**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 846 of 2013**

- Deokumar Sahu S/o Bharatlal Sahu Aged About 40 Years R/o Madanpur Chouk, Ranigaon, P.S. Ratanpur, Distt. Bilaspur C.G., Chhattisgarh

**---- Appellant**

**Versus**

1. Anoop Rai S/o Omprakas Rai Aged About 40 Years R/o Sector-11, Street No. 11, Qtr. No. 3/d, Bhilai, P.S. Chhawni, Distt. Durg C.G., Thru- Owner Of Vehicle Rakesh Tiwari S/o D.N. Tiwari, Age- 40 Yrs, R/o Mig-88, R.P. Nagar, Face No. 1, Distt. Korba C.G., Chhattisgarh

2. Rakesh Tiwari S/o D.N. Tiwari Aged About 40 Years R/o Mig-88, R.P. Nagar, Face No. 1, Distt. Korba C.G., District : Korba, Chhattisgarh

3. The National Insurance Company Ltd. S/o Thru- Zonal Office, Taha Complex, Opposite To Pridarshni Nagar, Vyapar Vihar Road, Bilaspur C.G., District : Bilaspur, Chhattisgarh

**---- Respondents**

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| For Appellant | : | Shri R.K. Jain, Advocate |
| For Respondent No.1 & 2 | : | None |
| For Respondent No.3 | : | Shri G.Khetrapal, Advocate |

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**Order On Board By Hon'ble Shri Justice Parth Prateem Sahu**

**09/05/2019**

1. Claimant/appellant has filed this miscellaneous appeal challenging award dated 1.8.2013 passed by learned 3rd Additional Motor Accident Claims Tribunal, Bilaspur (for short 'the Claims Tribunal') in Claim Case No.225/11 by which learned Claims Tribunal has partly allowed his claim application and awarded a total sum of Rs.50,000/- towards damages to his property i.e. shed of tent house including

sound system and light decoration.

2. Brief facts relevant for disposal of this appeal are that on 17.5.2011 one truck bearing registration No.CG12-C-0977 driven by respondent No.1 herein, dashed one bus coming from the side of village Ranigaon Square and thereafter entered into shop of appellant situated by the side of road. On account of aforementioned accident, along with structure of shop, shed constructed in front of shop with iron angle & tin sheet and other articles lying in the said shop got damaged, therefore, appellant filed claim application before the competent Claims Tribunal claiming total compensation of Rs.2,16,525/-.

3. Respondent No.1 & 2, driver & owner of offending vehicle respectively, did not appear before the Claims Tribunal despite service of notice and therefore proceeded ex-parte.

4. Respondent No.3 Insurance Company submitted its reply to claim application and pleaded that accident occurred due to negligence of driver of bus bearing registration number CG10-A-3330. It was also pleaded that respondent No.2 knowing full well that respondent No.1-driver of truck was not possessing valid and effective driving license, handed over vehicle to him and thereby violated conditions of insurance policy. Hence, the insurance company is not liable to indemnify the insured.

5. Learned Claims Tribunal on appreciation of pleadings and evidence available on record arrived at a conclusion that appellant suffered damage to property and accordingly

awarded Rs.50,000/- along with interest @ 6% p.a. from the date of filing of application till its realization.

6. Learned counsel for the appellant submits that Claims Tribunal committed error in holding that appellant sustained damage to property worth Rs.50,000/- only, whereas in the loss panchnama of property prepared by the police damage to property has been assessed at Rs.1,10,000/-. He further argued that appellant had also incurred expenses of Rs.1,46,525/- in reconstruction of shop and repairing of articles damaged in the said accident. Further, on account of said accident, shop of appellant remained closed for about four months and thereby he had sustained loss of income as he could not do any business during that period. However, the Claims Tribunal has not taken into consideration the aforesaid aspects and awarded a meagre amount of compensation. He further argued that Claims Tribunal also erred in exonerating Insurance Company from its liability on the ground that despite intimation respondent owner of offending vehicle failed to produce copy of driving license in the office of insurance company.

7. Per contra, learned counsel appearing on behalf of insurance company submitted that insurance company issued letter (Ex.D-2) to owner of offending vehicle namely Shri Rakesh Tiwari, calling upon him to submit certain documents including driving license of driver of offending vehicle, but he failed to do so. Further, the appellant also failed to produce any clinching

piece of evidence by which damage of property as also loss of income suffered, as pleaded by him, can be assessed.

8. I have heard learned counsel for the parties and perused the record.

9. So far as first ground raised by learned counsel for the appellant that the Claims Tribunal erred in assessing value of property damaged in accident is concerned, perusal of copy of loss panchnama (Ex.P-5) would show that this document was prepared on 2.6.2012 and it was signed by five persons of locality. A further perusal of Ex.P-5 would show that all four walls, shutter, tin shed of shop and articles like chairs, fans, amplifier etc. lying in the said shop were damaged.

