

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 774 of 2018

- Bhola Singh, son of Gurudev Singh, aged about 45 years, resident of Minocha Colony, Bilaspur (CG)
(Owner of the offending vehicle)

---- Appellant

Versus

1. Bajrang Yadav, son of Late Kallu Ram Yadav, aged about 30 years, resident of village Sargaon, Tahsil Pathariya, District Mungeli (CG)
(Claimant)
2. Sultan Ansari, son of Ishaque Ansari, aged about 30 years, resident of Niniyadih, PS Gadhwa, District Jharkhand, presently at Bilha Turn, PS Hirri, District Bilaspur (CG)
(Driver)
3. The Branch Manager, The New India Assurance Company Limited, Rama Trade Center, 2nd Floor, UTI Building, Rajeev Plaza, Bilaspur
(Insurer)

---- Respondents

For Appellant	: Shri Vivek Shrivastava, Advocate
For Respondent No.1	: Shri Sunil Sahu, Advocate
For Respondent No.2	: None
For Respondents No.3	: Shri Anil Gulati, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

09.10.2018

1. This appeal has been preferred by the Appellant/owner under Section 173 of the Motor Vehicles Act, 1988 against the award dated 25.01.2018 passed by the Motor Accident Claims Tribunal, Mungeli, District Mungeli (C.G.) in Claim Case No. 9/2016 by which, the claim petition filed by Respondent No.1/Claimant, was allowed to the extent of granting him of Rs.1,25,000/-.
2. The case in brief is that on the fateful day i.e. 14.07.2015 Respondent No.1/Claimant- Bajrang Yadav was sleeping alongwith his family in the house, at about 1.00 pm, he heard some sound of collision in front of his shop. He woke up

and saw that Respondent No. 2, driver of the vehicle Tractor bearing registration No. CG-10 C-8110 driving the said vehicle in a rash and negligent manner breaking the shutters and wall of two shops entered into the shops, which were given on rent.

3. As against the compensation of Rs.3,00,000/- claimed by the Respondent No.1/Claimant by filing application under Section 166 of the Motor Vehicles Act, 1988 for damages of two shops in the motor accident on 14.07.2015, the Tribunal awarded a total sum of Rs.1,25,000/- as compensation along with interest @ 9% per annum from the date of application till its actual payment in favour of Respondent No.1/Claimant. The Tribunal also directed the Appellant/owner is liable for payment of compensation of Rs.1,19,000/- out of total amount awarded as compensation i.e. Rs.1,25,000/- and also liability was fastened upon the Insurance Company/Respondent No. 3 to pay Rs.6,000/- out of total amount of compensation.

4. Shri Vivek Shrivastava, learned counsel appearing for the Appellant/owner, submits that the Tribunal has grossly erred in fastening the liability upon the Appellant/owner of Rs.1,19,000/- out of total amount of compensation of Rs.1,25,000/- and as per Section 147(2)(b) of the Motor Vehicles Act in respect of damage to any property of a third party, the whole liability was to be fastened upon respondent No. 3/Insurance Company of paying amount of compensation. He also submits that the Insurance Company was bound to indemnify any loss caused to a third party and the Tribunal has fallen in error in exonerating respondent No.3/Insurance Company from its liability to pay entire amount of compensation. Further, he filed the copy of insurance policy (Annexure-A/2) along with the appeal and same has been admitted by the counsel appearing for respondent No.3/Insurance Company. Therefore, there is no dispute in the instant case that the offending vehicle was covered under the policy of insurance and there is no breach of policy condition.

5. On the other hand, Shri Anil Gulati, learned counsel for Respondent No.3/Insurance Company submits that in written submission before the Tribunal, the Insurance Company denied that Respondent No.2/driver driving of the

offending vehicle in a rash and negligent manner breaking the shutters and wall of the two shops entered into the shops which were given on rent and reconstruction of shops incurred Rs.3 lacs. He also submits that at the time of accident, there was breach of policy condition as Respondent No.2/driver was not having a valid licence to drive the same. Therefore, the Insurance Company/Respondent No.3 prays for its exoneration.

6. It is submitted by the learned counsel for the parties that no counter appeal has been filed by the Claimant and Respondent No.3/Insurance Company.

7. I have heard the learned counsel for the parties and perused the award impugned including the records of the Tribunal.

8. A bare perusal of the records of the Tribunal would reveal that as per Ex.P/6 panchnama prepared by police in respect of damage caused to the Claimant, it was to the extent of Rs.1,50,000/- and Ex.-P/8 estimate prepared by engineer in this regard comes to Rs.6,29, 810/-. Claimant-Bajrang Yadav examined himself as AW-1, he stated in his court deposition that approximate 3-4 lacs amount has been incurred for re-construction of shops. Therefore, the Claimant/Respondent No. 1 has failed to prove actual expenses incurred for re-construction of his shops either on the basis of Ex.-P/6 and Ex.-P/8. Thus, the Tribunal considering the entire evidence has awarded Rs.1,25,000/- for re-construction of shops which is not on higher side.

9. Insurance policy (Annexure-A/2) would reveal that the policy is a Commercial Vehicle Package Policy and it was valid from 28.01.2015 to 27.01.2016. In the said policy, limits of liability was fixed that the limit of the amount the Company's liability under Section II 1(i) in respect of any one accident: as per the Motor Vehicles Act, 1988 and limit of the amount of the Company's liability under Section II 1(ii) in respect of any one claim or series of claims arising out of one event: upto to Rs.7,50,000/-. The insurance policy shows that the policy covered third party risk for which higher premium was paid by the Appellant/owner. Further, the respondent No. 3/Insurance company did neither file the copy of policy

of insurance nor did prove willful violation on the part of the owner of the vehicle. Therefore, Appellant/owner is not liable to pay for the damage caused to the Claimant due to rash and negligent driving by the driver.

10. When the matter is examined in its totality, in my opinion, the Tribunal has certainly fallen in error in exonerating respondent No. 3/Insurance Company from its liability of payment of entire compensation and the same is not sustainable in the present case.

11. For the reasons mentioned hereinabove, the appeal is allowed in part. The part of the award where respondent No.3/Insurance Company is exonerated from its liability of payment of compensation of Rs.1,19,000/- is set aside. Instead, it is held that Respondent No.3/Insurance Company is liable for payment of entire compensation to Respondent No.1/Claimant. The award is modified to the above extent. Rest of the conditions of the award shall remain intact.

12. If any amount has been deposited by the Appellant/owner and disbursed to the Claimant, he is entitled to recover the same from Respondent No.3/Insurance Company.

13. No order as to cost.

Sd/-

(Gautam Chourdiya)
Judge