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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 91 of 2014

- The Oriental Insurance Company Ltd. Thru- Divisional Manager, Divisional Office No. 02, Near Vadijya Bhawan, Devendra Nagar Road, Raipur, Distt. Raipur C.G.

---- Appellant

Versus

1. Agardas Satnami S/o Nohar Das @ Mohar Das Satnami Aged About 34 Years R/o Lariya, Post- Rohasi, P.S. Palari, Distt. Raipur C.G.

2. Narayan Sinha S/o Nacchetra Sinha Aged About 30 Years R/o Palari, Near Electric Office, P.S. Palari, Distt. Raipur C.G.

3. Kailash Sharma S/o Shri J.K. Sharma R/o Qr.No. 627, Motinagar, P.S. Tikrapara, Raipur, Distt. Raipur C.G., District : Raipur, Chhattisgarh

---- Respondents

For Appellant	Shri Raj Awasthi, Advocate.
For Respective Respondents	Shri K.K. Pandey & Shri Shikhar Sharma, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

05/12/2018

1. This is insurer's appeal against the award dated 30.10.2013 passed by the 4th Additional Motor Accidents Claims Tribunal, Raipur, District Raipur, C.G. in claim case No.90/2011.

2. As against compensation of Rs.32,00,000/- claimed by respondent No.1, i.e., claimant by filing claim petition under Section 166 of the Motor Vehicles Act, 1988 (henceforth 'the Act') for the injuries sustained by him in the accident on 02.05.2007,

the Tribunal awarded a total sum of Rs. 5,67,600/- along with interest at the rate of 6% per annum from the date of claim application till its actual payment, fastening the liability upon Insurance Company, Owner & Driver jointly and severely.

3. The Tribunal, on a close scrutiny of the evidence led by both the parties held that accident had occurred due to rash and negligent driving of Mini Bus bearing registration No. CG04/E/0754 by its driver –Narayan Sinha, i.e. respondent No.2, owned by respondent No.3. Respondent No.1/claimant – Agardas Satnami, aged about 34 years, sustained serious injuries resulting into permanent disability in the said accident. At the time of accident, the injured was earing Rs.9,000/- from running grocery shop and Rs.50,000/- through agriculture work.

4. Learned counsel for the appellant submits that Tribunal has erred in fastening liability on the Insurance Company as the offending vehicle was being used without permit. He further submits that the amount awarded by the Tribunal as compensation is also on the higher side because the Tribunal has considered the income of the injured as Rs.8,000/- without any evidence to this fact by the claimant and further considered 30% loss of earning capacity due to 30% permanent disability allegedly suffered by the claimant. He submits that even if the claimant suffered 35% permanent disability his loss of earning cannot be considered at the same rate.

5. On the other hand, learned counsel for the respective respondents supports the impugned award and submits that learned Tribunal after considering the over all evidence available

on record was fully justified in fastening the liability upon the insurance company.

6. Heard learned counsel for the parties and perused the material available on record including impugned award.

7. As regards the breach of policy, as per Seizure Memo Ex.P-4 the Police has seized the RC Book, Insurance Policy, Permit and Fitness Certificate of the offending vehicle. As per Insurance Policy, the offending vehicle was duly insured with the Insurance Company at the time of accident. The permit of the said vehicle was valid from 01.08.2004 to 31.07.2009. Respondent No.1/Driver has specifically stated in its written statement that on the date of accident he was having a valid and effective driving licence and has given all the relevant particulars of the same. However, no evidence has been adduced by the Insurance company in rebuttal regarding breach of policy. It has only pleaded regarding breach of policy conditions but did not adduce any evidence in support thereof. It is well settled principle of law that a party pleading a particular fact is required to adduce evidence to substantiate the same and in absence thereof the pleading alone is of no consequence. Therefore, this Court finds no illegality in the finding recorded by the Tribunal, fastening liability on the Insurance Company. Hon'ble Supreme Court in the matter of ***Kamla Mangalal Vayani and others v. United India Insurance Company Limited and Others*** reported in **(2010) 12 SCC 488,** observed as under in paras 6 & 7:-

> “6. As noticed above, the owner-cum-driver had remained ex parte. Once it was established that the vehicle was

comprehensively insured with the insurer to cover the passenger risk, the burden to prove that it was not liable in spite of such a policy, shifted to the insurer. The claimants are not expected to prove that the vehicle had a valid permit, nor prove that the owner of the vehicle did not commit breach of any of the terms of the policy. It is for the insurer who denies its liability under the policy, to establish that in spite of the comprehensive insurance policy issued by it, it is not liable on account of the requirements of the policy not being fulfilled.

7. In this case, the insurer produced a certified copy of the proceedings of the Registering Authority and Assistant Regional Transport Authority, Bangalore dated 7-7-1990 to show that the application for registration of the vehicle filed by the third respondent was rejected with an observation that it was open to the applicant to apply for registration in the appropriate class. But that only proved that on 7-7-1990, the vehicle did not have a permit. But that does not prove that the vehicle did not have a permit on 27-7-1990, when the accident occurred. It was open to the insurer to apply to the transport authority concerned for a certificate to show the date on which the permit was granted and that as on the date of the accident, the vehicle did not have a permit, and produce the same as evidence. It failed to do so."

8. So far as computation of compensation is concerned, it is not in dispute that the claimant suffered 35% permanent disability on account of injuries sustained by him in the unfortunate accident occurred on 02.05.2007. Considering the evidence of AW-2 Dr. A.A. Safi, the other medical documents of the claimant, the disability certificate Ex. P-33, it is seen that the claimant suffered 15% permanent disability in his left leg and 19% permanent disability in right arm. Thus, considering the nature and extent of injuries suffered by the claimant, the nature of his job and other relevant aspects of the matter and permanent disability in his left leg and right arm, the Tribunal has rightly considered that the claimant suffered 35% loss of earning due to permanent disability sustained by him in the accident.

9. So far as assessment of income of the claimant at the rate of Rs. 8,000/- per month is concerned, the Tribunal considering the documents produced by the claimant in relation to his income, the pleadings of the respective parties has rightly assessed the income of the claimant as Rs.8,000/- per month and therefore, the same does not need any interference by this Court.

10. In the result, the appeal being without any substance is liable to be dismissed and as such dismissed.

Sd/-
Gautam Chourdiya
Judge

Akhilesh