

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 521 of 2013****Reserved on 24.09.2019**
Pronounced on 17.10.2019

- Branch Manager, The New India Assurance Company Ltd. Branch Office- Rama Trade Center, Near Rajiv Plaza, Bus Stand, Bilaspur, Tah. And Distt. Bilaspur C.G.,

---- Appellant**Versus**

1. Rakesh Kumar Anant, S/o G.R. Anant Aged About 26 Years R/o Tulsi Awas, Qtr.No. 2/10, Rajkishore Nagar, Sarkanda, P.S. Sarkanda, Distt. Bilaspur C.G.,
2. Umesh Kashyap S/o Peeluram Kashyap Aged About 35 Years R/o P.H.C. Hospital Geedam, Distt. Dantewada C.G.,
3. Dr. Heeralal Thakur S/o Late C.R. Thakur R/o O.C.D. Hospital Colony, Village- Geedam, Distt. Dantewada C.G.,

---- Respondents

For Appellant	:	Shri Raj Awasthi, Advocate.
For Respondent No.1	:	Shri Rishi Rahul Soni, Advocate.
For Respondents No.2 & 3:	:	Shri Vikas A. Shrivastava, Advocate.

Hon'ble Shri Justice Sanjay Agrawal**C.A.V.Order / Award**

1. This Miscellaneous Appeal has been preferred by Non-Applicant No.3/The New India Assurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988) questioning the legality and propriety of the award dated 17.10.2012 passed by the 5th Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No.116/2011, by which, the Claims Tribunal, while allowing the claim in part, awarded total amount of compensation to the tune of Rs.3,81,796/- with interest @ 7.5% per annum from the date of filing of Claim Petition till its realisation. The parties to

this Appeal shall be referred hereinafter as per their description in the Court below.

2. Briefly stated the facts of the case are that on 18.08.2010, the Claimant Rakesh Kumar Anant was returning to his home by his motorcycle from Jagdalpur to Narayanpur and as soon as he reached near the bridge at Kotgaon village, it was dashed vehemently from its opposite side by the offending vehicle "Indica Car" bearing its registration No. C.G.-04/HB/0843. The said offending vehicle was owned by Non-Applicant No. 2 Dr. Hiralal Thakur and was insured with Non-Applicant No.3/The New India Assurance Company Limited. At the relevant time, it was being driven rashly and negligently by its driver Umesh Kashyap, Non-Applicant No.1, owing to which, the alleged accident occurred and Claimant injured badly and his right leg's femur bone got fractured apart from other multiple injuries and as such, he suffered permanent disability to the extent of 42%.

3. On account of the aforesaid accident, the Claimant instituted a claim petition enumerated under Section 166 of the Act of 1988 claiming total amount of compensation to the tune of Rs.17,00,000/- by submitting, inter alia, that he is working as Sub-Engineer in 'Chhattisgarh Renewable Energy Development Agency' (CREDA) where he used to earn Rs.20,000/- per month and on account of permanent disability, he is unable to perform his duties.

4. The aforesaid claim has been contested by the Non-Applicants. Non-Applicants No. 1 & 2 pleaded in their written statement that the vehicle in question was not involved in the alleged accident as the front right side of its tyre got punctured all of a sudden and the Claimant, who was coming from opposite side, has lost his control and got injured himself. It was pleaded further that since the vehicle in question was insured with the said Insurance Company and the driver of it was possessing the effective and valid driving license, therefore, in case of any liability being fastened, the same could be indemnified by the

insurance company.

5. Non-Applicant No.3, the insurance company contested the claim mainly on the ground that the vehicle in question was being used in violation of its policy as the driver of it was not authorized to drive the alleged vehicle as his license was not renewed on the date of the alleged accident.

6. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the accident occurred on 18.08.2010 due to rashness and negligent driving of the driver of the offending vehicle, owing to which, the Claimant suffered permanent disability to the extent of 42%. It held further that the vehicle in question was not being used in violation of the policy as the driver of it was possessing the valid and effective driving license. As a consequence, the Tribunal while fastening the liability upon the insurance company, awarded total amount of compensation as mentioned herein above.

