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HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 1605 of 2017

Lekhram S/o Shri Shatrughan Sahu, Aged About 4 Years Minor, Through His Natural Guardian i.e. Father Namely Shatrughan Sahu, S/o Shri Premlal Sahu, Age About 40 Years, R/o Village Nawagaon, Tahsil Police Station, Than Khamhariya, District Bemetara, Chhattisgarh.

---- Appellant

Versus

1. Lokeshwar Das Barle S/o Tarandas Barle, Aged About 25 Years Village Kodva, Police Station- Saja, Tahsil- Berla, District Bemetara, Chhattisgarh.
2. Bhavesh Dubey, S/o L. D. Dubey, Aged About 45 Years Old Court Road, Kawardha, District Kabirdham, Chhattisgarh.
3. Bajaj Allianz General Insurance Company Limited, Through Branch Manager, Plot No. 2/7, Second Floor, Near Gandhi Chowk, G. E. Road, Aakash Ganga Bhailai, Tahsil And District Durg, Chhattisgarh.

---- Respondents

MAC No. 1649 of 2017

Bajaj Alianz General Insurance Company Ltd Through Branch Manager Plot No. 2/7, Second Floor Near Gandhi Chowk, G.E.Road Akash Ganga Bhilai Tehsil And District Durg, Chhattisgarh.

---- Appellant

Versus

1. Lekhram S/o Satrughan Sahu, Aged About 4 Years Minor Through His Father Guardian Satrughan S/o Premlal Sahu, Age 40 Years R/o Village Nawagaon, Tehsil Thana Than Khamariya District Bemetara, Chhattisgarh.
2. Lokeshwar Das Barle S/o Taran Das Barle, Aged About 25 Years Village Kodwa, P.S. Saja, Tehsil Berla, District Bemetara, Chhattisgarh.
3. Bhawesh Dubey S/o L.D.Dubey, Aged About 45 Years Old Court Road Kawardha District Kabirdham, Chhattisgarh.

---- Respondents

For Claimant	:	Shri Vaibhav A Gowardhan, Advocate.
For Insurance Com.	:	Shri Ghanshyam Patel, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

30.01.2018

1. These two appeals arise out of same accident in claim case No.34/2015, decided on 31.07.2017 by the Motor Accident Claims Tribunal, Bemetara (CG). Vide the impugned award the Tribunal in an injury case has awarded compensation of Rs.75,000/- to the

claimant along with interest @ 9 percent per annum from the date of application.

2. MAC No.1605 of 2017 is an appeal filed by the claimant seeking enhancement of compensation. MAC No.1649 of 2017 is an appeal by the insurance company challenging the liability part. In both the appeals, applications have been filed for condonation of delay in filing the appeal. For the reasons assigned in the applications and finding them to be satisfactory, the applications are allowed and delay in filing both the appeals stand condoned. For convenient sake, we shall take the appeal of the insurance company first i.e. MAC No.1649 of 2017.

3. Learned counsel appearing for the insurance company submits that the liability which has been fastened upon it is not proper, legal and justified for the reason that the insurance company has specifically pleaded and proved before the Tribunal of the vehicle involved in the accident not having proper permit and fitness. Ex. D/3 was produced before the Tribunal in this regard which was issued from the office of the RTO, Kabirdham, and which has been proved by the officer of the insurance company. He further submits that the insurance company had also moved an application under Rule 231 of the Chhattisgarh Motor Vehicle Rules, 1994, but the said application was rejected by the Tribunal, thereby it has to be inferred that the document which has been proved by the insurance company through its officer to have been properly proved.

4. He further submits that it is a case where though the owner and

driver were represented through lawyer before the Tribunal and they had filed their respective submissions, but have not led any evidence in their support or defence and therefore, an adverse inference has to be drawn against the owner and driver and to hold that the vehicle involved in the accident i.e. Mahindra Bolero bearing registration No.CG-09-B-1069 did not have valid permit or fitness at the relevant point of time.

5. Given the facts and circumstances of the case and on perusal of records, this court is of the opinion that the insurance company in the instant case have discharged their burden so far as pleadings and proving the fact that the vehicle involved in the accident did not have valid permit and fitness certificate on the date of accident i.e. on 30.06.2014. Further, moving an application for calling upon witness from the RTO further strengthens the case of the insurance company, however, the said application has been rejected by the Tribunal, which shows that the Tribunal did not find it necessary to call upon the said witness as the same already stood proved and exhibited by the officer of the insurance company. Therefore, it has to be accepted and safely inferred that the insurance company has proved their case of the offending vehicle not having valid permit and fitness on the date of accident.

6. Under the said circumstances, applying the judgment of Supreme Court in case of National Insurance Co. Ltd. Vs. Challa Bharathamma and Ors. 2004 (8) SCC 517, it is a fit case where the doctrine of “Pay and Recover” can be applied. It is ordered accordingly that the

insurance company shall honour the award with liberty to recover the same from the owner and driver of the offending vehicle.

7. So far as MAC No.1605 of 2017 filed by the claimant seeking enhancement of compensation is concerned, the contention of claimant is that the injured has been paid less compensation when compared to the nature of injury that he has sustained. According to him, the injured as a result of the accident had received fracture on his left leg and that he had also to be operated and steel plates and screws had to be implanted for the treatment and for all these the claimant has incurred huge amount of expenditure for the treatment and that he has also suffered disability in this regard. However, a perusal of record would show that the doctor was not examined to prove the disability part, if any. Neither is there any medical certificate issued from the competent medical board to establish the disability. However, since it is undisputed that the accident took place on 30.06.2014 and as a result of the accident the claimant had suffered fracture on his left leg and also subjected to surgery where steel plates were implanted for which the claimant must have undergone much pain and suffering and also incurred incidental expenses, this court is of the opinion that ends of justice would meet if the claimant is awarded an additional compensation of Rs.25,000/- in addition to what has already been awarded by the Tribunal to make the total compensation payable at Rs.1,00,000/-instead of Rs.75,000/-. It is ordered accordingly.

8. The enhanced amount shall also carry the same interest as has been

awarded by the Tribunal.

9. Thus, MAC No.1605 of 2017 stands allowed and MAC No.1649 of 2017 stands partly allowed and disposed of. It is made clear that the insurance company shall pay the entire amount of compensation with liberty to recover the same from the owner and driver of the offending vehicle.

Sd/-
(P.Sam Koshy)
Judge

inder