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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 418 of 2014

1. Branch Manager, Bajaj Alianz General Insurance Co. Ltd., Through its authorized officer Bajaj Alianz General Insurance Company Ltd. Branch Office, Shiv Mohan Bhawan 2nd floor, Vidhansabha Road Pandri, Raipur, District- Raipur (C.G.).

---- Appellant/Claimant

Versus

1. Laxmiikant @ Pradeep Kumar Das S/o Umashankar Das, Aged 33 Years, R/o Aadawal, Nayapara, Tehsil- Jagdalpur, District- Bastar (C.G.)

2. Sadashiv Harijan S/o Tayk Harijan, Aged 45 years, village Karlawandi, P.S. Kotpand, District- Koraput (Orrisa).

---- Respondents

For Appellant : Shri Ghanshyam Patel, Advocate
For Respondent No. 2 : Shri Praveen Tulsyan, Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

11.12.2018

This is Insurer appeal against the award passed by the 1st Additional Motor Accidents Claims Tribunal, Bastar At Jagdalpur, (C.G.) (for short 'the Tribunal') in claim case No. 15/2012 vide award dated 29.11.2013.

2. Facts of the case leading to filing of the claim petition is that on 09.03.2011, the claimant was returning to his home on his motorcycle after getting petrol refilled in his motorcycle petrol tank, when he reached near turning of petrol pump, at that time respondent No. 2- Sadashiv

Harijan driver of the offending vehicle(Auto) bearing registration No. CG 17-T/0687 by driving rashly and negligently hit the motorcycle, as a result of which claimant/injured sustained injuries and his right leg got fractured.

3. The Tribunal, on a close scrutiny of the evidence led, held : the accident had occurred due to rash and negligent driving of offending vehicle(Auto) bearing registration No. CG 17-T/0687 by its driver respondent No. 2- Sadashiv Harijan; Laxmikant @ Pradeep Kumar Das sustained multiple injuries in the said accident; appellant/Insurance Company liable for payment of compensation to the claimant as it could not establish violation of policy conditions. Considering the facts & circumstances of the case, the Tribunal awarded a total amount of Rs.1,16,800/- alongwith interest @ 6% per annum from the date of application till its actual payment.

4. Learned counsel for the appellant submits that no opportunity was given by the learned Tribunal to the appellant to adduce evidence regarding breach of policy conditions. The application filed by the appellant for summoning non-applicant No. 1 for recording his evidence was dismissed on 04.7.2013 by learned Tribunal by stating that Non-applicant No. 1 i.e. owner/driver has already been summoned and he has refused to accept the notice and therefore, he could not be compelled to come before the Tribunal and produced the documents. Therefore, the appellant/insurance Company could not prove breach of policy. He further submits that offence under Section 3/181 of the Motor

Vehicle Act was registered against the owner/driver for driving the vehicle without driving licence.

5. On the other hand learned counsel appearing for the respondent No. 1 supports the impugned award.

6. I have heard learned counsel for the appellant/claimant and perused the impugned award.

7. From the perusal of the chargesheet filed by the appellants against the non-applicant No. 1- Driver/owner it is seen that certain documents were seized by the police as per seizure memo vide Ex. P/3, however, from the perusal of the seizure memo(Ex.P/3) it is found that the driving licence of the non-applicant No. 1 was not seized by the police and the same was said to be under preparation. Though the Insurance Company had moved an application for summoning the non-applicant No. 1 before the Tribunal for recording his evidence but the same has been rejected by the Tribunal vide order dated 04.07.2013 by recording a finding that non-applicant No. 1 was already summoned by the Tribunal, he refused to accept the notice and therefore, he cannot be compelled before the Tribunal for giving the evidence.

8. Thus considering the facts and circumstances of the case, nature and gravity of the evidence produced by the parties it appears that the Tribunal has not decided the issue of liability in accordance with law. Hence, the matter needs to be remanded to the Tribunal for deciding the issue of liability afresh.

9. In the result the appeal is allowed in part. The impugned award sofar as it relates to fastening of liability on the Insurance Company, is hereby

set aside. The matter is remanded to the Tribunal to decide the issue of liability only afresh after affording due opportunity of hearing to the parties as expeditiously as possible preferably within a period of six months from the date of receipt of copy of this order. It is made clear that the Tribunal shall pass a fresh award. If any amount has been deposited the same shall be adjusted in the award to be passed afresh by the Tribunal. Parties are directed to appear before the concerned Tribunal on **4th February, 2019.**

10. Needless to mention the Tribunal shall provide proper and sufficient opportunity to the parties to adduce evidence, to amend the pleadings and to file additional documents, if any in respect of liability only.

11. Record of the Tribunal be sent back forthwith.

12. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

Amita