7. Being aggrieved, Non-Applicant No.3 has preferred this appeal. Shri Raj Awasthi, learned counsel for the appellant, submits that the award impugned as passed by the Claims Tribunal fastening the liability upon the insurance company holding that the driver of the offending vehicle was possessing the effective and valid driving license and was authorized to drive the same at the relevant time is apparently contrary to law. While inviting attention to the particulars of the driving license, marked as Ex.D.2, it is contended that since it was renewed with effect from 27.08.2010 upto 26.08.2013 after its expiry in the year 2007 and that too after the occurrence of the alleged accident on 18.08.2010, therefore, it cannot be held that he was authorized to drive the vehicle in question on the date of the alleged accident. He submits further that while determining the amount of compensation, the Claims Tribunal has committed an illegality in assessing the permanent functional disability of the body of the Claimant to the extent of 42% based upon the disability certificate (Ex.P.82). However, it was only to the extent of his right leg and as such, it

cannot be held to be the same percentage of his whole body in absence of any specific opinion of the qualified Medical Practitioner. In support, he placed his reliance upon the decisions rendered in the matters of “*Ram Babu Tiwari vs. United India Insurance Company Limited and others*” “*New India Assurance Company Limited vs. Suresh Chandra Aggarwal*” and “*Raj Kumar vs. Ajay Kumar and Another*” reported respectively in (2008) 8 SCC 165, (2009) 15 SCC 761 and (2011) 1 SCC 343. The award impugned is, therefore, liable to be set aside and/or modified.

8. On the other hand, Shri Vikas A. Shrivastava, learned counsel appearing for respondents No. 2 & 3, the driver and owner of the vehicle in question and Shri Rishi Rahul Soni appearing for respondent No.1/Claimant while supporting the award impugned submit that it does not require any interference. According to Shri Shrivastava, since the requisite fee for the renewal of driving license was already collected by the concerned Transport Authority prior to the occurrence of the alleged accident, therefore, it cannot be said that he was not authorized to drive the alleged offending vehicle. In support, he placed his reliance upon the decision rendered in the matter of “*Kalyan Singh and another vs. Sadarani and others*” reported in 2001 ACJ 1758 (MP).

9. I have heard learned counsel for the parties and perused the entire record carefully.

10. The questions which arise for determination based upon the aforesaid contentions are as to whether the driver of the offending vehicle was holding the effective and valid driving license at the relevant time? And, whether the loss of future functional disability accrued to the Claimant owing to the alleged accident could be taken into consideration to the same percentage of 42%, as shown in the alleged disability certificate (Ex.P.82)?

11. In order to examine the first question, I have examined the particulars of the alleged driving license (Ex.D.2), vis-a-vis, the evidence led by the insurance

company in this regard. Perusal of the said particulars (Ex.D.2) would show that initially the driving license of the driver Umesh Kumar was valid w.e.f. 11.08.1993 upto 10.08.1996, renewed thereafter upto 10.08.1999. It was thereafter renewed further after intervals w.e.f. 22.03.2000 upto 21.03.2003 and, it was renewed again by some intervals w.e.f. 29.09.2004 upto 28.09.2007. A bare perusal of the particulars of the alleged driving license would reveal further that for around three years upon its expiry on 28.09.2007, it was not renewed and was got renewed only after the alleged accident occurred on 18.08.2010, i.e., w.e.f. 27.08.2010 upto 26.08.2013. The aforesaid particulars of the driving license (Ex.D.2) was duly corroborated by one Ramlal Yadav (N.A.W.1), who was an employee of the Regional Transport Authority, Jagdalpur. He appeared along with the concerned Register of the said Department upon receiving summons of the Court. According to his testimony, it is evident that the driver of the alleged offending vehicle was not holding the driving license and was not authorized to drive the same on the date of the alleged accident for want of its renewal as observed herein above. It is true, as revealed from his cross-examination that the requisite fee for its renewal was paid by the said driver prior to the occurrence of the alleged accident on 03.08.2010, however, that by itself would not be sufficient to hold that he possessed the valid driving license on the date of the accident, particularly, when it was renewed only on 27.08.2010, much after the date of its expiry and that too after the occurrence of the alleged accident.

