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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 54 of 2013

- Sunil Kumar Jaiswal S/o Ashok Kumar Jaiswal Aged 26 Years Village- Jhilmila, Tahna And Tah. Saraipali, Distt. Mahasamund C.G.

---- Appellant/claimant

Versus

1. Mangal Singh S/o Rampravesh Singh Chouhan Aged About 55 Years, R/o Chote Line, Railway Colony, Milky, Thana Nawada, Distt. Aara Bihar.

2. Amitabh Pal @ Munna S/o Dr. A.K. Pal Main Road, Saraipali, P.O. And Thana And Tah. Saraipali, Distt. Mahasamund C.G.

3. The Oriental Insurance. Company Ltd. through Branch Manager, Branch Office- Madina Building, Jail Road, Raipur, Distt. Raipur C.G.

---- Respondents

For Appellant	:	Shri Sanjay Agrawal, Advocate.
For Respondent No.1 & 2	:	None.
For Respondent No.3	:	Shri Raj Awasthi, Advocate.

MAC No. 70 of 2013

- Amitabh Paul @ Munna S/o Dr. A.K. Pal Aged About 39 Years R/o Main Road Saraipali, P.O. And Thana And Tah. Saraipali, Distt. Mahasamund C.G.

---- Appellant/owner

Versus

1. Sunil Kumar Jaiswal S/o Ashok Kumar Jaiswal Aged About 28 Years R/o Village- Jhilmila, Thana And Tah. Saraipali, Distt. Mahasamund C.G.

2. Mangal Singh S/o Rampravesh Singh Chouhan Aged About 57 Years R/o Chhote Line Railway Colony Milki, Thana- Nawada, Distt. Aara Bihar

3. The Oriental Insurance Company Ltd. through Divisional Manager, Divisional Office- Madina Building Jail Road, Raipur, Distt. Raipur C.G.

---- Respondents

For Appellant	:	Shri Amrito Das, Advocate.
For Respondent No.1	:	Shri Sanjay Agrawal, Advocate.
For Respondent No.2	:	None.
For Respondent No.3	:	Shri Raj Awasthi, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

19/06/2019

Since both these appeals filed under Section 173 of the Motor Vehicles Act, 1988 arise out of the award 12.10.2012 passed by Motor Accident Claims Tribunal, Mahasamund (CG) in Claim Case No.59/2010 awarding total compensation of Rs.3,59,500/- with interest @ 6% per annum from the date of application till realization, fastening liability on non-applicants No. 1 & 2 jointly and severally, they are being disposed of by this common judgment. The Tribunal exonerated non-applicant No.3/insurance company on the ground of use of the vehicle for hire and reward as also on the ground of non-applicant No.1 not having a valid and effective driving licence.

02. As per claim petition, on 26.8.2009 injured claimant Sunil Kumar was telephonically informed by his friends about theft of vehicle Bolero bearing No. CG 04 HA 7457 in front of office of Life Insurance Corporation. Thereupon the injured claimant reached the spot and tried to stop the said vehicle being driven by non-applicant No.1 Mangal Singh but due to rash and negligent driving of the vehicle, the claimant suffered grievous injuries on his hand, legs, abdomen, liver, eyes and face. At the time of accident, the said vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.

03. On claim petition being filed by the injured claimant under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

04. **MAC No.70/2013**: Learned counsel for the appellant/owner

submits that there is no willful breach of policy conditions on the part of owner of the vehicle. The vehicle was in fact duly parked by its driver near office of LIC which was being stolen by non-applicant No.1. When the claimant on receipt of information about such stealing went to the spot and tried to stop the vehicle, non-applicant No.1 drove the same in a rash and negligent manner and caused grievous injuries to the claimant. The Tribunal only on the basis of statement of the claimant that the vehicle was used for hire and reward by Chhotelal Jaiswal, wrongly exonerated the insurance company whereas there is no any specific defence or evidence adduced by the insurance company in this regard. Neither there is any such pleading in the written statement of the insurance company nor any such issue was raised by it before the Tribunal. Therefore, the said issue is not decided on merits of the case and statement of the claimant alone cannot taken as trustworthy statement because Chhotelal Jaiswal was not examined before the Tribunal and further driver of the vehicle Tarachand was also not examined before the Tribunal. No opportunity was provided to the owner to rebut this fact because no such pleading was raised and no such issue was framed by the Tribunal.

