NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 834 of 2013

- Uttam Singh Rajput S/o Late Shivmangal Singh Rajput, Aged About 45 Years, Vehicle Owner, R/o Chikhaldah, Present Address- Khairagarh, Tahsil and P.S. Khairagarh, Distric Rajnandgaon C.G.

---- Appellant

Versus

1. Branch Manager The Oriental Insurance Company Ltd. Near L.I.C. Office, Railway Station Road, Rajnandgaon, P.S. Rajnandgaon, District Rajnandgaon C.G. (Insurance)

2. Mohammed Kalam @ Ismile Khan S/o Ishakh Mohammed Aged About 45 Years, Vehicle Driver, R/o Old Bus Stand, Khairagarh, Tahsil and P.S. Khairagarh, District Rajnandgaon C.G. (Driver)

3. Deelip Kumar Vaishnav S/o Deosharan Vaishnav Aged About 30 Years, Occupation- Service, Paricharak Grade II, Helper, CG Electricity Board, R/o Village Rampur, Tahsil and P.S. Dongargaon, District Rajnandgaon C.G (Claimant)

---- Respondents

For Appellant	:	Shri Praveen K Dhurundhar, Advocate
For Respondent No.1	:	Shri Raj Awasthy, Advocate
For Respondent No.2 & 3	:	None.

Order On Board By Hon. Mr. Justice Parth Prateem Sahu

24/06/2019

1. Owner/appellant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging award dated 19.6.2013 passed by learned Additional Motor Accident Claims Tribunal, Khairagarh, District Rajnandgaon (henceforth 'the Claims Tribunal') in Claim Case No.58/10 whereby the Claims Tribunal allowed claim application in part, awarded total compensation of Rs.1,77,272/- with interest @ 6% p.a. from the date of filing of

application till its realization, in an injury case.

2. From perusal of the impugned award it appears that the Tribunal had committed an error in totalling compensation awarded under various heads. The actual award amount should be Rs.1,78,272/- instead of Rs.1,77,272/- as mentioned by Claims Tribunal in the award.

3. Brief facts relevant for disposal of this appeal are that on 18.3.2009 at 7.00 a.m. injured claimant left his house for work place on motorcycle bearing registration No.CG04-CM-0140 and at 8.30 a.m. when he reached near Banjari Temple, Pendrikala, one truck bearing registration No.CG08-B-2788, driven by non-applicant No.2, dashed motorcycle of injured as a result of which he sustained multiple grievous injuries including fracture of right calf and two fingers of right leg. Appellant was immediately taken to hospital at Khairagarh where he was given primary treatment and thereafter referred to Apollo BSR Hospital, Bhilai where he took treatment as indoor patient from 18.3.2009 to 26.3.2009.

4. Claimant/respondent No.3 herein filed claim application before competent Claims Tribunal claiming an amount of Rs.15,65,014/- as compensation under the head of medical expenses, nutritious diet, transportation, loss of salary during treatment period i.e. six months, physical and mental agony etc.

5. Non-applicant No.1/Insurance Company filed reply to claim application and denied all adverse pleadings made therein. Pleadings to the effect that claimant suffered injuries and admitted in hospital have also been denied. It was pleaded that as the injured was driving motorcycle rashly & negligently, therefore, he lost control

over it and met with an accident. In the reply income as pleaded by claimant and his loss of income was also denied.

6. Non-applicant No.2 & 3, driver & owner of offending vehicle, have jointly filed reply to claim application and denied all adverse pleadings made therein. They have pleaded that accident took place due to rash and negligent driving by claimant himself. On the date of accident, the offending vehicle was not plied on road where accident took place. They further pleaded that on the date of accident, driver of offending vehicle was possessing valid and effective driving license and as offending vehicle was insured with non-applicant No.1, therefore, insurance company is liable to indemnify owner in case any compensation is awarded by the Claims Tribunal. Lastly, it was pleaded that compensation claimed by claimant is highly exaggerated.

7. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties has allowed claim application in part and awarded an amount of Rs.1,77,272/- with interest @ 6% p.a. as compensation by holding that accident took place due to rash and negligent driving of non-applicant No.2 i.e. driver of offending truck. The Claims Tribunal further held that as driver of offending vehicle was not possessing valid and effective driving license on the date of accident, which amounts to violation of condition of insurance policy, therefore, insurance company is not liable to indemnify insured.

8. Learned counsel for appellant-owner submits that Claims Tribunal erred in awarding an amount of Rs.1,33,212/- towards loss of future

income. He further submits that claimant is a government servant and even after the accident, he is working on the same post and thus there is no loss of future income to him. Even otherwise, injured claimant is only entitled for an amount of the period during which he could not perform his work i.e. during treatment period, and for other non-pecuniary damages. He further argued that as on the date of engagement of non-applicant No.2 with appellant herein, he was possessing valid and effective driving license and there was a valid insurance policy on the date of accident, therefore, a direction may be issued directing insurance company to first pay the entire amount of compensation and then to recover the same from owner of offending vehicle.

9. Per contra, learned counsel appearing on behalf of non-applicant No.1 / respondent No.1 submits that the Claims Tribunal has rightly exonerated insurance company in the facts and circumstances of case as on the date of accident driver of offending vehicle was not possessing any license. He further submits that pay and recover direction cannot be issued in an appeal preferred by owner of offending vehicle.

10. I have heard learned counsel for the parties and perused the records.

11. It is not disputed by learned counsel for appellant that on the date of accident, driver of offending vehicle was not possessing valid and effective driving license. Even otherwise, from perusal of document Ex.D-3 filed by insurance company, which is 'Particulars of Driving License' issued by Additional Regional Transport Officer,

Rajnandgaon, it is apparent that license bearing No.202/RJN/99 was issued in favour of non-applicant No.2-driver on 28.09.1987, which was valid upto 31.10.2002, and thereafter it was renewed on 22.10.2002 for a period upto 21.11.2005. Ex.D-4C is the copy of register maintained in the office of licensing authority concerned in which it is mentioned that license issued in favour of non-applicant No.2-driver was renewed on 29.11.2005 for a period upto 21.11.2008. NAW-1 Satyendra Kumar, who at the relevant point of time was working as Assistant Grade-III in the office of Additional Regional Transport Office, Durg, has stated in his evidence that license of non-applicant No.2 was renewed on 26.6.2009 having its validity upto 25.6.2012 for LMV, HGV, LTV & HPG vehicles.

12. Section 14 of the Act of 1988 deals with currency of licenses to drive motor vehicles and Section 15 deals with renewal of driving licenses. First proviso to Section 15 provides that if the application for renewal of a license is made after more than thirty days from the date of its expiry, the driving license shall be renewed with effect from the date of its renewal.

13. Admittedly, in the present case driving license of driver of offending vehicle had expired on 21.11.2008 and thereafter he had filed application for renewal of his license only on 26.6.2009 i.e. much after the expiry of thirty days i.e. from 21.11.2008. Accident in question had taken place on 18.3.2009. Thus, it is evident that driver of offending vehicle was not holding an effective driving license on the date of accident. Hence, the Claims Tribunal has not committed any illegality in exonerating insurance company and fastening

liability upon owner of offending vehicle.

14. It has been argued on behalf of appellant that non-applicant No.2 was working with him for sufficient long time. In this situation, non-applicant No.2 was under an obligation to see that driver appointed by him is holding a valid license or not, which he failed to do. Hence, prayer made on behalf of appellant regarding issuance of pay & recover direction cannot be allowed and it is hereby rejected.

15. So far as other ground raised by learned counsel for appellant that the Claims Tribunal has erroneously awarded amount towards loss of future income calculating disability of claimant as 5% is concerned, perusal of claim application and evidence of injured claimant would show that at the time of accident, claimant was working as 'Helper' in the State Electricity Board. He admitted in his evidence that even after accident, he was working as 'Helper' and getting same salary as he was drawing prior to accident. In view of this admission on the part of injured claimant, this Court is of considered view that the claimant has not suffered any loss of future income due to injuries suffered by him in the accident in question. Thus, an amount of compensation of Rs.1,33,212/- awarded by the Claims Tribunal under head of 'loss of future income' being bad in law is hereby set aside. However, in the given facts and circumstances of case, the claimant is definitely entitled for loss of salary for the period of his treatment and also for other non-pecuniary damages suffered by him.

16. Claimant has filed discharge summary (Ex.P-13) in which after describing injuries and treatment given to him, the doctor had

advised him for strict bed rest for a period of two months. Claimant has also filed OPD ticket (Ex.P-27) showing his visit to Apollo BSR Hospital on 30.5.2009. Though, the claimant in his application and evidence pleaded that he could not perform his work for a period of six months, but he failed to produce any cogent and clinching admissible piece of evidence in support thereof. The claimant also failed to examine any employee/officer of his department to prove that after the accident, he could not join his duties for a period of six months. However, looking to nature of injuries suffered by claimant, this Court feels that claimant might have taken one month's additional rest. In this situation, this Court is of the view that ends of justice would be met if it is held that claimant suffered loss of income during period of treatment and rest i.e. for a period of three months. Salary Slip (Ex.P-32) of injured claimant shows that at the relevant point of time, he was getting Rs.14,708/- per month as gross salary. Hence, it is held that respondent-claimant will be entitled for a sum of Rs.44,124/- (14708x3) for loss of income during period of treatment.

17. Apart from above, claimant will be entitled for amount already awarded by Claims Tribunal i.e. Rs.900/- towards attendant; Rs.40,160/- towards medical expenditure and Rs.4,000/- towards conveyance.

18. In view of above, the claimant is entitled for total compensation under following heads;-

HEADS	:	AMOUNT AWARDED (In Rs.)
Loss of income during treatment period		44,124=00
Medical Expenses	:	40,160=00
For Attendant	:	900=00
For Conveyance	:	4,000=00
Total:		**89,184=00**

19. On the basis of aforesaid discussions, claimant/respondent No.3 is held entitled for a total compensation of Rs.89,184/- instead of Rs.1,78,272/- as awarded by the Claims Tribunal. This amount shall carry interest @ 6% p.a. from the date of filing of application. Rest of the conditions of impugned award shall remain intact.

20. In the result, the appeal is allowed in part and the award impugned stands modified to the extent indicated above.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/