10. Appellant (AW-1) has stated in his statement that not only his shop constructed in the area 150 sq. ft. (10x15) got completely damaged but tin shed standing with 10 nos. of iron angle also got damaged in the said accident. In support of his version regarding expenditure incurred by him in reconstruction and repair of articles, he has produced bills (Ex.P-7, P-10 to P-13) showing purchase of building materials.

11. Vidhyanand Gahwai (AW-2) has stated in his statement that he entered into a contract with appellant for construction of his damaged shop. This witness has stated in his cross-examination that area of shop of appellant is 15x10 sq. ft.

12. From perusal of statement of AW-1 & AW-2, it is clear that dimension of appellant's shop was 150 sq. ft. (15x10) and in such a situation the expenditure incurred by him must be more

than the actual damage caused to him and assessed by police by virtue of Ex.P-5. Thus, in the light of specific evidence of AW-1 & AW-2, amount of Rs.1,46,525/- as claimed by appellant cannot be treated to be correct assessment of expenses incurred by appellant during reconstruction of shop.

13. Though appellant has exhibited Ex.P-7 & P-8 showing purchase of amplifier & mixer much prior to the date of accident, but he failed to produce any document showing that he incurred expenses in repair of any of articles claimed to be damaged in said accident and in absence thereof it is difficult to assess actual expenditure incurred by appellant under the head of repair.

14. In view of above, it is not in dispute that property of appellant i.e. shop, was constructed in the area of 15x10 sq. ft., which is also evident from Ex.P-5 prepared by the police during the course of investigation of accident. Contents of Ex.P-5 has not been disputed or refutted by respective parties before the Claims Tribunal and they have not led any evidence to refute the same.

15. Considering the nature of property, which was damaged, and specific mention in Ex.P-5 that all the four walls of shop were damaged, it is natural that appellant had to reconstruct the shop for bringing it to its original condition, but in any condition the appellant cannot be held entitled for less than Rs.1,10,000/- as lump sum towards damages to his property in a motor accident, as assessed by the police by way of

panchnama.

16. So far as second contention raised by learned counsel for the appellant that appellant suffered loss of income as his shop remained closed for about four months is concerned, perusal of record would reveal that appellant has not placed on record any evidence to substantiate this submission. It is also not the case that the entire articles lying in the shop got damaged. Appellant himself has not mentioned in his pleading and affidavit filed under Order 18 Rule 4 of CPC as to how he suffered loss of income from the business. The business in which appellant is engaged is a tent house and sound system which do not run only by opening of shop of one room. Hence, I do not find any substance in the submission of learned counsel for the appellant that he has suffered loss of income for a period of four months as it has not been proved by appellant and therefore this argument is rejected.

17. As regards the exoneration of insurance company, the Claims Tribunal arrived at such conclusion on the ground that on the date of accident driver of offending vehicle was not having valid and effective driving license to drive transport vehicle. Insurance company issued notice/ letter of Ex.D-2 to respondent No.2 calling upon him to produce certain documents mentioned in Ex.D-2 including driving license of driver. Perusal of Ex.D-2 shows that it is a printed form of letter which is said to be sent on 3.2.2012 through post with acknowledgement card but neither postal receipt nor

acknowledgement has been produced by insurance company to establish its case before the Claims Tribunal that any such letter was sent and received by addressee. Mere filing of letter addressed to owner of vehicle is alone not sufficient to prove service of notice/letter upon the addressee. Even otherwise, insurance company itself raised ground that on the date of accident, driver of offending vehicle was not possessing valid and effective driving license but even after raising such ground, the insurance company has not made any effort to obtain copy of driving license seized by police in the course of investigation, which is also apparent from copy of seizure memo available on record as Ex.P-4 wherein at Sr. No.5 there is mention about seizure of driving license of driver Anup Rai which was effective till 12.4.2013. It is a trite law that it is for the party who takes a particular defence to prove the same by adducing cogent and reliable piece of evidence. In the present case, the insurance company failed to prove the fact that driver of offending vehicle was not possessing any driving license and therefore learned Claims Tribunal committed error in exonerating insurance company from its liability though on the date of accident indisputably the offending vehicle was insured with respondent Insurance company. Hence, finding recorded by Claims Tribunal exonerating insurance company on the ground that driver of offending vehicle was not possessing valid and effective driving license and thus the offending vehicle was being plied in violation of condition of insurance policy is not sustainable and is hereby set aside.

18. In view of above discussion, the appeal is partly allowed. The amount of compensation determined by the Claims Tribunal is enhanced to Rs.60,000/-, that is to say, appellant is now entitled for total compensation of Rs.1,10,000/- instead of Rs.50,000/- as awarded by Claims Tribunal. This amount of compensation shall carry interest @ 6% p.a. from the date of application till its realization. Respondents are jointly and severally held liable to satisfy impugned award. The insurance company, as having first liability, is directed to deposit entire amount of compensation with the Claims Tribunal. The amount, if any, deposited by respondent No.2-owner of the offending vehicle and disbursed to claimant, shall be refunded to him from the amount so deposited by insurance company.

19. The impugned award is modified to the extent indicated above.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-