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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1142 OF 2017

Rajoo Singh Sandilya, S/o Bhagat Ram Gond, aged about 24 years, R/o Village- Karauli, Tahsil and Police Station Dhaurpur, District Surguja (C.G.)

… Appellant

versus

1. Surendra Minj, S/o Timboo Ram Minj, aged about 45 years
2. Sangita Minj, D/o Surendra Minj, aged about 21 years
3. Sanjay Minj, S/o Surendra Minj, aged about 20 years

All Caste- Uraon, R/o Vilage- Batauli, Tahsil and Police Station Dhaurpur, District Surguja (C.G.)

4. I.C.I.C.I. Lambard General Insurance Company Limited, I.C.I.C.I. Lambard House, 414, Veer Sawarkar Marg, near Sindhi Vinayak Temple, Prabha Devi, Mumbai 400025

… Respondents

For Appellant : Mr. S.D. Singh, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

24/10/2017

1. The present is an owner's appeal under Section 173 of the Motor Vehicles Act, 1988, challenging the award dated 15.5.2017 passed by the Fifth Additional Motor Accident Claims Tribunal, Ambikapur, in Motor Accident Claim Case No. 255/2016.

2. Brief facts of the case are that on 10.7.2016 one Sumitra Minj, aged between 36-40 years, a pedestrian, was hit by a Motorcycle No. CG15-CX-3397 owned and driven by the Appellant, as a result of which she sustained grievous injuries to which she later succumbed.

3. Immediately after the accident, a criminal case was registered against the Appellant, for which he is being prosecuted.

4. The legal representatives of deceased-Sumitra Minj moved a claim application under Section 166 of the Motor Vehicles Act before the Tribunal.

5. The learned Tribunal vide the impugned award dated 15.5.2017 has awarded a compensation of Rs. 4,10,000/- to the claimants with interest thereon at the rate of 7% per annum from the date of filing of the claim application. While passing the award, the learned Tribunal has exonerated the Insurance Company of its liability on the ground that the Appellant who was also the driver of the motorcycle at the time of accident, did not have a licence to drive the motorcycle and since the vehicle was being driven by a person who was not having a licence, the liability has been fastened upon the owner himself, i.e., the Appellant.

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

7. The ground raised by the learned Counsel for the Appellant is that the Court below has not properly appreciated the contentions of the Appellant inasmuch as the vehicle at the time of accident was being driven by another person, namely, Ajit Kumar, who has also entered appearance before the Tribunal and has accepted the fact that the accident had occurred when he was driving the motorcycle. Learned Counsel for the Appellant further submitted that the Tribunal also should have taken into consideration the fact that the Appellant himself has entered appearance before the Tribunal and has stated these facts and therefore the Tribunal ought to have accepted the submissions and evidence put forth by the Appellant and should have fastened the liability upon the Insurance Company. In the alternate, he prayed that even if the payment of compensation is to be made, the Insurance Company should had been held responsible for depositing the same first with a liberty to recover the same from the Appellant, relying upon the decision of the Hon'ble Supreme Court in the case of **Kusum Lata & Ors.** v. **Satbir & Ors.**, **2011 (3) SCC 646**.

8. Having heard the contentions put forth on behalf of the Appellant and on perusal of the record, what is reflected is that undisputedly an accident had occurred on 10.7.2016 and as a result of the accident, Sumitra Minj sustained grievous injuries to which she later succumbed. It is also an admitted factual position that the deceased-Sumitra Minj was a pedestrian and was hit by the Motorcycle No. CG15-CX-3397. What is also not in dispute is the initiation of a criminal case against the Appellant, the owner of the motorcycle.

9. Contention of the learned Counsel for the Appellant so far as the vehicle not being driven by the Appellant is concerned, the same is a weak piece of evidence inasmuch as though the accident did occur on 10.7.2016 and a criminal case was also registered by the police authorities, it is only before the Tribunal that the said Ajit Kumar was examined as a witness taking a different stand that it was he who was driving the vehicle at the time of accident and not the Appellant.

10. From the cross-examination of the said witness Ajit Kumar it reflects that he has also accepted the fact that he has not given any such intimation of the accident to have occurred when he was driving the motorcycle at all, which by itself demolishes the entire case of the Appellant, the owner of the motorcycle. On the contrary, from the materials which have been produced before the Tribunal, the documents of the criminal case which has been registered against the Appellant, the FIR, the documents pertaining to the Supurdnama of the vehicle which was again obtained by the Appellant and the other documents duly produced and exhibited before the Tribunal, it establishes the accident to have occurred while the Appellant was driving the vehicle.

11. Admittedly, in the instant case, the Appellant did not have a licence at the time of accident. In the absence of a licence and he being the owner and driver of the vehicle at the time of accident, the Insurance Company has been rightly exonerated of its liability, for the reason that one of the primary conditions while issuance of a licence is that the vehicle should be driven by a person having a valid licence. In the instant case, the Appellant did not have a licence at all. Thus, the finding of the Tribunal cannot be said to be either erroneous or contrary to the evidence which have come on record.

12. Thus, for the foregoing reasons, the appeal is dismissed being devoid of merits.

Sd/-
(P. Sam Koshy)
Judge

/sharad/