12. It is relevant to note at this stage the provisions prescribed under Section 15 of the Act of 1988, which provide for renewal of driving license and reads as under:

“15. Renewal of driving licences.----- (1) Any licensing authority may, on application made to it, renew a driving licence issued under the provisions of this Act with effect from the date of its expiry:

Provided that in any case where the application for the renewal

of a licence is made more than thirty days after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal:

Provided further that where the application is for the renewal of a licence to drive a transport vehicle or where in any other case the applicant has attained the age of forty years, the same shall be accompanied by a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8, and the provisions of sub-section (4) of section 8 shall, so far as may be, apply in relation to every such case as they apply in relation to a learner's licence.

(2) An application for the renewal of a driving licence shall be made in such form and accompanied by such documents as may be prescribed by the Central Government.

(3) Where an application for the renewal of a driving licence is made previous to, or not more than thirty days after the date of its expiry, the fee payable for such renewal shall be such as may be prescribed by the Central Government in this behalf.

(4) Where an application for the renewal of a driving licence is made more than thirty days after the date of its expiry, the fee payable for such renewal shall be such amount as may be prescribed by the Central Government:

Provided that the fee referred to in sub-section (3) may be accepted by the licensing authority in respect of an application for the renewal of a driving licence made under this sub-section if it is satisfied that the applicant was prevented by good and sufficient cause from applying within the time specified in sub-section (3):

Provided further that if the application is made more than five years after the driving licence has ceased to be effective, the licensing authority may refuse to renew the driving licence, unless the applicant undergoes and passes to its satisfaction the test of competence to drive referred to in sub-section (3) of section 9.

(5) Where the application for renewal has been rejected, the fee paid shall be refunded to such extent and in such manner as may be prescribed by the Central Government.

(6) Where the authority renewing the driving licence is not the authority which issued the driving licence it shall intimate the fact of renewal to the authority which issued the driving licence."

13. By virtue of the aforesaid provision, it is evident that the Licensing Authority may, on the basis of the application, renew a driving license with effect from the date of its expiry, however, the proviso to the aforesaid provision provides that it shall be renewed only from the date of its renewal, if the application, for the said purpose, is made after the period of more than thirty

days of its expiry. In the instant matter, as visualized herein above, the alleged driving license was not in existence as it was got renewed much after the date of its expiry, i.e., on 27.08.2010. The driver, was, therefore, not authorized to drive the alleged offending vehicle on the date of the accident.

14. In a similar factual scenario, as happened in the instant matter, when the driving license of the driver was valid upto 25.10.1991 and was renewed with effect from 23.03.1992, after the occurrence of the accident occurred on 29.02.1992, as the application for its renewal was not made within the period of 30 days of its expiry, it was held by the Supreme Court in the matter of **New India Assurance Company Limited vs. Suresh Chandra Aggarwal** (supra) that the license was not in existence in the interregnum period, i.e., between the date of expiry of the license and the date of its renewal while interpreting the aforesaid provision of the Act of 1988 at paragraphs 17, 18, 19 and 20 as under:

“17. In the instant case, as noted above, as per the certificate issued by the licensing authority, the driving licence of the deceased driver had expired on 25-10-1991 i.e. four months prior to the date of accident on 29-2-1992 and it was renewed with effect from 23-3-1992. It is not the case of the Claimant that the driver had applied for renewal of the licence within 30 days of the date of its expiry. On the contrary, it is the specific case of the appellant that the driving licence was renewed only with effect from 23-3-1992.

18. From a plain reading of Section 15 of the Act, it is clear that if an application for renewal of licence is made within 30 days of the date of its expiry, the licence continues to be effective and valid without a break as the renewal dates back to the date of its expiry. Whereas, when an application for renewal is filed after more than 30 days after the date of its expiry, the proviso to sub-section (1) of Section 15 of the Act gets attracted and the licence is renewed only with effect from the date of its renewal, meaning thereby that in the interregnum between the date of expiry of the licence and the date of its renewal, there is no effective licence in existence. The provision is clear and admits of no ambiguity.

