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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No. 58 of 2014

Chandra Kumar, S/o Kartik Ram Thakur, Aged About 25 Years, R/o Kuli, P.S. Seepat, Tah. Masturi, Distt. Bilaspur, Chhattisgarh.

---- Appellant

Versus

1. Pratap Singh, S/o Chamar Singh, Aged About 23 Years, R/o Madrapara, P.O. Gudi, P.S. Seepat, Distt. Bilaspur, Chhattisgarh.
2. Hind Energy Coal Benefit India Private Limited, Sai Parisar, Shrikant Verma Marg, Bilaspur, Tah. And Distt. Bilaspur, Chhattisgarh
3. National Insurance Company Limited Bilaspur, Distt. Bilaspur, Chhattisgarh.

---- Respondents

For Appellant	: Ms. Laxmin Kashyap appears on behalf of Mr. Pushpendra Kumar Patel, Advocate.
For Respondent No. 1 & 2	: Mr. R. S. Patel, Advocate.
For Respondent No. 3	: Mr. Qamrul Aziz, Advocate.

Hon'ble Shri Justice Sanjay Agrawal

Order On Board

19.09.2018

1. This Miscellaneous Appeal has been preferred by the claimant under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') questioning the award dated 19.09.2013 passed by the 3rd Additional Motor Accidents Claims Tribunal to the Court of 1st

Additional Motor Accidents Claims Tribunal, Bilaspur (for short 'the Claims Tribunal') in Claim Case No. 39/2012, by which, the claim petition was allowed in part by awarding meager amount of compensation of Rs.9,100/- with 6% interest per annum from the date of filing of the claim petition till its realization.

2. Briefly stated the facts of the case are that on 16.08.2011 at 12:30 pm the alleged accident has occurred. At the relevant time the appellant was coming along with his friend Dharmendra, by his motorcycle while sitting behind him and as soon as the said vehicle reached near the Government hospital at Baloda, it was dashed vehemently by the offending vehicle, i.e., Haiwa truck bearing Registration No. CG-10-C-5651 which was being driven rashly and negligently by its driver, namely Pratap Singh, the Respondent No. 1 herein, owned by Respondent No. 2 Hind Energy Coal Benefit India Private Limited. It is pleaded in the claim petition that the alleged offending vehicle was insured with the Respondent No. 3, namely, National Insurance Company Limited and owing to the alleged accident, the appellant has sustained serious injuries, particularly, on his right leg as it was got fractured and was thereafter immediately shifted to the hospital. It is pleaded in the claim petition that the claimant is a contractor and because of the alleged accident he could not perform his duty, and therefore, he claimed the total amount of compensation to the tune of Rs. 2,24,000/- on various heads.

3. The aforesaid claim was contested by Respondents No. 1 & 2, the driver and the owner of the vehicle in question by submitting, inter alia, that the alleged accident has occurred due to rashness

and negligence driving of the driver of the motorcycle himself and, pleaded further that the offending vehicle was insured with the said Insurance Company at the relevant time and was being driven by its driver who was possessing the valid driving license, therefore, in case of any liability being fastened, the same would be liable to be indemnified by Respondent No. 3. The Respondent No. 3, the insurer, has contested the claim mainly on the ground that since the driver of the offending vehicle was not possessing the valid driving license, therefore, the Insurance Company cannot be held liable to indemnify the insured vehicle.

4. After considering the evidence led by the parties, the learned Claims Tribunal has allowed the claim in part by holding that the driver of the offending vehicle was not possessing valid driving license at the relevant time and held further that the alleged accident has occurred due to negligence driving of the driver of the motorcycle as well as the driver of the offending vehicle and in consequence held the contributory negligence of both the drivers in the ratio of 30% and 70% respectively. While holding as such and that by considering the evidence led by the parties, assessed the total amount of compensation to the tune of Rs. 13,000/- and was reduced to the tune of Rs. 9,100/- payable to the claimant by exonerating the Insurance Company from its liability owing to the alleged violation of the Insurance Policy.