Reliance has been placed on the decision in the matter of ***United India Insurance Co. Ltd. Vs. Lehru and others, (2003) 3 SCC 338*** wherein it has been held that where there is no willful violation of the insurance policy conditions on the part of owner of the vehicle, the insurance company cannot be exonerated of its liability to indemnify the owner.

05. Learned counsel for the insurance company opposing the submission of the appellant/owner submits that the Tribunal rightly exonerated the insurance company in the given facts and circumstances of the case, in particular in view of statement of the claimant himself which remains unrebutted wherein he has stated that the vehicle in question was being used for hire and reward at the time of accident whereas according to insurance policy Ex.D/10, the vehicle was insured as a private car.

06. Learned counsel for respondent No.1 supports the contention of

the appellant/owner.

07. **MAC No.54/2013**: Learned counsel for the appellant/claimant submits that in this case the claimant sustained 40% permanent disability as per Ex.P/308 in his leg and Dr. Girdhari Chandrakar (AW-3) and Dr. Devendra Naik (AW-4) have also been examined before the Tribunal to prove the same. However, the Tribunal without considering the functional disability and the loss of earning during treatment, only on notional basis assessed loss of annual income of the claimant as Rs.3000/-, which is against the settled principles of law governing the injury cases. He submits that the Tribunal wrongly deducted from the total compensation towards contributory negligence on the part of the claimant because when the claimant came to know about the theft of the vehicle he went to the spot and tried to stop the vehicle and during this process, he suffered grievous injuries due to rash and negligent driving of the vehicle by non-applicant No.1. Since the conduct of the claimant was natural, the Tribunal was not justified in holding him negligent in any manner.

08. On the other hand, learned counsel for the respondent/insurance company also supports the impugned award in relation to quantum of compensation.

09. Heard learned counsel for the parties and perused the material available on record.

10. It is not disputed by both the parties that the vehicle in question is ensured as per Ex.D/1 by a Private Car Package Policy and on the date of accident it was being stolen by non-applicant No.1 Mangal Singh. It is also not disputed that when the claimant tried to stop the said vehicle, due to rash and negligent driving of the vehicle by non-applicant No.1 the claimant suffered grievous injuries. In this case, from perusal of the record it is seen that in the written statement non-applicant No. 3/insurance company has not raised any such plea regarding breach of policy conditions on account of use of the vehicle for hire and reward. The insurance company only pleaded breach of policy conditions on the ground that non-applicant No.1 was not having

a valid and effective driving licence. No evidence is adduced by the insurance company on the issue of use of the vehicle for hire and reward. Only on the basis of statement of the claimant that the vehicle was being used on rent by Chhotelal Jaiswal, the Tribunal held that the vehicle was being used for hire and reward in contravention of the policy conditions and exonerated the insurance company of its liability. However, neither said Chhotelal Jaiswal nor driver of the vehicle is examined before the Tribunal, no any agreement or contractual terms and conditions showing allowing of use of the vehicle for hire and reward is produced before the Tribunal. Further, there is no such pleading in the written statement of the insurance company and no evidence in this regard has been adduced by it.

