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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1176 of 2011

Hemraj S/o late Shri Ramprasad Kaushal, aged about 52 years, resident of House No.95, Bihari Colony, New Khursipar, Bhilai, District Durg, Chhattisgarh **---- Appellant**

Versus

1. Sohail Shadab S/o Shri Mushtaak Ahmad, aged about 20 years, resident of Plot No. 10, Ayappa Nagar, Bhilai, Thana Supela, District Durg, Chhattisgarh
2. Smt. Shabana Mustaak wife of Shri Mustaak Ahmad, resident of Plot No. 10, Ayappa Nagar, Bhilai, Thana Supela, District Durg, Chhattisgarh
3. Branch Manager, IFFCO Tokio General Insurance Company Limited, 3rd Floor 354-347, Lal Ganga Shopping Mall, G.E. Road, Raipur, Chhattisgarh

---- Respondents

For Appellant	:	Shri A. L. Singroul, Advocate
For Respondent no.3	:	Shri P. Acharya, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

18/01/2018

Present is an appeal by the claimant seeking for enhancement of compensation. The challenge is to the award dated 30.09.2011 passed by the 1st Additional Motor Accident Claims Tribunal, Durg (CG) in Claim Case No. 233 of 2011. Vide the impugned award, the Tribunal has awarded a compensation of Rs.86,007/- to the claimant with interest @ 6% per annum.

2. While passing the impugned award, the Tribunal has exonerated the Insurance Company of its liability and has fastened the liability upon the owner of the motorcycle.

3. Counsel for the appellant submits that the Insurance Company has been wrongly exonerated of its liability as there was a duly proved document produced before the Tribunal to establish its case and the Tribunal has not properly appreciated the said document. He submits that Ex. D-5 is a document produced before the Tribunal to show that the driver at the relevant point of time had a valid licence which was effective from 28.06.2007 to 27.06.2027. Therefore, the Insurance Company should have been fastened with the liability of payment of compensation. He submits that considering the nature of injury sustained, the claimant would also be entitled for much more compensation than what has been awarded. Counsel for the appellant submits that it is a case where the claimant had sustained injuries on his right shoulder and right leg and that the doctor was also examined before the Court as applicant witness no.2 to prove the disability part. Thus, prayed for the award to be suitably enhanced.

4. Counsel for the Insurance Company, however, opposing the appeal submits that it is a case where apparently the driver was less than 18 years on the date of issuance of Ex. D-5 and therefore, he could not have obtained a licence. He submits that the licence which has been issued i.e. Ex. D-5 not being proper, legal and justified, it does not have a legal sanctity and therefore, the liability has rightly been shifted upon the owner of the offending motorcycle instead of the Insurance Company. Hence, prayed for rejection of the appeal.

5. Having heard the contentions put forth on either side and on perusal of the record what is undisputed before the Tribunal is, the accident, the vehicle involved in the accident, the owner of the vehicle and the vehicle being duly insured with respondent no.3 Insurance Company. What is also primarily not in dispute is the issuance of Ex. D-5 from the concerned authority. The validity of licence seems to be from 28.06.2007 to 27.06.2027 and the accident took place during the validity of the said licence. The finding of the Tribunal not accepting the licence was on the ground that the mark sheet shows the age of the driver to be less than 18 years which is the minimum age required for the purpose of obtaining a licence. What cannot be brushed aside is the fact that on the date of accident, there was a licence Ex. D-5 in existence in favour of the driver. The said licence has not been cancelled by any of the competent authority holding the driver to be not eligible for driving a motorcycle. In the absence of any such cancellation of licence by a competent authority, only because there is some discrepancy in the date of birth in the mark sheet, it cannot be presumed that the driver was not eligible to have a licence or was not qualified to have a licence unless the licence duly issued stands cancelled on this ground. Under the said facts, this Court is of the opinion that ends of justice would meet if the liability of payment of compensation is shifted upon the Insurance Company as the vehicle was duly insured with respondent no.3. The appeal thus stands allowed to that extent.

6. So far as the enhancement of compensation is concerned, having perused the records particularly the nature of injuries discussed by the doctor, this Court is of the opinion that ends of justice would meet if the compensation awarded is enhanced from Rs.86,007/- to Rs.1,00,000/-. Accordingly, it is ordered that the claimant shall be entitled for an additional compensation of Rs.13,993/- which would make the total compensation payable at Rs.1,00,000/- instead of Rs.86,007/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal. The liability of payment of compensation shall now stand shifted upon the Insurance Company instead of the owner.

7. The appeal thus stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
JUDGE

Bhola