NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 694 of 2014

Reserved on 7-8-2018

Decided on 27-8-2018

- Smt.Sheela Paikara W/o Late Pandey Singh Aged About 41 Years R/o Pathiapali, Tah. Kartala, Distt. Korba C.G., Chhattisgarh

---- Appellants

Versus

1. Sheikh Mehboob Khan S/o Noor Mohammed Aged About 41 Years R/o Mudapara, In Front Of Shivam Motors, Korba, Distt. Korba C.G., Chhattisgarh
2. M/s Sharad Saurabh Collection for Rajendra Agrawal, R/o Kosabadi Korba, Distt. Korba C.G., District : Korba, Chhattisgarh
3. Bajaj Allianz General Insurance .Company .Pvt. Ltd. Thru- Its Branch Manager, Plot No. 102, Indira Commercial And Residential Complex, Behind Hotel Natraj, Transport Nagar, Korba, Tah. Korba, Distt. Korba C.G., District : Korba, Chhattisgarh

---- Respondents

For Appellant	:	Mr. Mirza Baeg, Advocate.
For respondent No.2	:	Mr. Sanjay Patel, Advocate.
For respondent No.3 `	:	Mr. Shokie Yadav, Advocate.

SB: Hon'ble Mr. Justrice Ram Prasanna Sharma

CAV Order

1. The claimant/appellant has preferred this appeal under Section 173 of the Motor Vehicle Act, 1988 against the award dated 9-4-2014 passed by the Additional Motor Accident Claims Tribunal, (FTC), Korba (CG) in Claim Case No. 86 of 2013, wherein the said Tribunal awarded compensation of Rs.4,66,100/- to the

claimant/appellant who sustained serious injuries in a motor accident occurred on 11-11-2008.

2. As per case of the claimant/appellant, on 11-11-2008, claimant Smt. Sheela Paikara was going in a motorcycle bearing registration No. CG-12-4904 driven by her husband Pandey Singh Paikara towards main road Champa, at the same time the Minibus bearing registration No. CG -12 -9836 dashed the said vehicle as the driver of the said bus who is respondent No.1 was driving the vehicle negligently as a result of which she sustained grievous injuries and resulting into 100% disability.

3. The Claims Tribunal after recording the evidence and after hearing both the parties, decided that the deceased was also negligent as per evidence of Pradeep Kumar Agrawal (NAW3) and the vehicle Minibus was driven by respondent No.1 who was not having a driving licence to drive the transport vehicle, therefore, the Insurance Company is not liable to pay compensation, but the owner of the Minibus who is respondent No.2 herein is liable to pay compensation. After recording the finding of contributory negligence, the Tribunal calculated 50% negligence on the part of deceased and as per medical bills of Rs.3,43,454/- and calculated Rs.2,70,000/- on account of loss of income and again

assessed for special diet, pain and suffering and transport, awarded 50% sum of the total assessment i.e., Rs.9,32,200 and awarded a sum of Rs.4,66,100/ against owner/respondent No.2.

4. Learned counsel for the appellant submits that there is no contributory negligence on the part of the victim, therefore, deduction of 50% of the amount out of total compensation assessed is not proper.

5. In view of this court, the Tribunal recorded its finding on the basis of the evidence of Pradeep Kumar Agrawal (NAW/3). As per evidence of this witness, deceased was driving in wrong direction and dashed the said Minibus which is alleged to be offending vehicle. He has clearly stated that he was travelling in the said minibus and the incident was seen by him directly. Looking to the evidence of this witness, the trial Court opined that the victim has also contributed in accident and assessed his contributory negligence to be 50%. Finding of the Tribunal is based on the evidence adduced by the parties and it is not rebutted by the evidence of Smt. Sheela Paikara (AW/1), therefore, finding regarding contributory negligence on the part of the victim is based on the evidence of both sides and this court has no reason to interfere with the finding recorded by the Tribunal. The Tribunal assessed the

compensation on the basis of monthly salary of the victim and again future prospects and conventional head have also been taken into account and assessed the total compensation to the tune of Rs. 9,32,200 and awarded 50% of the sum i.e., Rs.4,66,100/- against owner/respondent No.2.

6. The next point for consideration of this Court is whether the driver of the said Minibus/respondent No.1 was having a valid driving licence to drive the same or the driving licence was not effective on the date of incident.

7. In the present case, date of incident is 11-11-2008. From the evidence of Santosh Pal (NAW/1), it is established that respondent No.1 was having driving licence from 15-9-1998 to 13-9-2018 for driving the light motor vehicle. As per evidence of Punit Rathore (NAW/4), who is Law Officer of respondent No.3 Bajaj Allianz General Insurance Company Limited, respondent No.1 was not having driving licence to drive the transport vehicle. As per version of Heeralal Dhruw (NAW/5) who is an employee of Regional Transport Office, Bilaspur stated that the Minibus was having permit from 1-11-2008 to 30-11-2008. From the evidence adduced by the persons of Transport Department, it is established that on the date of incident i.e., 11-11-2008 respondent No.1 was having

licence to drive the light motor vehicle from 15-9-1998 to 13-9-2018.

8. As per law laid down in the matter of **Mukund Dewangan vs. Oriental Insurance Company Ltd., reported in (2017) 14 SCC 663,** Hon'ble the Apex Court held that the "light motor vehicle" as defined under Section 2(21) of the Motor Vehicles Act, 1988 Act includes transport vehicle or omnibus, the gross vehicle weight of either of which does not exceed 7500 kgs and it includes tractor or road roller, unladen weight of, which, does not exceed 7500 kg., and holder of a driving licence to drive class of "light motor vehicle" is competent to drive the transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg i.e., to say that no separate endorsement on the licence is required to drive the transport vehicle of light motor vehicle as enumerated above.

9. In the present case, Insurance Company has not proved that unladen weight of the offending vehicle was more than 7500 kg, therefore, respondent No.1 who was having a valid and effective driving licence for light motor vehicle, was authorised to drive any transport vehicle or omnibus, the gross vehicle weight of which does not exceed to limit. In

absence of any proof by the Insurance Company, the Insurance Company cannot be absolved from its liability.

10. In view of the pronouncement by Hon'ble the Supreme Court in every case where the driver is having a valid driving licence to drive the light motor vehicle, the Insurance Company has to prove that unladen weight of the offending vehicle was more than 7500 kg. In absence of any proof regarding unladen weight of the offending vehicle, person having driving licence to drive the light motor vehicle is authorised to drive such vehicle even if it is goods vehicle or passenger vehicle.

11. In the present case, Insurance Company did not lead any evidence regarding unladen weight of the offending vehicle. In absence of the evidence that respondent No.1 was not having effective driving licence to drive the said vehicle, Insurance Company cannot be absolved from its liability. Therefore, the finding arrived at by the trial Court is liable to be and hereby reversed and it is decided that the respondent No.3/Insurance Company is liable to pay compensation to the claimant/appellant.

12. Accordingly, the appeal is partly allowed and award is passed in favour of the appellant and against respondent No.3/Insurance Company as under:

I) Respondent No.3 Insurance Company shall pay Rs. 4,66,100/- to the appellant/claimant within 60 days from the date of passing of the order, failing which 9% interest shall be charged.

ii) Remaining part of the award of the claims Tribunal remains as it is.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju