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HIGH COURT OF CHHATTISGARH AT BILASPUR

Misc. Appeal (C) No. 284 of 2017

1. Somarsai S/o Jagarnath Rajwade, aged about 42 years, Occupation Service, R/o Village Shyamnager (Kharkapara), P.S. Bhatgaon, District Surajpur, Chhattisgarh
2. Anil Kumar Rajwade S/o Somarsai, aged about 24 years, Occupation Service, R/o Village Shyamnager (Kharkapara), P.S. Bhatgaon, District Surajpur, Chhattisgarh ....(Driver and Owner)

---- Appellants

Versus

1. Jagdish Rajwade S/o Ramkelawan Rajwade, aged about 17 years, Minor through guardian gather Ramkhelawan Rajwade, S/o Karansai, aged about 40 Years, R/o Village Dumariya, P.S. Patna, at Present R/o Kuruwa, P.S. Vishrampur, District Surajpur, Chhattisgarh ....(Claimant)
2. Branch Manager, United India Insurance Company Limited, Branch Amibakapur District Surguja, Chhattisgarh ....(Insurer)

---- Respondents

For Appellants	:	Mr. A. K. Prasad, Advocate.
For Respondent no.1	:	Mr. Shakti Raj Sinha, Advocate.
For Respondent no.2	:	Mr. Dashrath Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

12/07/2017

Present is an appeal under Section 173 of the Motor Vehicles Act preferred by the driver and the owner of the offending vehicle assailing the award dated 15.11.2016 passed by the Motor Accident Claims Tribunal, Surajpur in Motor Accident Claim No. 97 of 2015. Vide the impugned award the Claims Tribunal on an application under Section 166 of the MV Act on personal accident injuries sustained by the claimant i.e. respondent no.1 in the present appeal has awarded compensation of Rs.1,10,865/- with interest @ 9% per annum from the date of application. While passing the impugned award, the Claims Tribunal has exonerated the Insurance Company from its liability to pay the compensation and has fastened the liability upon the appellants.

2. The relevant facts for adjudication of the present case is that on 20.03.2015, respondent no.1 while returning home after purchasing some grocery articles from the nearby shop was hit by the motorcycle bearing registration No. CG15 CS 6279 driven by appellant no.1, owned by appellant no.2 and was insured by respondent no.2. As a result of the accident, respondent no.1 received grievous injuries who immediately after the first aid given by the Community Health Center was referred to the District Hospital, Baikunthpur and fromwhere he was again referred to Raipur where he was admitted in MMI Narayana Hospital, Raipur for a few days and undergone some surgery. After sometime, he was again readmitted in the said hospital for further treatment. For all these, the claimant filed an application for compensation under the Motor vehicles Act.

3. Considering the overall evidences which have come on record, the Tribunal vide its impugned order dated 15.11.2016 finally exonerated the Insurance Company and fastening the liability upon the appellants, ordered for payment of a total compensation of Rs.1,10,865/- with interest @ 9% per annum to the claimant.

4. It is this award which is under challenge in the present appeal.

5. Counsel for the appellants submits that it is not a case where the driver did not have a licence at all, neither is it a case where the driver was having a fake licence. Rather it is a case where the driver of the offending vehicle in fact, at the relevant point of time, had a licence of driving a light motor vehicle. It is contended that since it is not a case of no licence or a fake licence and that the vehicle involved in the accident being duly insured with the Insurance Company i.e. respondent no.2, the learned Tribunal ought to have fastened the liability upon the Insurance Company. Counsel for the appellants relied upon a decision of the Karnataka High Court in the case of Srinivasagowda and Another Vs. Sannamma and others reported in 2010 ACJ 1510 where in somewhat similar circumstances, the Division Bench of the Karnataka High Court had allowed the appeal of the owner by saddling the liability upon the Insurance Company. He also relied upon the decision of the High Court of Himachal Pradesh in the case of Oriental Insurance Company Limited Vs. Khem Chand and Others reported in 2016 ACJ 169.

6. Opposing the appeal counsel for the Insurance Company however submits that all the facts pertaining to the incident are not in dispute including the fact that the driver of the offending vehicle at the relevant point of time did not have a valid licence to driver a motorcycle. He submits that so far as the requirement of a driving licence is concerned, it is Section 3 of the Motor Vehicles Act which specifically enumerates that no person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorizing him to drive the vehicle. Referring to Section 3 of the MV Act counsel for the Insurance Company submits that in the instant case, the driver of the motorcycle was having a licence for driving a light motor vehicle alone and as such he did not have the licence or endorsement in his licence enabling him to drive a motorcycle also. In the absence of which the Tribunal has rightly fastened the liability upon the owner and the driver of the offending vehicle. Counsel for the Insurance Company further submits that the Insurance Company had also led specific evidence in this regard that the driver at the relevant point of time did not have a valid licence and perhaps which is not disputed by the appellants as well. Counsel for the Insurance Company relying upon the decision of the Supreme Court in the case of Oriental Insurance Company Limited vs. Zaharulnisha and Others reported in 2008 (12) SCC 385 submits that the facts of the present case squarely fit to the facts of the aforesaid judgment of the Supreme Court. Therefore, the finding of the Claims Tribunal discharging the Insurance Company of its liability cannot be said to be bad in law, arbitrary or contrary to law or the evidences which have come on record. Thus, prayed for rejection of the appeal.

7. Having heard the rival contentions put forth on either side and on perusal of the record what clearly strikes the mind of this Court is the admitted facts regarding the accident, the date of accident, the offending vehicle involved in the accident, the driver and the owner of the offending vehicle being the present appellants and as a result of the accident respondent no.1 sustaining injuries. It is also not in dispute that at the relevant point of time, the driver of the offending vehicle did not have a valid licence in as much as the licence which the driver was holding was only confined to drive a light motor vehicle and it did not have permission to drive a motorcycle. Thus, the requirement of Section 3 read with sections 5 & 18 of the MV Act stood clearly breached.

8. In view of the same, this Court has no hesitation in reaching to the conclusion that the finding arrived at by the Tribunal cannot be said to be erroneous or bad in law. Moreover, the finding of the Tribunal stands fortified from the judgment of the Supreme Court in the case of Zaharulnisha (supra) which was pronounced under somewhat similar set of facts.

9. As regards the two judgments relied upon by the counsel for the appellants, since those judgments are of different High Courts, and when there is a direct decision on the issue involved in the present case of the Supreme Court, maintaining judicial discipline, this Court is inclined to accept the law as it stands in the judgment of the Supreme Court in the case of Zaharulnisha (supra) and holds that the impugned award passed by the Claims Tribunal does not warrant any interference nor it can be said to be contrary to law or the evidences which have come on record.

10. Thus, the appeal being devoid of merits, the same deserves to be and is accordingly dismissed.

Sd/-

(P. Sam Koshy)
Judge

Bhola