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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 156 of 2014

- The Oriental Insurance Co. Ltd. Thru- Divisional Manager, Divisional Office- Kawardha, Near Sunil Video World Swami Mahavir Chowk, Main Market, Kawardha, Tah. Kawardha, Distt. Kabirdham C.G.

---- Appellant (Respondent No.3)

Versus

1. Gokaran Das Anant, S/o Amrit Das, Aged About 26 Years, R/o Barhatthi, Thana- Bhoramdeo, Tah. Bodla, Distt. Kabirdham C.G. .... (Claimant)
2. Shekchand Bhaskar, Aged About 22 Years, R/o Ward No. 13, Minimata Chowk, Kawardha, Thana, Tah. Kawardha, Distt. Kabirdham C.G.
3. Jitendra Singh Thakur S/o Bhikari Singh, Aged About 36 Years, Occupation-Owner of Vehicle CG08-ZD-0377, R/o Ward No. 14, Thakur Para, Kawardha, Thana Kawardha, Zila Kabirdham C.G., Or Jitendra Singh Thakur, R/o Near Sunil Video World, Swami Mahaveer Chowk, Main Market, Kawardha C.G.

---- Respondents

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MAC No. 168 of 2014

- Gokaran Das Anant, S/o Shri Amrit Das, aged about 26 years, Occupation- Security Guard, R/o Village Barhatti, Thana- Bhoramdeo, Tah. Kawardha, Civil & Revenue Distt. Kabirdham C.G.

---- Appellant (Claimant)

Versus

1. Shekchand Bhaskar, S/o Shri Roopchand Bhasker, aged about 22 Years, R/o Ward No.13, Minimata Chowk, Kawardha, Thana & Tahsil Kawardha, Civil & Revenue Distt. Kabirdham C.G.

   (Driver of the vehicle No.CG08-ZD-0377)
2. Jitendra Singh Thakur S/o Shri Bhijkhari Singh, aged about 36 years, R/o Ward No. 14, Thakur Para, Kawardha, Thana & Tahsil Kawardha, Zila Kabirdham C.G.

   (Owner of the vehicle No.CG08-ZD-0377)
3. The Oriental Insurance Company Limited, Branch Kawardha, Near Sunil Video World, Mahavir Chowk, Main Market, Kawardha, Thana & Tahsil Kawardha, Civil & Revenue Distt. Kabirdham C.G.

   (Insurer of the vehicle No.CG08-ZD-0377)

---- Respondents

MAC No.156/2014

For Appellant	:	Smt. Chitra Shrivastava, Advocate
For Respondent No.1	:	Shri Sumit Shrivastava, Advocate
For Respondent No.2 & 3	:	Shri Ajit Singh, Advocate

MAC No.168/2014

For Appellant	:	Shri Sumit Shrivastava, Advocate
For Respondent No.1 & 2	:	Shri Ajit Singh, Advocate
For Respondent No.3	:	Smt. Chitra Shrivastava, Advocate

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgement

Per P. Diwaker, J

25/07/2017

1. Since the above miscellaneous appeals arise out of the award dated 27.11.2013 passed by the Motor Accident Claims Tribunal, Kabirdham (for short 'the Claims Tribunal') in Claim Case No.89/2012, they are being disposed of by this common judgment.

2. MAC No.156/2014 has been filed on behalf of the insurance company challenging the legality and validity of the impugned award, whereas MAC No.168/2014 has been filed by the claimant seeking enhancement of compensation as awarded by the Claims Tribunal.

3. Facts of the case, in brief, are that on 9.3.2012 claimant Gokaran Das Anant was travelling as a pillion rider on a bicycle which was being plied by his friend and they were going to their house from Kawardha Market. At about 4.30 in the evening when they reached near Jorataal Tiraha, the offending vehicle i.e. Jeep bearing registration No.CG08-ZD-0377, which was being driven by its driver in a rash and negligent manner, came from the side of village Rabeli and hit against the said motorcycle on which the claimant was travelling as a result of which he received fracture injury in his right leg. The

claimant was admitted in the Government Hospital, Kawardha where no proper treatment was given to them and therefore he was shifted to Radiance Hospital, Kawardhar for better treatment where he remain admitted from 9.3.2012 to 16.3.2012 and during this period a rod was inserted in his right leg. Report of the accident was lodged in the Police Station Kawardha based on which FIR was registered against the driver of the offending vehicle and after completion of investigation, charge sheet against him was filed in the Court. A claim application was filed by the claimant before the Claims Tribunal concerned seeking compensation to the tune of Rs.1,90,596/- on various grounds inter alia pleading that at the time of accident the claimant was aged about 26 years, he was working as Security Guard and getting salary of Rs.6097/- per month. Due to accidental injuries, he is unable to continue his avocation as Security Guard and thus, lost his job, income and future income also. He was also earning Rs.50,000/- per annum from the agriculture. The family members put into great financial miseries due to the said accident, as, he was the sole bread winner of the family. Therefore, the claimant is entitled to receive the amount of compensation as claimed by him.

4. The respondents No.1 & 2 filed their written statement before the Claims Tribunal denying the averments made in the claim application. Respondent No.3 Insurance Company by filing written statement contested the case on the ground that the driver of offending vehicle was not having valid & effective license to drive the vehicle in question and therefore the insurance company is not liable for making payment of any compensation to the claimant.

5. By the impugned award, the Claims Tribunal has awarded compensation of Rs.2,15,596/- along with interest @ 7.5% p.a. to the claimant/appellant. It is this award which has been challenged by the claimant and the insurance company as well.

