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HIGH COURT OF CHHATTISGARH, BILASPUR

MISCELLANEOUS APPEAL NO. 886 OF 2004

Shesh Narayan Sahu aged about 19 years S/o Laxman Lal Sahu R/o Village Bemta, Police Station Simga, Tahsil Tilda, District Raipur (C.G.)

---- Appellant

Versus

1. Tulsa Ram Jaat aged about 42 years S/o Shri Bhuraram Jaat R/o Village Sukhmandal, Police Station Dechu, District Jodhpur (Rajsthan).

2. G.K. Agrawal Through Shri Asok Kumar Joshi S/o Shri Hukumchand Joshi R/o Subhash Chowk, Balodabazar, District Raipur (C.G.)

3. The New India Insurance Company Limited, Through Divisional Manager, Divisional Office, Balodabazar, District Raipur (C.G.)

-----Respondents

For Appellant	:	Mr. Arjun Lal Singroul, Advocate
For Respondent No. 3	:	Mr. Qamarul Aziz, Advocate
For Respondents No. 1 & 2	:	None

Hon'ble Shri Sanjay Agrawal, J.

Judgment on Board

03/02/2017

1. This is an appeal filed by the appellant/claimant under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') seeking enhancement of the amount awarded under the impugned award dated 07/05/2004 passed by the Second Additional Motor Accident Claims Tribunal, Balodabazar (hereinafter referred to as 'the Claims Tribunal') in Claim Case No. 46/2002.

2. Briefly stated facts of the case are that the accident had occurred on 14/12/2001 when the complainant Shesh Narayan Sahu was returning along

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with his friend Lokesh Kumar Sahu on a bicycle from village Bemta to village Bhumiya. As soon as they reached near Pardhidera, they have been dashed vehemently by the offending vehicle, i.e. Truck, bearing its registration No. MP 23-DA 3972 which was coming from opposite direction from Raipur. The said offending vehicle was driven rashly and negligently by its driver namely, Tulsa Ram Jaat (respondent No.1), owned by G.K. Agrawal (respondent No.2) and the same was insured with the New India Insurance Company Limited (respondent No.3).

3. On account of the aforesaid accident, a claim enumerated under Section 166 of the Motor Vehicles Act,1988 has been made by claimant by claiming total compensation to the tune of Rs. 4,95,000/-, submitting, *inter alia,* that on account of the said accident, his right leg has been crushed badly and rod has been fixed in his right leg. It was further pleaded that he was admitted into the hospital from 14/12/2001 to 01/01/2002 and despite of the said treatment, he is still facing a lot of problem in his daily life.

4. Respondent No. 2/owner has contested the claim and submitted that the claimant himself is responsible for the alleged accident, therefore, not entitled to any amount of compensation, while the respondent No. 3/Insurance Company has contested the claim on the ground that the vehicle in question was being used in violation of the insurance policy as the driver of the offending vehicle was not possessed a valid and effective driving license.

5. Upon hearing of the parties, the Claims Tribunal vide its impugned award dated 07/05/2004 has held that the alleged accident had been occurred due to rash and negligent driving of the driver of the offending vehicle. The Claims Tribunal further held that on account of the alleged accident, the complainant has suffered injury on his right leg, and in consequence, Rs. 23,485/- has been awarded as compensation.

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6. While awarding the amount of compensation, the Claims Tribunal has exonerated the insurance company from its liability by holding that the claimant has failed to establish the fact by producing the copy of the insurance policy that the vehicle in question was insured with the New India Insurance Company and, as a consequence, total liability has been fastened upon driver and owner of the offending vehicle.

7. Being aggrieved with the aforesaid award, the claimant has filed this appeal questioning the aforesaid award, submitting *inter alia,* that the amount of compensation as awarded by the Claims Tribunal is extremely on the lower side and, the Claims Tribunal has erred further in exonerating the Insurance Company from its liability.

8. Mr. Arjun Lal Singroul, learned counsel appearing for the appellant submits that the claimant Shesh Narayan Sahu, aged about 19 years has suffered grievous injury in his right leg and a rod has been fixed in his right leg due to the alleged accident, therefore, the amount of compensation as awarded by the Claims Tribunal is extremely on the lower side. He further submits that the Insurance Company has wrongly been exonerated on the ground that the policy has not been submitted despite the fact that the Insurance Company has not denied this fact that the vehicle in question was not insured with it. He further submits that the main defence of the Insurance Company was that the vehicle in question was being driven in violation of the insurance policy as the driver was not possessing valid and effective driving license, however to prove the said fact, none of the witnesses were examined by the Insurance Company and therefore, exoneration of the Insurance Company as held by the Claims Tribunal deserves to be set aside.

9. On the other hand, Mr. Qamarul Aziz, learned counsel appearing for respondent No.3 supported the impugned award and submits that since the

accident was occurred in the year 2001; therefore, the amount of compensation as awarded by the Claims Tribunal is just and proper in the facts and circumstances of the case.

10. I have heard learned counsel appearing for the parties and perused the record carefully.

11. From perusal of the record, it is clear that the exoneration of the Insurance Company as held by the Claims Tribunal that since the insurance policy has not been submitted, is not at all sustainable in view of the materials available on record as well as in view of the defence taken by the Insurance Company. A bare perusal of the written statement submitted by Insurance Company would reveal that they have in fact not denied the fact with regard to the insurance of the offending vehicle. What they have denied in their written statement was that since the driver was not possessing valid and effective driving license, therefore, the Insurance Company cannot be held liable to pay compensation as the same was being used in violation of the insurance policy.

12. Be that as it may, during the pendency of this appeal, the insurance policy had already been submitted and verified by the Insurance Company. The insurance policy shows that the vehicle in question was insured with the New India Insurance Company Limited. In view of this fact, the finding as recorded by the Claims Tribunal while exonerating the Insurance Company is wholly untenable and, therefore, not sustainable. Besides, in order to establish the fact that the vehicle in question was being used by the driver, who was not holding a valid and effective driving license, the Insurance Company ought to have placed cogent and reliable evidence, however, none of the witnesses were examined by the Insurance Company. Therefore, considered opinion of this Court is that the exoneration of the Insurance Company from its liability was wrongly held by the Claims Tribunal. I therefore set aside the said finding and hold that the vehicle in

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question was not being used in violation of any terms and conditions of the insurance policy and the Insurance Company is liable to indemnify the insured.

13. In order to assess just and proper compensation payable to the claimant, it is necessary to examine the entire evidence led by the parties, I find from mere perusal of the entire record that the Claims Tribunal has awarded just and proper compensation as the claimant has failed to examine the doctor and under said fact and circumstances, the amount of compensation awarded by the Claims Tribunal to the tune of Rs.23,485/- is just and proper. However, the said amount shall carry interest @ 9% per annum from the date of filing of the claim petition till its realization.

14. With the aforesaid modification, the appeal is allowed in part. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
Judge

Tiwari