NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 812 of 2011

Bajrang Lal Agrawal S/o Sadhu Ram Agrawal, aged about 50 years, R/o Nehru Park Road, Lanka Para, Surajpur, PS Surajpur, District Sarguja (CG) (appellant is owner of the offending vehicle)

---- Appellant

Versus

1. Ramcharitar Sahu S/o Munna Sahu, aged about 50 years, R/o village Maanpur, PS Surajpur, District Sarguja (CG) (Claimant)
2. Sufal S/o Kasahi Gond, aged about 28 years, R/o village Kot Patna, PS Surajpur, District Sarguja (CG) (Driver of the offending vehicle)
3. Bajaj Alliaz General Insurance Company, Shiv Mohan Bhavan, Vidhan Sabha Road, Pandri, Raipur (CG) (Insurer of vehicle)

---- Respondents

For Appellant	:	Shri Rajat Agrawal, Advocate
For Respondent no.3	:	Shri Ghanshyam Patel, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

15/01/2018

Present is an appeal by the owner under Section 173 of the Motor Vehicles Act assailing the award dated 21.06.2011 passed by the 1st Additional Motor Accident Claims Tribunal, Surajpur, District Sarguja (now district Surajpur) (CG) in Claim Case No. 11 of 2009. Vide the impugned award, the Tribunal, in an injury case, has awarded a compensation of Rs.55,000/- with a penal provision of 12% per annum interest if the amount is not deposited within two months.

2. While passing the impugned award, the Tribunal has exonerated the Insurance Company and has fastened the liability of payment of compensation upon the owner i.e. the appellant herein leading to the filing of this appeal.

3. Contention of the counsel for the appellant is that the vehicle involved in the accident was duly insured at the time of accident with respondent no.3 Bajaj Allianz General Insurance Company and that the driver of the offending vehicle had a valid licence at the time of accident. He submits that the laden weight of the vehicle would also reflect that it would fall within the category of light motor vehicle, therefore, applying the judgment of the Supreme Court in the case of **Mukund Dewangan Vs. Oriental Insurance Company Limited** reported in **AIR 2017 SC 3668**, the liability of payment of compensation should have been shifted upon the Insurance Company rather than fastening it upon the appellant. Further contention of the counsel for the appellant is that the Insurance Company in the instant case has not led any evidence to substantiate their contention and in absence of any evidence, the Tribunal was not justified in exonerating the Insurance Company.

4. Counsel for the Insurance Company, on the contrary, submits that it is a case where the owner and the driver have not discharged their burden at the first instance and it is only thereafter that the burden would fall upon the Insurance Company. Even otherwise, the owner has not been able to prove that the driver had a valid licence at the time of accident nor is there any such document produced or marked before the Tribunal. It is also the contention of the counsel for the Insurance Company that the record shows that a learner's licence of the driver was produced before the Tribunal on behalf of the owner which would further prove the case of the Insurance Company and strengthen the finding of the Tribunal in exonerating the Insurance Company of its liability.

5. At this juncture, it is relevant to refer to Section 7 of the Motor Vehicles Act which clearly reflects that no person shall be granted a learner's licence to drive a transport vehicle unless he has a valid driving licence of a light motor vehicle category for at least one year.

6. In the instant case, the learner's licence which is on record though not marked, for the first time was issued in April 2008 and the accident occurred in less than 3 months time i.e. on 15.07.2008. Undisputedly, the vehicle involved in the accident is a transport vehicle. In view of the same, Section 7 of the MV Act would squarely come into play. Even otherwise, if the driver has a learner's licence, it is the requirement of law that when the vehicle is being driven by a person having a learner's licnece, he should be accompanied by a person who has a valid licence at the relevant point of time.

7. In the instant case, in spite of proper service, the owner and the driver have deliberately avoided appearance before the Tribunal in as much as they have not filed any reply neither have they adduced any evidence before the Tribunal to substantiate their contention.

8. Given the facts and circumstances of the case, this Court does not find any strong case made out by the owner calling for an interference with the impugned award. The appeal of the owner thus deserves to be and is accordingly dismissed.

9. At this juncture, this Court also perused the cross appeal filed by the claimant seeking enhancement. Perusal of the record would show that the claimant had sustained fracture injury and that he has not led any medical evidence to substantiate the permanent disability if any, neither was any disability certificate issued from a Medical Board brought on record. In the given facts and circumstances of the case, this Court does not find any merit in the cross appeal filed by the claimant and the same also stands dismissed.

10. Accordingly, the appeal filed by the owner and the cross appeal filed by the claimant stand dismissed.

Sd/-
(**P. Sam Koshy)**
JUDGE

Bhola