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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 631 OF 2017

The Oriental Insurance Company Limited, through its Divisional Manager, Divisional Office, Ist Floor, Rama Trade Centre, Near Bus Stand, Bilaspur, Civil and Revenue District Bilaspur (C.G.) PIN 495001

… Appellant

versus

1. Jivrakhan Lal Verma, S/o Niranjan Lal Vema, aged about 52 years, R/o Village Gatori, P.S. Koni, District Bilaspur (C.G.)
2. Rishraj Singh Thakur, S/o Bodhan Singh Thakur @ Bijju Singh Thakur, aged about 34 years, R/o Gatori, P.S. Koni, District Bilaspur (C.G.)
3. Veerendra Singh, S/o Late Basant Singh, aged about 41 years, R/o Masturi, P.S. Masturi, District Bilaspur (C.G.)

… Respondents

with

MISC. APPEAL (C) NO. 1109 OF 2017

Jirakhan Lal Verma, S/o Niranjan Lal Vema, aged about 50 years, R/o Gatori, Thana- Koni, District Bilaspur (C.G.)

… Appellant

versus

1. Rishraj Singh Thakur, S/o Bodhan Singh Thakur @ Bijju Singh Thakur, aged about 32 years, R/o Gatori, Thana-Koni, District Bilaspur (C.G.)
2. Virendra Singh, S/o Late Basant Singh, R/o Masturi, Thana-Masturi, District Bilaspur (C.G.)
3. Branch Manager, The Oriental Insurance Company Limited, Branch Office, Rama Trade Centre, in front of Rajeev Plaza, Old Bus Stand, Bilaspur, Tehsil and District Bilaspur (C.G.)

… Respondents

- Mr. R.N. Pusty, Advocate, for the Insurance Company.
- Mr. A.L. Singroul, Advocate, for the Claimant.
- Mr. Suryakant Mishra, Advocate, for the Driver.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

31/08/2017

1. These are the two appeals under Section 173 of the Motor Vehicles Act, 1988, arising out of award dated 10.2.2017 passed by the Motor Accident Claims Tribunal, Bilaspur, in MACT No. 17/2015.

2. MAC No. 631/2017 is an appeal by the Insurance Company and MAC No. 1109/2017 is an appeal preferred by the Claimant seeking enhancement of compensation awarded.

3. There is an I.A. No. 1 of 2017 in MAC No. 1109/2017 for condoning the delay of 75 days occurred in the filing of the appeal by the Claimant. In the factual matrix of the case, the appeal being of the Claimant and the reasons assigned for condoning the delay found to be satisfactory, I.A. No.1 of 2017 is allowed and the delay of 75 days occurred in the filing of the appeal stands condoned.

4. It is a case where the Claimant was hit by a motorcycle (Registration No. CG10-ED/5199) when he was going on bicycle, causing grievous injuries to him. The said motorcycle was driven by Rishraj Singh Thakur, owned by Virendra Singh and insured with the Oriental Insurance Company when the said accident had occurred.

5. Vide the impugned award dated 10.2.2017, the Tribunal, on an application under Section 166 of the Motor Vehicles Act moved by the Claimant for compensation towards the injuries sustained in the accident, has awarded a compensation of Rs. 2,05,000/- to the Claimant with interest thereon at the rate of 9% per annum from the date of filing of claim application, fastening the liability for payment of the same jointly and severally upon the driver, owner and insurer of the offending motorcycle.

6. So far as the appeal of the Insurance Company is concerned, Shri Ratan Pusty, learned Counsel for the Insurance Company, submits that the Insurance Company has been wrongly fastened with the liability of payment of compensation. According to Shri Pusty, it is a case where the accident arose when the Claimant was going on a bicycle and was hit by the motorcycle belonging to Virendra Singh and driven by Rishraj Singh Thakur. It is further contended by Shri Pusty that the said Rishraj Singh, the driver of the offending motorcycle, did not have a driving licence to drive the motorcycle inasmuch as the licence in his possession was permitting him to drive only 'Light Motor Vehicles' which does not include motorcycle for which a separate licence is required under the provisions of the Motor Vehicles Act. He further submits that, since the two vehicles, i.e., the Light Motor Vehicle and the motorcycle which is involved in the accident, are entirely two different classes of vehicles and which have no semblance whatsoever and the Motor Vehicles Act also requires for specific licence for driving both the vehicles, the Insurance Company could not be fastened with the liability of indemnifying the owner.

7. Shri Pusty has relied upon a decision of the Himachal Pradesh High Court in **New India Assurance Company** v. **Tika Ram & Ors.**[1]. He has also relied upon a judgment of the Hon'ble Supreme Court in the case of **Oriental Insurance Company Limited** v. **Zaharulnisha & Ors.**[2]

8. Shri A.L. Singroul, learned Counsel for the Claimant, and Shri Suryakant Mishra, learned Counsel appearing for the driver, have relied upon the judgment of the Karnataka High Court in **Srinivasagowda & Anr.** v. **Sannamma & Ors.**[3] wherein the liability under similar circumstances was fastened upon the Insurance Company by the Karnataka High Court.

