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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 508 OF 2017

1. Aslam Khan S/o Shahid Khan, Aged About 45 Years, R/o Village Khamtoli Bamhani, Post Patratoli, Tahsil Duldula, District Jashpur (C.G.)
2. Mohd. Javed S/o Aslam Khan, Aged About 21 Years R/o Village Khamtoli Bamhani, Post Patratoli, Tahsil Duldula, District Jashpur (C.G.)

… Appellants

Versus

1. Jagarnath Ram S/o Late Sudhu Ram, Aged About 55 Years, Occupation Service, R/o Village Fatehpur, Tahsil & District Jashpur (C.G.)
2. The New India Insurance Company Limited, Micro Branch Office, Judev Complex, Gamhariya Road, District Jashpur (C.G.)

… Respondents

MISC. APPEAL (C) NO. 749 OF 2017

Jagarnath Ram S/o Late Sudhu Ram, Aged About 55 Years, Occupation Service, R/o Village Fatehpur, Tahsil & District Jashpur (C.G.)

… Appellant

Versus

1. Aslam Khan S/o Shahid Khan, R/o Village Khamtoli Bamhani, Post Patratoli, Tahsil Duldula, District Jashpur (C.G.)
2. Mohd. Javed S/o Aslam Khan, Aged About 21 Years R/o Village Khamtoli Bamhani, Post Patratoli, Tahsil Duldula, District Jashpur (C.G.)
3. The New India Insurance Company Limited, Micro Branch Office, Judev Complex, Gamhariya Road, District Jashpur (C.G.)

… Respondents

- Mr. J.K. Saxena, Advocate, for the Owner and Driver.
- Mr. Rishikant Mahobia, Advocate, under instructions of Mr. A.K. Prasad, Advocate, for the Claimant.
- Mr. B.N. Nande, Advocate, for the Insurance Company.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

20/09/2017

1. The present two appeals under Section 173 of the Motor Vehicles Act, 1988, arise out of the same award dated 20.2.2017 passed by the Motor Accident Claims Tribunal, Jashpur, in Motor Accident Claim Case No. 102/2015.

2. Vide the impugned award dated 20.2.2017, the Tribunal, in a proceeding under Section 166 of the Motor Vehicles Act, in an injury case, has awarded a compensation of Rs. 1,46,000/- to the injured-claimant, along with interest thereon at the rate of 9% per annum from the date of filing of claim application. While passing the award, the Tribunal has fastened the liability for payment of compensation jointly and severally upon the owner and driver of the offending vehicle and exonerated the insurance company of its liability.

3. MAC No. 508/2017 is an appeal preferred by the owner and driver of the offending vehicle, assailing the liability which has been fastened upon them to pay the compensation. MAC No. 749/2017 is an appeal filed by the injured-claimant, seeking enhancement of the compensation awarded.

4. It is a case where on 2.6.2015, the injured-claimant/Jagarnath Ram sustained injuries arising out of an accident from the Auto, bearing registration no. CG13-UB/6721, which was driven by Mohd. Javed, owned by Aslam Khan and insured with the New India Insurance Company Limited. As result of the said accident, the claimant suffered injuries on his ribs and chest, where the ribs of the claimant had got fractured. Initially, he was admitted to Holy Cross Hospital, Kunkuri and thereafter he was taken to RIMS, Ranchi and from there he is said to have been further taken to Abdur Razzaque Ansari Memorial Weavers Hospital Irba, Ranchi.

5. So far as the accident occurred on 2.6.2015, the offending vehicle being the Auto, bearing registration no. CG13-UB/6721, and the said Auto being owned by Aslam Khan, the same are not in dispute. Further, it is also not in dispute that the said Auto was duly insured with the New India Insurance Company Limited.

6. For the sake of convenience, this Court first intends to decide the appeal of the owner and driver of the offending vehicle.

7. Shri J.K. Saxena, learned counsel appearing for the owner and driver, challenges the impugned award on the ground that the insurance company has been falsely exonerated of its liability, inasmuch the finding of the Tribunal of the owner not being indemnified on the ground that there being a clear breach of policy condition, is bad in law and the same deserves to be set aside. According to him, it is a case where the Auto at the time of accident was being driven by Mohd. Javed who was having a valid learner's licence for driving the Light Motor Vehicle and that while he was driving the Auto his instructor i.e. his father-Aslam Khan was also sitting along with him and who had a valid driving licence, thus, there was no contravention of any of the provisions of the Motor Vehicles Act. The liability of payment of compensation therefore should have been fastened jointly and severally upon the insurance company as well and the insurance company should have been directed to pay the amount of compensation.

8. Shri B.N. Nande, learned counsel appearing for the insurance company, however, opposing the appeal of the owner and driver, submits that it is a case where the Motor Vehicles Act itself did not permit the owner to permit a person having a learner's licence to drive a passenger vehicle. He refers to Section 7(1) of the Motor Vehicles Act and the amended rules of 1999 wherein it has been held that a person with a learner's licence would not be permitted to drive a transport vehicle unless he holds a driving licence for a period of at least 1 year. In the instant case, the learner's licence was issued on 29.5.2015 and within a period of one month's time itself the accident occurred i.e. on 2.6.2015 and therefore the Tribunal has rightly exonerated the insurance company and the impugned award does not warrant any interference so far as the liability of payment of compensation is concerned.

9. Having heard the contentions put forth on either side on the appeal of the of the owner, it would be trite at this juncture to refer to the decision of the Hon'ble Supreme Court in the case of **National Insurance Co. Ltd.** v. **Swaran Singh & Others**, **2004 (3) SCC 297**, wherein the Apex Court in paragraphs 93 and 94 dealing with the issue of learner's licence has held as under:-

> **"93.** Motor Vehicles Act, 1988 provides for grant of learner's licence. [See Section 4(3), Section 7(2), Section 10(3) and Section 14]. A learner's licence is, thus, also a licence within the meaning of the provisions of the said Act. It cannot, therefore, be said that a vehicle when being driven by a learner subject to the conditions mentioned in the licence, he would not be a person who is not duly licensed resulting in conferring a right on the insurer to avoid the claim of the third party. It cannot be said that a person holding a learner's licence is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's licence, the same would run counter to the provisions of Section 149(2) of the said Act.
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> **94.** The provisions contained in the said Act provide also for grant of driving licence which is otherwise a learner's licence. Section 3(2) and 6 of the Act provides for the restriction in the matter of grant of driving licence, Section 7 deals with such restrictions on granting of learner's licence. Section 8 and 9 provide for the manner and conditions for grant of driving licence. Section 15 provides for renewal of driving licence. Learner's licences are granted under the rules framed by the Central Government or the State Governments in exercise of their rule making power. Conditions are attached to the learner's licences granted in terms of the statute. A person holding learner's licence would, thus, also come within the purview of "duly licensed" as such a licence is also granted in terms of the provisions of the Act and the rules framed thereunder. It is now a well-settled principle of law that rules validly framed become part of the statute. Such rules are, therefore, required to be read as a part of main enactment. It is also well- settled principle of law that for the interpretation of statute an attempt must be made to give effect to all provisions under the rule. No provision should be considered as surplusage.**"**

Further, while summarizing the finding, in clause (*viii*) of paragraph 110 it has also been enunciated as under:-

> **"**If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.**"**

10. Keeping in view the aforesaid authoritative law laid down by the Hon'ble Supreme Court, this Court is of the opinion that the finding of the Tribunal in exonerating the insurance company was not proper, legal and justified and, therefore, the impugned award to that extent deserves to be modified and and the appeal of the owner also deserves to be allowed. It is ordered accordingly that the finding of the Tribunal in exonerating the insurance company is set aside and it is held that it shall be the responsibility of the insurance company, owner and driver, jointly and severally, for payment of compensation and the amount shall be paid by the insurance company indemnifying the owner. So far as the mandatory deposit which the owner has deposited while filing the appeal is concerned, the same shall be refunded to the owner by the insurance company and the balance amount shall be deposited by the insurance company with the Tribunal. The appeal of the owner and driver, i.e., MAC No. 508 of 2017, thus stands allowed.

11. So far as the appeal of the claimant seeking enhancement of compensation is concerned, Shri Rishikant Mahobia, learned counsel appearing for the claimant, submits that the Tribunal has only granted medical expenses which the claimant has incurred at RIMS, Ranchi, whereas there was additional expenses incurred of more than Rs.3 Lakh at the Abdur Razzaque Ansari Memorial Weavers Hospital Irba, Ranchi, and for which a security guard of the said hospital was also examined to prove the documents pertaining to the treatment undertaken by the claimant at the said hospital.

12. However, perusal of the records would show that the claimant has not been able to adduce evidence of a medical doctor to establish the treatment that he had undertaken at any of the hospital as also to establish the disability, if any, that he has suffered as a result of the said accident.

13. Considering the aforesaid facts, this Court is of the opinion that ends of justice would meet if the case of the claimant is remitted back to the Tribunal granting permission to the claimant to adduce sufficient evidence, more particularly of a doctor of the hospital from where he has undertaken the treatment to prove the documents pertaining to the treatment as also the expenses that he has incurred. Liberty is also granted to the claimant, if required, for recording the evidence of the doctor by appointment of a commission so as to avoid further delay of the matter before the Tribunal and the Tribunal thereafter may proceed and decide the claim of the claimant in accordance with the evidence which are brought on record. The owner and the insurance company would also have a liberty of leading evidence, if any, in rebuttal. It is accordingly ordered so.

14. Since the parties are present before this Court, it is directed that the parties may keep themselves present before the Tribunal on 6th November, 2017.

15. Registry is directed to ensure that the record of the case is sent back to the concerned Tribunal forthwith so that the record reaches the Tribunal well in advance.

16. In the result, the appeal of the owner and driver, i.e., MAC No. 508/2017, is allowed and the appeal of the claimant, i.e., MAC No.749/2017, stands remanded to the Tribunal below with the aforesaid observations.

Sd/-
(P. Sam Koshy)
Judge

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