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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1179 of 2010

Ishwar Prasad Dewangan S/o Manbodhi Dewangan, aged about 38 years, Occupation Tailoring, R/o Tikripara, Chhuikhadan, Distt.-Rajnandgaon, C.G.

---- Appellant

Versus

1. Tarkesh Sharma S/o Ramsanehi Tripathi, aged about 36 years, driver of Motorcycle No. CG 07 K 4793, R/o village Khongha, Police Station & Tahsil Chhuikhadan, District Rajnandgaon (CG)
2. United India Insurance Company Limited, Divisional Office Krishna Complex, Kachahari Chowk, Raipur, (Insurer of motorcycle No. CG 07 K 4793)
3. Ramesh Sharma S/o Ramsanehi Tripathi, owner of vehicle, R/o Khongha P.S. & Tahsil Chhuikhadan, Distt.-Rajnandgaon, C.G.
4. Oriental Insurance Company, Branch Office near Railway Station – Rajnandgaon (CG) (Insurer of motorcycle No. CG 08 F 1645)

---- Respondents

For Appellant	:	Shri Abhishek Sharma, Advocate
For Respondents 1 & 3	:	Shri Pravin Ku. Tulsyan, Advocate
For Respondent no.2	:	Shri Anand Ku. Gupta, Advocate
For Respondent no.4	:	Shri Sudhir Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

26/09/2017

Present is an appeal under Section 173 of the Motor Vehicles Act assailing the award dated 30.08.2010 passed by the Additional Motor Accident Claims Tribunal Khairagarh, District Rajnandgaon (CG) in Claim Case No.117/2008. Vide the impugned award, the Tribunal has in a proceeding under Section 166 of the MV Act awarded a compensation of Rs.82,035/- with interest @ 6% per annum to the appellant-claimant.

2. There is a cross objection also filed by respondents 1 & 3, the driver and the owner of the offending motorcycle. For convenience sake, we take the cross objection of the owner and the driver first.

3. Contention of the counsel for respondents 1 & 3 is that the only ground on which the Insurance Company has been exonerated of its liability, is the driver of the motorcycle not having a valid licence at the relevant point of time. Counsel for respondents 1 & 3 submits that the driver Tarkesh Sharma, the brother of the actual owner in fact had a licence which was valid for the vehicles other than the motorcycle during the relevant period of time and therefore the liability of payment of compensation should have been fastened upon the Insurance Company instead of the liability being shifted upon the owner and the driver. He further submits that it is a case where the accident resulted because of the negligence on the part of the appellant-claimant himself and therefore the claimant should not have entitled for any compensation.

4. Counsel for respondent no.4 i.e. the Insurance Company of the motorcycle which was being driven by the appellant-claimant submits that it is a case where the said Insurance Company has been exonerated for the reason that the policy which was taken by the claimant was in fact an act only policy which would cover only the third party, therefore, respondent no.4 Insurance Company has rightly been exonerated from the payment of compensation.

5. Having considered the rival contention put forth on either side and on perusal of the record and also taking into consideration the evidence of the witness from RTO who has categorically deposed of the driver of the motorcycle i.e. respondent no.1 having a valid licence to drive a LMV as well as other vehicles except the motorcycle at the relevant point of time, this Court is of the opinion that applying the principle of law laid down by this Court in the case of **National Insurance Co. Ltd. Vs. Kashi Das @ Mohandas and others** in **MA No. 496 of 2003** decided on 03.05.2016 the liability of payment of compensation would fall upon the Insurance Company which had insured the motorcycle belonging to

Ramesh Sharma respondent no.3. However, the Insurance Company shall have the liberty of recovering the same from the owner applying the principle of “pay and recovery”. The responsibility of payment of compensation shall be upon respondent no.2 the United India Insurance Company Limited, the insurer of the motorcycle bearing registration No. CG 07 K 4793.

6. Accordingly, the cross objection of respondents 1 & 3 stands allowed to the aforesaid extent.

7. So far as the appeal of the appellant-claimant is concerned, according to the counsel for the appellant, in the instant case, the Tribunal has wrongly fastened the contributory negligence and has deducted 50% of the compensation which was otherwise payable to the claimant. He further submits that the amount of compensation paid under the other heads is also on the lower side and the same deserves to be enhanced suitably.

8. So far as the contributory negligence is concerned, considering the evidences which have come on record particularly the evidence of the claimant as well as the respondents, this Court has no hesitation in reaching to the conclusion that the finding of the contributory negligence assessed by the Tribunal does not warrant interference. However, considering the total facts and circumstances of the case particularly the nature of injury sustained by the appellant, this Court is of the opinion that ends of justice would meet if the appellant is granted an additional lump sum compensation of Rs.18,000/- in addition to the amount of Rs.82,035/- as awarded by the Tribunal. It is ordered accordingly. Thus, the total amount of compensation payable to the appellant shall be Rs.1,00,035/- instead of Rs. 82,035/-. The enhanced amount shall also carry interest at the same rate as fixed by the Tribunal.

9. The appeal of the claimant/appellant stands allowed in part and the Cross Objection of the respondents 1 & 3 stands allowed.

Sd/-
(P. Sam Koshy)
JUDGE

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