11. In the matter of *United India Insurance Co. Ltd. Vs. Lehru and others* (supra), the Hon'ble Apex Court while considering the issue of liability of insurer in respect of third party risk when the driver of the vehicle was having fake licence, observed as under:

> *"18. Now let us consider Section 149(2). Reliance has been placed on Section 149(2)(a)(ii). As seen in order to avoid liability under this provision it must be shown that there is a "breach". As held in Skandia's and Sohan Lal Passi's cases (supra) the breach must be on the part of the insured. We are in full agreement with that. To hold otherwise would lead to absurd results. Just to take an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there is an accident. The thief is caught and it is ascertained that he had no licence. Can the Insurance Company disown liability? The answer has to be an emphatic "No". To hold otherwise would be to negate the very purpose of compulsory insurance. The injured or relatives of person killed in the accident may find that the decree obtained by them is only a paper decree as the owner is a man of straw. The owner himself would be an innocent sufferer. It is for this reason that the Legislature, in its wisdom has made insurance, at least*

third party insurance, compulsory. The aim and purpose being that an Insurance Company would be available to pay. The business of the Company is insurance. In all businesses there is an element of risk. All persons carrying on business must take risks associated with that business. Thus it is equitable that the business which is run for making profits also bears the risk associated with it. At the same time innocent parties must not be made to suffer or loss. These provisions meet these requirements. We are thus in agreement with what is laid down in aforementioned cases viz. that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The Insurance Company must establish that the breach was on the part of the insured."

12. Considering the facts and circumstances of the case in hand in light of the aforesaid principles of law laid down in the matter of Lehru (supra), this Court is of the opinion that the Tribunal was not justified in exonerating the insurance company of its liability and fastening the same on driver & owner of the vehicle. Hence the insurance company is held liable to indemnify the owner in respect of the claim raised by the claimant.

13. As regards the quantum of compensation, though the claimant has pleaded that he was earning Rs.5000/- per month through private job but no documentary evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income, the income of the claimant can be considered as Rs.3000/- per month as per minimum wages at the relevant time.

Further, considering the fact that the claimant sustained 40% permanent disability as per Ex.P/308 in his leg, the evidence of Dr. Girdhari Chandrakar (AW-3) and Dr. Devendra Naik (AW-4) who have proved the same, the nature of job of the claimant, his functional disability can be safely taken as 10%.

14. So far as contributory negligence on the part of the claimant is concerned, as per pleading of the claimant, the evidence adduced by him, which remained unrebutted, it is clear that the claimant upon coming to know about the theft of the vehicle went to the spot and tried to stop the vehicle and during this process, he suffered grievous injuries due to rash and negligent driving of the vehicle by non-applicant No.1. Thus considering the manner in which the accident took place and the conduct of the claimant, he cannot be in any way held to be negligent in causing the accident and as such, the finding of the Tribunal regarding his contributory negligence being against the settled principles of law with regard to contributory negligence is liable to be and is, accordingly, set aside. Further, considering the nature and extent of injuries, requirement of future treatment, loss of earning of the claimant during the period of his treatment and other miscellaneous expenses, this Court is of the opinion that the amount of Rs.50,000/- awarded by the Tribunal under the conventional heads deserves to be enhanced to Rs.70,000/-.

15. Thus, in view of the above, considering the age of the claimant i.e. 26 years, his permanent disability, the nature of his job and the decisions of the Hon'ble Supreme Court in ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121***, and ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, the claimant is held entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the claimant @ Rs.3000/- per month.	36,000/- per annum
02.	40% of (i) above to be added towards future prospects.	36,000 + 14,400 = 50,400/-
03.	10% functional disability	5,040/-
04.	Multiplier of 17 to be applied for assessing total loss of earning	85,680/-

05.	Towards medical expenses	6,15,000/- (as awarded by Tribunal)
06.	Towards pain and suffering, attendant, conveyance, special diet, future treatment & loss of earning during treatment etc.	70,000/-
	Total:	**7,70,680/-**

Since the Tribunal has already awarded Rs.3,59,500/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.4,11,180/- with interest as awarded by the Tribunal.

16. In the result, both the appeals are allowed. Impugned award is hereby modified to the extent that it is the non-applicant No.3/insurance company which is liable to indemnify non-applicant No.2/owner and pay the entire amount of compensation to the claimant with interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

Sd/

(Gautam Chourdiya)

Judge

Khan