9. The point of issue involved in the instant case is, whether a person having a licence of 'Light Motor Vehicle' can drive a 'motorcycle' and whether under such circumstances if an accident occurs the Insurance Company can be held responsible for indemnifying the insured.

10. The Motor Vehicles Act classifies the different vehicles which require the licence to drive and in the said Section motorcycle with gear and motorcycle without gear have been shown as different class of vehicles. Likewise, Light Motor Vehicle also has been shown as a different category altogether.

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1 2011 ACC 2229 (HP)
2 2008 (12) SCC 385
3 2010 ACJ 2510

11. Both, motorcycle as well as Light Motor Vehicle have also been defined separately under the Motor Vehicles Act. Light Motor Vehicle as is defined in sub-section (21) of Section 2 of the Act reads as under:

> **"2. Definitions.–**
> xxx xxx xxx xxx
> (21) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kilograms;
> xxx xxx xxx xxx**"**

Likewise, Motorcycle has been defined under sub-section (27) of Section 2, which reads as under:

> **"**(27) "motor cycle" means a two-wheeled motor vehicle, inclusive of any detachable side-car having an extra wheel, attached to the motor vehicle;**"**

The plain reading of both these definitions would show that the two are entirely different categories and classes of vehicles. The said provisions when read with Section 10 of the Motor Vehicles Act would make it more specific of the requirement of specific licences for the driving of both these different categories or class of vehicles.

12. At this juncture, it would be relevant to quote paragraph 4 of a decision of the Himachal Pradesh High court in **Tika Ram** (supra), wherein it was held as under:-

> **"4.** The legislature was obviously aware of the difference between two wheeled and four wheeled vehicles. In Section 10 while providing the form and contents of the driving licence motor cycle without gear and motor cycle with gear have been taken as a different category vis-a-vis the light motor vehicle. This is also apparent from a reading of Section 9(6), the proviso to which states that a person who has passed a test of driving a motor cycle with gear shall be deemed to have passed the test of driving motor cycle without gear. This clearly pre-supposes that test for driving motor cycle is different than that prescribed for light motor vehicle which is is a four wheeled vehicle. Even the form of the driving licence in the rules makes special mention of the motor cycles as a separate category. Therefore, it cannot be said that a motor cycle or a scooter or any other two wheeled vehicle will fall in the general category of light motor vehicle.**"**

13. What is also relevant at this juncture is that, the Hon'ble Supreme Court also in **Zaharulnisha** (supra) has held that a person having licence to drive a Heavy Motor Vehicle cannot be said to be holding a valid driving licence to drive a Scooter. The same analogy would apply in the facts of the present two appeals.

14. This Court also recently in the case of **Somarsai & Anr.** v. **Jagdish Rajwade & Anr.**[4] following the judgment of the Hon'ble Supreme Court in **Zaharulnisha** (supra) has held as under:

> **"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.**"**

15. So far as the judgment of the Karnataka High Court in **Srinivasagowda** (supra) which has been relied upon by the learned counsel appearing for the claimant as well as learned counsel for the driver is concerned, this Court finds that the very same High Court has subsequently in a decision rendered on 3.1.2017 in MFA No. 3910/2011 (MV) has considered the judgment relied upon by the applicant therein and held it to be not a good law in view of an earlier Full Bench decision of the Karnataka High Court on the very same subject. Thus, the judgment so relied by them may not come to their rescue in this case.

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4 MAC No. 284 of 2017, decided on 12.7.2017.

16. In the given factual matrix of the case, this Court is of the opinion that the appeal of the Insurance Company does have force and the same deserves to be and is accordingly allowed to the extent that the liability of payment of compensation shall be shifted upon the owner of the offending motorcycle, exonerating the Insurance Company of its liability.

17. However, perusal of the record shows that 50% of the amount awarded has already been deposited by the Insurance Company. If that be so, let the amount so deposited by the Insurance Company be released to the Claimant with a liberty to the Insurance Company to recover the same from the owner. However, for the balance 50% of the amount, the Claimant shall have the right of getting the award executed from the owner of the offending motorcycle. For the purpose of getting the amount recovered by the Insurance Company from the owner, this Court applying the principles laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd.** v. **Challa Bharathamma**[5] holds that for execution the Insurance Company would also have the liberty of seeking for attachment of the property of the owner in an appropriate execution proceeding.

18. So far as the appeal of the Claimant is concerned, learned Counsel for the Claimant restricts his claim to the extent that the amount of Rs.2,05,000/- awarded by the Tribunal appears to be a clerical error for the reason that the total amount awarded in fact, as is reflected from paragraph 10 of the award, shows that the amount of compensation awarded was Rs. 2,15,000/-.

19. This Court, on perusal, finds the said contention of the Claimant to be correct and accordingly orders that the impugned award stands modified to the extent that the total amount of compensation payable to the

5 2004 (8) SCC 517

Claimant would be Rs. 2,15,000/- instead of Rs. 2,05,000/- as has been awarded by the Tribunal.

20. In the result, the appeal of Insurance Company is allowed and the appeal of the Claimant also stands allowed to the extent indicated above.

Sd/-
(P. Sam Koshy)
Judge

/sharad/