6. Counsel for the appellant-claimant submits that;-

- the Claims Tribunal has erred in law in awarding very negligible compensation for the injuries sustained by the claimant.
- no amount has been granted under the head “future treatment', loss of income during treatment. The sum awarded under the head 'pain & suffering' is also on the lower side.
- The appellant lost his job due to the accident in question and is not able to do any work due to permanent disability, but nothing has been awarded by the Claims Tribunal under the head of permanent disablement.
- the Claims Tribunal has not considered the important aspect of the case that in future also the appellant had to undergo surgery for removing the rod inserted in his leg.
- the rate of interest awarded at the rate of 7.5% per annum from the date of application till payment is also very low and it requires upward revision and enhancement.

7. Learned counsel for Insurance Company has argued that in the present case, the driver of the vehicle in question had a license only to drive the light motor vehicles and there was no endorsement on the license permitting him to drive a commercial vehicle like taxi, thus, the vehicle was being plied in violation of the terms and conditions of the policy and therefore the insurance company is not liable to pay compensation to the claimant.

8. Learned counsel for owner & driver of the offending vehicle submits that the driver of the offending vehicle was having a valid and effective driving license to drive the light motor vehicles and therefore, merely in absence of any endorsement on his license for driving the transport or commercial vehicle, it cannot be held that on the date of accident the driver was not having a valid and effective license to drive the offending vehicle. Reliance has been placed on the judgment of the Apex Court in the matter of Kulwant Singh &

others Vs. Oriental Insurance Company Limited reported in (2015) 2 SCC 186.

9. Heard counsel for the parties and perused the material available on record.

10. As regards the appeal filed by the insurance company, the legal position in a case where driver had a license only to drive the light motor vehicles and there was no endorsement on the license authorizing him to drive a commercial vehicle like taxi has been considered by the Supreme Court in the case of Kulwant Singh & others v. Oriental Insurance Company Limited reported in (2015) 2 SCC 186 and has held as follows;-

> "8. We find the judgments relied upon cover the issue in favour of the appellants. In Annappa Irappa Nesaria reported in (2008) 3 SCC 464, this Court referred to the provisions of Section 2 (21) and (23) of the Motor Vehicles Act, 1988, which are definitions of 'light motor vehicle' and 'medium goods vehicle' respectively and the rules prescribing the forms for the license, i.e. Rule 14 and Form No.4. It was concluded: (SCC p.468, Para-20)
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> > "20.From what has been noticed herein-before, it is evident that "transport vehicle" has now been substituted for "medium goods vehicle" and "heavy goods vehicle". The light motor vehicle continued at the relevant point of time to cover both "light passenger carriage vehicle" and "light goods carriage vehicle". A driver who had a valid licence to drive a light motor vehicle, therefore, was authorized to drive a light goods vehicle as well."
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> In **S. Iyyapan v. United India Insurance Co. Ltd.** reported in **(2013) 7 SCC 62** the question was whether the driver who had a license to drive 'light motor vehicle' could drive 'light motor vehicle' used as a commercial vehicle, without obtaining endorsement to drive a commercial vehicle. It was held that in such a case, the Insurance Company could not disown its liability. It was observed:
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> > "18. In the instant case, admittedly the driver was holding

> a valid driving license to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment (Civil Misc. Appeal No.1016/2002 order dated 31.10.2008 (MAD), is therefore, liable to be set aside.

11. In the present case also, admittedly, the driver was holding a valid license to drive light motor vehicles. There is also no dispute that the offending vehicle by which accident took place is a Jeep, which was registered with transport authority as taxi. Therefore, in view of the law laid down by the Supreme Court in Kulwant Singh's (supra), we are of the opinion that it cannot be held that on the date of accident, the driver having license to drive light motor vehicles was not authorized to drive the offending vehicle and being so, the appellant insurance company is not liable to pay compensation.

12. As regards the appeal filed by the claimant, considering the fact that the claimant/appellant remain hospitalized for more than 11 days in the hospitals and during this period a rod was inserted in his leg and further considering that in future also he would be required to undergo surgery for removal of said rod, it is apparent that the claimant would have suffered much pain and agony and would also be required to incur expenses in future treatment. Thus, keeping in view all the above things, this Court is of the view that the amount awarded by the Claims Tribunal is on lower side and requires reconsideration. The claimant/appellant is entitled for compensation in the following manner;-

Heads		Amount Awarded
For Medical Expenses	:	Rs.1,50,596/-- (Maintained)
For loss of income during hospitalization.	:	Rs.15,000/-
For Physical & Mental agony	:	Rs.50,000/-
For serious injuries	:	Rs.50,000/-
For future treatment	:	Rs.50,000/-
For Special Diet	:	Rs.15,000/-
For attendant	:	Rs.5,000/-
Total	:	**Rs.3,35,596/-**

13. On the basis of aforesaid discussions, the claimant/appellant is held entitled for a total compensation of Rs.3,35,596/-. Since the Claims Tribunal has already awarded Rs.2,15,596/-, after deducting the said amount, the claimant/appellant is entitled for enhanced amount of Rs.1,20,000/- (3,35,596 - 2,15,596). This additional amount of compensation shall carry interest @ 9% p.a. from the date of filing of claim application till realization.

14. In the result;-

- MAC No.156/2014 filed by the appellant Insurance Company being sans merit is dismissed.
- MAC No.168/2014 filed by the claimant/appellant is allowed in part and the award impugned stands modified to the extent indicated above.

Sd/-
(P. Diwaker)
Judge

Sd/-
(RP Sharma)
Judge

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