5. Being aggrieved, the instant appeal has been preferred by the claimant.

6. Ms. Laxmin Kashyap appears on behalf of Mr. Pushpendra Kumar Patel, counsel for the Appellant submits that the award

impugned as passed by the learned Claims Tribunal holding the contributory negligence of the driver of the motorcycle is apparently contrary to law. She submits further that amount as awarded by the learned Claims Tribunal is extremely on lower side by disbelieving the medical bills (ExP-5 to ExP-19) and erred further in exonerating the Insurance Company from its liability. The award impugned, is therefore, liable to be modified.

7. Shri R. S. Patel, counsel for Respondents No. 1 & 2 have supported the impugned award as passed by the learned Claims Tribunal. While, Shri Qamrul Aziz, counsel for Respondent No. 3, the insurer, while supporting the award impugned, has stated that the driver was not holding the valid driving license, therefore, there is no infirmity in the finding of the learned Claims Tribunal in relation to the exoneration of the insurer.

8. I have heard learned Counsel for the Appellant and perused the entire record carefully.

9. A claim enumerated under Section 166 of the Act has been made by the Claimant Chandra Kumar on account of the accident occurred on 16.08.2011 at 12:30 pm when he was travelling as a pillion rider while sitting behind his friend in his motorcycle. The finding of the learned Claims Tribunal holding that its driver, i.e. Dharmendra Kumar is also liable for the alleged accident merely on the ground that he was not holding the driving license cannot be held to be sustainable. Even otherwise, the appellant was a pillion rider, therefore, amount of compensation cannot be reduced. The finding in this regard, therefore, deserves to be and is hereby set aside and, it is held that the alleged accident has

occurred solely on account of the rash and negligent driving of the driver of the offending vehicle “Haiwa-Truck”

10. Perusal of the record would show further that while awarding the compensation, the learned Claims Tribunal has wrongly disbelieved the medical bills (ExP-5 to ExP-19) for non-examination of any of the medical officer. However, perusal of these documents would show that the appellant has incurred a sum of Rs. 22,500/- and Rs. 1,108/- respectively, vide medical bills ExP-5 and ExP-19 for his treatment and the said fact could not have been rebutted by any of the respondents. Therefore, he is entitled to Rs.23,608/- (Rs.22,500/- + Rs.1,108 = Rs.23,608/-) under these bills. Pertinently to be noted here further that although, the medical bills marked as ExP-6 to ExP-18 are not clear but a bare perusal of it would, however, show that a lum sum of Rs.4,000/- was incurred by the claimant towards his treatment and he is also entitled for the same. The learned Claims Tribunal has certainly erred in not awarding the same by disbelieving the aforesaid medical bills. The claimant, is therefore, entitled to total amount of compensation to the tune of Rs.40,608/- and the enhanced amount i.e., Rs.31,508/- (Rs.40,608 – Rs.9,100/- = Rs.31,508/-) shall carry interest at the rate of 6% per annum from the date of filing of the claim petition till its realization.

11. As far as the finding in relation to exoneration of insurer from its liability is concerned, the same does not require to be interfered as it was duly established by the insurer that the driver of the offending vehicle was not possessing the driving license at the

relevant time. In order to establish this fact, the insurer has examined one of its witnesses, namely, Umesh Tripathi, the employee of the Regional Transport Authority, who entered into the witness box along with the original register and stated very specifically that no driving license was issued in favour of the driver of the offending vehicle and the said fact was duly corroborated by way of the information furnished by the Licensing Authority, RTO, Bilaspur vide ExD-3. Consequently, I do not find any infirmity in the finding of the learned Claims Tribunal in this regard. The finding so recorded, exonerating the Insurance Company from its liability, is therefore, affirmed.

12. In view of the foregoing discussions, the appeal is allowed in part and the appellant is entitled to total amount of compensation of Rs.40,608/- instead of Rs.9,100/- as awarded and, the enhanced amount i.e., Rs.31,508/- shall carry interest at the rate of 6% per annum from the date of filing of claim petition till its deposit which shall be paid by the Respondents No. 1 & 2. No order as to costs.

Sd/-
(**Sanjay Agrawal**)
Judge

Deepti Jha