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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 728 of 2014

- Bajaj Allianz General Insurance Company Limited, G.E. Plaza, Airport Road, Erawada, Pune- 411006 through Vidhan Sabha Road, Pandri, PS Pnadri, Civil & Revenue Dist.- Raipur (C.G.).

---- Appellant

Versus

1. Durga Prasad Vishwakarma S/o Shri Devidhin Vishwakrma aged about 55 years, R/o Behind Ajit Hotel, Telipara, PS City Kotwali, Civil and Revenue Dist.- Bilaspur C.G. (Claimant)
2. Ku. Ranjna Shukla D/o Munnilal Shukla aged about 56 years- R/o Jorapara, Street No. 4, Sarkanda, Bilaspur. PS Sarkanda, Civil and Revenue Dist.- Raipur C.G. (driver and registered owner of vehicle No. CG 10 FA 3809).

---- Respondents

For Appellant	:	Shri Rohitashav Singh, on behalf of Shri N. K. Thakur, Advocate
For Respondent No 1.	:	Shri Uttam Pandey, Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

18.02.2019

1. This is insurer's appeal filed under section 173 of the Motor Vehicles Act, 1988 (henceforth “MV Act, 1988”) against the award dated 30.04.2014 passed by 3rd Additional Member to 1st Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No. 53/2013 awarding total compensation of Rs. 1,11,846/- alongwith interest @ 6% pa from the date of application till realisation, fastening liability on the Non-applicants jointly and severally.

2. As per claim petition, on 07.08.2011, at around 03.30 o'clock Durga

Prasad Vishkarma aged about 55 years in front of Ajeet Hotel, Telipara, Bilaspur (C.G.) was walking towards his car at that point of time, non-applicant No. 1 Ku. Ranjna Shukla by rash & negligent driving of offending vehicle (Alto) bearing No. C.G. 10FA/3809 dashed Durga Prasad Vishkarma due to which he sustained injuries on his body and got fracture on thigh.

3. On claim petition being filed by the claimant/injured under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above. The vehicle is owned by Non-applicant No. 1 and insured with Non-applicant No. 2.

4. Being aggrieved & dissatisfied with the aforesaid award, the instant appeal has been preferred by the appellant/Insurance Company.

5. Learned counsel for the appellant/Insurance Company submits that at the time of accident, Non-applicant No. 1/driver/registered owner of offending vehicle bearing registration No. CG 10 FA /3809 did not have valid & effective driving licence. He submits that appellant/Insurance Company filed an application before the Claims Tribunal under Order 11 Rule 12 of CPC and another application under Section 134 of the Motor Vehicle Acts 1988 seeking details of driving licence of Non-applicant No. 1/driver/registered owner but the aforesaid applications were dismissed by the learned Tribunal and Non-applicant No. 1/respondent No. 2- Ku. Ranjna Shukla could not furnish the driving licence to the counsel for the appellant/Insurance Company.

6. On the other hand, learned counsel for the respondent No. 1 supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation and fastened the liability upon the Insurance Company which needs no interference by this Court.

7. I have heard learned counsel appearing for the appellant and perused the impugned award including record of the Claims Tribunal.

8. Shri Pravin Sizariya (NAW-1) was examined on behalf of the appellant/Insurance Company. He has stated in paragraphs 3 & 4 of his statement that despite filing application under Order 11, Rule 12 of the CPC read with Section 134 of the Motor Vehicles Act, 1988 seeking driving licence

from respondent No. 2/driver-cum-owner of the offending vehicle, she could not produce the same and she was not cooperated with the enquiry made for driving licence.

9. As per seizure memo (Ex.P/5) prepared by Investigating Officer on 08.08.2011 offending vehicle alongwith RC book, driving licence and insurance policy were seized from the owner of the vehicle. As per seizure memo (Ex. P/5) driving licence was issued in the name of Ku. Ranjna Shukla, respondent No. 2 herein and it is valid up to 05.07.2014 whereas the accident had occurred on 7.8.2011 but the appellant/Insurance Company failed to collect the copy of the documents seized by the Investigating officer and no sincere efforts was made regarding collection of driving licence. Only one witness namely Pravin Sizariya (NAW-1) was examined on behalf of Insurance Company, who had no knowledge about the driving licence and this fact was admitted in para 7 of his statement that no application was submitted before Regional Transport Authority regarding seeking driving licence. It was the duty of the Insurance Company to collect the documents relating to the offending vehicle and driving licence and submit before the Claims Tribunal but the Insurance Company has failed to produce that documents, therefore, learned Tribunal has rightly fastened liability upon the Insurance Company in which I do not find any illegality warranting interference in this appeal.

10. Accordingly, the appeal filed by the Insurance Company is liable to be and is hereby dismissed.

Sd/-

(Gautam Chourdiya)
Judge

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