19. However, the stand of the Claimant before the District and the State Fora as also before us was that since the deceased driver was holding a valid licence and had not been disqualified from holding an effective licence, the stipulation in the afore-extracted condition was not infringed. In our view, the argument is stated to be rejected.

20. Admittedly, having failed to apply for renewal of the driving licence within 30 days from the date of its expiry in terms of Section

15 of the Act, the licence could not be renewed with effect from the date of its expiry and therefore, between the period from 26-10-1991 to 23-3-1992, the deceased driver had no valid and effective driving licence as contemplated under Section 3 of the Act. We are convinced that during this period, he did not hold at all an effective driving licence, as required in the terms and conditions governing the policy on the date of accident i.e. 29-2-1992.”

15. The aforesaid provision was interpreted yet again by the Supreme Court in the matter of **Ram Babu Tiwari vs. United India Insurance Company Limited and others** (supra) and held at paragraph 18 as under:

“18. It is beyond any doubt or dispute that only in the event an application for renewal of licence is filed within a period of 30 days from the date of expiry thereof, the same would be renewed automatically which means that even if an accident had taken place within the aforementioned period, the driver may be held to be possessing a valid licence. The proviso appended to sub-section (1) of Section 15, however, clearly states that the driving licence shall be renewed with effect from the date of its renewal in the event the application for renewal of a licence is made more than 30 days after the date of its expiry. It is, therefore, evident that as on renewal of the licence on such terms the driver of the vehicle cannot be said to be holding a valid licence, the insurer would not be liable to indemnify the insured.”

16. While countering the aforesaid contention, Shri Vikas A. Shrivastava, learned counsel appearing for the driver and owner of the vehicle in question by placing his reliance upon a decision rendered in the matter of **Kalyan Singh and another vs. Sadarani and others** (supra) submits that though the licence of the said driver was not renewed on the date of accident but merely on this ground alone, the appellant/insurance company cannot be held to be exonerated from its liability. The contention of Shri Shrivastava based upon the said decision is, however, noted to be rejected as it was distinguishable from the facts involved in the present matter. That is the case where the High Court of Madhya Pradesh had examined the proviso to clause (b) of the insurance policy, marked therein as 'Ex.D.1', which reads as under:

“*Persons or classes of persons entitled to drive.*---- Any of the following:
 (a) The insured
 (b) Any other person who is driving on the insured's order or with his permission.

Provided that the person driving holds or had held and has not been disqualified from holding an effective driving licence with all the required endorsements thereon as the *Motor Vehicles Act* and the Rules made thereunder for the time being in force to drive the category of motor vehicle insured hereunder.”

And while interpreting the same, it was held that even if a person who is holding license in the past and who was not held to be disqualified subsequently by the licensing authority from holding the license in the meantime would also be covered by the aforesaid proviso.

17. The aforesaid principle was laid down in the said factual scenario where the aforesaid proviso was in existence, however, I do not find any such kind of proviso in the policy (Ex.D.3) in question herein. It is necessary to reproduce the said clause of the policy (Ex.D.3), which reads in following terms:

“Persons or classes of persons entitled to drive

Any person including the insured provided that a person driving holds an effective driving license at the time of the accident and is not disqualified from holding or obtaining such a license.

Provided also that the person holding an effective Learners License may also drive the vehicle and that such a person satisfies the requirement of Rule 3 of the Central Motor Vehicles Rules, 1989.”

18. It is, thus, evident from a bare perusal of the aforesaid terms and conditions stipulated in the alleged policy (Ex.D.3) that no such kind of proviso, as interpreted by the High Court of M.P, is in existence herein. The principles laid down in the aforesaid case would, therefore, not come as a rescue for the owner and driver of the vehicle in question.

19. Here in the instant case also, as observed herein above, the driving license of the driver of the offending vehicle, namely, Umesh Kumar, had expired on 28.09.2007 whereas the accident took place more than six and half years thereafter, i.e., on 18.08.2010 and the driving license of him was renewed only w.e.f. 27.08.2010. In such an eventuality, based upon the aforesaid principles, it cannot be held that the driver of the offending vehicle had license to drive the

vehicle in question on the date of the alleged accident. Consequently, the finding recorded by the Claims Tribunal fastening the liability upon the Appellant-Insurance Company by holding that the driver of the offending vehicle was possessing the effective and valid driving licence on the date of the accident is hereby set aside and the Appellant/Insurance company is accordingly exonerated from its liability.

20. Now, the second question, which arises for determination, is as to whether the finding of the Claims Tribunal holding that the loss of future earning capacity accrued to the Claimant on account of the alleged accident to the same percentage of 42% based upon the alleged disability certificate (Ex.P.82) could be held to be sustainable in the eye of law.

21. The Claimant Rakesh Kumar Anant was injured in an accident occurred on 18.08.2010. Owing to which, his right leg's femur bone got fractured and was admitted into the District Hospital, Narayanpur. He was thereafter referred to M.M.I. Hospital at Raipur where he was undergone treatment for 15 days and his right leg was operated and a screw (rod) was inserted. A disability certificate (Ex.P.82) was issued by the District Medical Board, Bilaspur upon his examination, which reveals the fact that he suffered disability to the extent of 42%. This certificate was duly corroborated by Dr. S.S.Bhatia, Member of the said Board. According to his testimony, it is evident that few parts of the femur bone of his right leg have come out and as a result of which, he suffered permanent disability to the extent of 42% of moderate nature. The Claimant has, thus, suffered permanent disability in relation to his right leg to the extent of 42%.

22. While considering the aforesaid certificate, it was held by the Claims Tribunal that the Claimant suffered permanent disability to the extent of 42% and accordingly loss of future earning capacity accrued to him was taken as such. Considering further his monthly income at Rs.3,000/-, yearly Rs.36,000/-, the

future loss of earning capacity of the Claimant has been assessed annually at Rs.15,120/- (42% of the yearly income of Rs.36,000) and that by applying the multiplier of 18, as he was found to be 26 years old at the time of the accident, total loss of future earning capacity has been assessed to the tune of Rs.2,72,160/- (Rs.15,120 x 18). In addition to this, a sum of Rs.1,02,636/- towards medical expenses, Rs.4,000/- towards loss of income, Rs.1000/- towards special diet and a sum of Rs.2000/- towards physical and mental agony has been awarded. Thus, total amount of compensation of Rs.3,81,796/- has been awarded by the Claims Tribunal payable to the Claimant with 7.5% interest per annum from the date of filing of claim petition till its realisation.

23. It, thus, appears from the aforesaid calculation that the percentage of loss of future earning capacity of the Claimant was considered as shown in the alleged certificate (Ex.P.82). However, a bare perusal of the said certificate, vis-a-vis, the evidence of Dr. S.S.Bhatia, it is evident that the alleged permanent disability to the extent of 42% was in fact accrued to the Claimant's right leg alone and was not in relation to his whole body, as held by the Claims Tribunal. The future loss of earning capacity, as assessed by the Claims Tribunal, to the same percentage as shown in the alleged certificate, thus, appears to be unreasonable and unjustified.

24. The aforesaid observation of mine is fortified by the principles laid down in the matter of **Raj Kumar vs. Ajay Kumar and another** (supra) where the Claimant suffered permanent disability to the extent of 45% towards left of his lower limb and was not the same as of 45% in relation to the whole of his body. However, the Claims Tribunal had considered the loss of future earning capacity of the Claimant to the same percentage as shown in the said certificate. In that factual scenario and particularly when the Tribunal had overlooked the fact that the percentage of disability as shown in the said certificate was only in relation to his left lower limb and was not towards his entire body, it was held at

paragraphs 19 (i), (ii) and 25 as under:

“19. We may now summarise the principles discussed above:

- (i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.
- (ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

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25. The Tribunal has proceeded on the basis that the permanent disability of the injured claimant was 45% and the loss of his future earning capacity was also 45%. The Tribunal overlooked the fact that the disability certificate referred to 45% disability with reference to the left lower limb and not in regard to the entire body. The said extent of permanent disability of the limb could not be considered to be the functional disability of the body nor could it be assumed to result in a corresponding extent of loss of earning capacity, as the disability would not have prevented him from carrying on his avocation as a cheese vendor, though it might impede in his smooth functioning. Normally, the absence of clear and sufficient evidence would have necessitated remand of the case for further evidence on this aspect. However, instead of remanding the matter for a finding on this issue, at this distance of time after nearly two decades, on the facts and circumstances, to do complete justice, we propose to assess the permanent functional disability of the body as 25% and the loss of future earning capacity as 20%.”

25. By applying the aforesaid principles to the case in hand, it is evident that while considering the percentage of loss of earning capacity, the Claims Tribunal has committed an illegality in considering the same percentage of permanent functional disability as shown in the alleged permanent disability certificate (Ex.P.82). The approach of the Claims Tribunal in assessing the percentage of the loss of functional disability to the extent of 42%, which, as visualized from the alleged certificate coupled with the statement of Dr. S.S.Bhatia, is in fact the part of Claimant's said limb (left leg) alone and cannot be equated with the same percentage of his entire body. The finding of the Claims Tribunal as such, deserves to be and is hereby set aside.

26. Considering the injury sustained by the Claimant coupled with the evidence of Dr. S.S.Bhatia, I deem it proper to assess the percentage of permanent functional disability of the Claimant's body as 25% and the loss of future earning capacity as 20%. The finding of the Claims Tribunal in assessing the percentage of the loss of future earning capacity of the Claimant to the extent of 42% as shown in the alleged certificate (Ex.P.82) is thus reduced to the extent of 20%.

27. The income of the Claimant as was assessed by the Claims Tribunal at Rs.3,000/- per month, yearly Rs.36,000/-, the loss of earning due to functional disability would thus be 20% of Rs.36,000/-, which comes to Rs.7,200/- per annum. Since the age of the Claimant at the time of accident was 26, the multiplier applicable would be 18. Therefore, the loss of future earning capacity would be $\text{Rs.7,200} \times 18 = \text{Rs.1,29,600/-}$ instead of Rs.2,72,160/- as determined by the Claims Tribunal. The Claimant would thus be entitled to total sum of Rs.2,39,236/- (Rs.1,29,600 + Rs.1,02,636 + Rs.4,000 + Rs.1000 + Rs.2000) instead of Rs.3,81,796/-, along with interest @ 7.5% per annum, as awarded by the Claims Tribunal from the date of filing of the claim petition till its realisation.

28. Although, as observed herein above, the Appellant/Insurance Company is held to be exonerated from its liability as the driver of the offending vehicle was not possessing the effective and valid driving license at the time of the alleged accident for want of its renewal, but undisputedly the policy (Ex.D.3) was found to be in existence. Therefore, on the basis of the principles laid down in the matter of *National Insurance Company Limited v. Swaran Singh*, A.I.R. 2004 SC 1531 and *Manager, National Insurance Company Limited Vs. Saju P. Paul and another* reported in (2013) 2 SCC 41, it would be just and appropriate to apply the principles of pay and recover while directing the Appellant/Insurance company to first pay the awarded sum to the Claimant and then to recover the same from the owner and driver of the offending vehicle.

I accordingly hold that the amount of compensation of Rs.2,39,236/- along with interest @ 7.5% per annum from the date of filing of the claim petition till its realisation shall be paid by the appellant/insurance company and the same shall be recovered from the owner and driver of the vehicle in question in the Execution Proceedings arising in this very case.

29. The appeal is accordingly allowed with the aforesaid observations. Rest of the observations of the Claims Tribunal shall remain intact. No order as to costs.

Sd/-
(Sanjay Agrawal)
Judge