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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1118 of 2017

Divisional Manager (DO-1) the Oriental Insurance Company Limited, Madina Building, Kutchery Chowk, Jail Road Raipur, Chhattisgarh.....Appellant

---- Appellant

Versus

1. Kamalnayan Das alias Laxmikant S/o Shri Kripa Sindhu Das, aged about 35 years, R/o Village Paraskol, Thana Basna, District Mahasamund, Chhattisgarh.
2. Salim Khan S/o late Shri Rahim Khan, R/o Ward Number-4, Thana Basna, District- Mahasamund, Chhattisgarh..........Driver
3. Bajrang Lal Agrawal S/o Shri Premchand Agrawal, aged about 38 years R/o Basna, District- Manasamund, Chhattisgarh.....Owner

---- Respondents

For Appellant	:	Shri Sudhir Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

10/08/2017

Present is an Insurance Company's appeal under Section 173 of the Motor Vehicles Act assailing the award dated 16.05.2017 passed by the 1st Additional Motor Accident Claims Tribunal, Raipur, Chhattisgarh in Claim Case No. 79 of 2015. Vide the impugned award, the Tribunal in a proceeding under Section 166 of the MV Act in a injury case has awarded compensation of Rs.1,92,500/- with interest @ 7% per annum from the date of application.

2. The challenge to the award is on two grounds. First, the driver of the offending vehicle at the relevant point of time did not have a licence, thus, there is breach of policy condition. Second, there being a contributory negligence on the part of the injured as there was a head on collision which shows that there was some amount of negligence on the part of the injured also. Hence, prayed for modification of the impugned award accordingly.

3. A perusal of the record would show that the Tribunal in the course of evidence has found that the claimant had initially given a licence of the RTO, Raipur which had already lapsed at the time of accident and the same subsequently got renewed. However, during the course of evidence, the injured brought a valid licence from the RTO, Jagdalpur which was not verified by the Insurance Company. Further an explanation has also been given by the injured regarding the subsequent licence being prepared from RTO, Jagdalpur explaining that his earlier licence having been lost, the subsequent licence was got prepared. There is no evidence to disbelieve the contention of the injured and to disbelieve the subsequent licence issued by the RTO, Jagdalpur. Thus, the first ground raised by the Insurance Company stands negated.

4. So far as the contributory negligence is concerned, this Court does not find any substantive cogent evidence led by the Insurance Company to establish the negligence on the part of the injured for the accident to arise. Only on account of the fact that there was head on collision between the motorcycle and the truck by itself cannot be a ground to presume that there was some contributory negligence on the part of the injured also. Thus, the said ground raised by the Insurance Company also stands negated.

5. In view of the same, this Court does not find any strong ground to interfere with the impugned award. The appeal thus being devoid of merit, deserves to be and is accordingly dismissed.

Sd/-

(**P. Sam Koshy)**
JUDGE

Bhola