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HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 1102 of 2013

Yugal Kishore S/o Gendram Dhruv Aged About 18 Years R/o. Paijaniya, P.S. Lormi, Civil Distt. Bilaspur And Revenue Distt. Mungeli C.G.

---- Appellant

Versus

1. Ravi Kumar S/o Maniram Sharma Aged About 36 Years R/o. Amora, P.S. Takhatpur, Civil and Revenue Distt. Bilaspur C.G.
2. Branch Manager Bajaj Alliance General Insu. Co .Ltd., Shiv Mohan Bhavan, Vidhan Sabha Road, Pandari, Raipur, Distt. Raipur C.G.

---- Respondents

For Appellants	:	Ms. Menu Banerjee, Advocate
For Respondent No.1	:	None.
For Respondent No.2	:	Mr. Ghanshyam Patel, Advocate.

Order on Board By Hon'ble Shri Justice Parth Prateem Sahu
24/06/2019

1. Appellant-claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') seeking enhancement of amount of compensation awarded to him by learned 4th Additional Motor Accident Claims Tribunal, Bilaspur, C.G (for short 'the Tribunal') vide award dated 11.12.2012 passed in Claim Case No.104/2011.

2. Brief facts necessary for disposal of this appeal are that on 11.3.2010, appellant Yugal Kishore (injured) alongwith one person was going to village-Paijaniya from Bilaspur on a motorcycle. Yugal Kishore was travelling as pillion rider. When they reached near village Jaraunda, one Tata Magic bearing registration No.CG10-T-0520 (hereinafter referred as “offending vehicle”), driven by non-applicant No.1/respondent No.1-herein, dashed their motorcycle. In the aforesaid accident, appellant suffered grievous injuries on his person including fracture injuries over his left leg. He was brought to CIMS Hospital, Bilaspur where he took treatment. He also took treatment in private hospital of Dr. Hemant Chhatterjee. Matter was reported to Police Station – Takhatpur based on

which crime bearing No.57/10 for offences defined under Sections 279, 337, 338 of the Indian Penal Code was registered against driver of offending vehicle. After recovering from injuries, appellant filed claim application before competent Claims Tribunal claiming Rs.4,20,000/- as compensation.

3. Non-applicant no.1/respondent no.1 herein (owner of offending vehicle) despite service of notice remained absent and, therefore, he was proceeded ex-parte by the Tribunal.

4. Non-applicant no.2/respondent No.2 -herein (Insurance Company) filed its reply to claim application and pleaded that on the date of accident claimant was travelling on motorcycle under the influence of liquor. Driver of offending vehicle was not possessing valid & effective driving license. There was no valid permit and fitness certificate to ply offending vehicle on road. Thus, there was violation of conditions of insurance policy and therefore insurance company is not liable to indemnify the insured.

5. The Tribunal on appreciation of pleadings and evidence placed on record by respective parties arrived at a finding that there was violation of conditions of insurance policy as on the date of accident, driver of offending vehicle was not possessing valid and effective driving license. Permit or fitness certificate was also not seized from possession of driver of offending vehicle along-with other documents. Driving license seized from the possession of driver of offending vehicle authorizes him to drive only 'motorcycle with gear' & 'light motor vehicle' and there is no endorsement authorizing him to drive any other type of vehicle. whereas on the date of accident, he was driving 'light passenger vehicle', which comes within the category of 'transport vehicle'.

6. After recording said finding the Tribunal assessed disability of claimant to the extent of 15% and awarded total sum of Rs.1,19,700/- as compensation to claimant including Rs.97,200/- towards loss of future income, Rs.15,500/- towards medical expenses, Rs.5,000/- towards pains & suffering, Rs.1,000/- towards special diet and Rs. 1,0000/- for conveyance expenses.

7. Learned counsel for the appellant submitted that the Tribunal erred in recording a finding that on the date of accident driver of offending vehicle was not possessing valid and effective driving license. He further submitted that the Tribunal also committed error in assessing disability of appellant/claimant to the extent of 15% ignoring disability certificate (Ex.P-35) which was issued by District Medical Board, Bilaspur wherein it has been specifically mentioned that appellant/claimant suffered 30% moderate disability. The amount awarded by the Tribunal under other heads is also on lower side and needs to be enhanced suitably.

8. Per contra learned counsel appearing for respondent No.2-insurance company supported the impugned award and submitted that the Tribunal has rightly held that there is violation of condition of insurance policy as on the date of accident driver of offending vehicle was not having valid and effective driving license to drive the offending vehicle. Apart from valid and effective driving license, he also failed to place on record valid permit and fitness certificate of his vehicle for plying the vehicle on public road.

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

10. So far as, ground raised by learned counsel for the appellant that the Tribunal committed error in exonerating insurance company from its

liability by holding that there is violation of conditions of insurance policy is concerned.

11. Perusal of record would show that insurance company has placed on record the particulars of license as (Ex.D-1), which was issued in name of non-applicant no.1/respondent no.1-Ravi Kumar Sharma by Regional Transport Office having its validity upto 21.01.2030, it also bears that Ravi Kumar was authorised to drive 'Motorcycle with gear' and Light Motor Vehicle only. Copy of registration certificate issued from office of Registering Authority was also placed on record as Ex.D-2 in said certificate offending vehicle has been mentioned as 'light motor vehicle' (taxi) and unladen weight has been mentioned as 1000 kgms.

12. Perusal of Ex.D-2 itself it is clear that offending vehicle was 'light motor vehicle' and driver of offending vehicle was also possessing driving license to drive the light motor vehicle on the date of accident.

13. Issue with respect to the persons having license authorizing him to drive 'Light Motor Vehicle' and driving other type of vehicle of the same category has been dealt with the Hon'ble Supreme Court in its judgement rendered in the matter of **Mukund Dewangan v. Oriental Insurance Company Limited**[1] held as under :-

> **"**17. The definition of 'light motor vehicle' makes it clear that for a transport vehicle or omnibus, the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kgs. 'Gross vehicle weight' has been defined in section 2(15). The motor car or tractor or road roller, the unladen weight of any of which does not exceed 7500 kgs. as defined in section 2(48) of the Act, are also the light motor vehicle. No change has been made by Amendment Act of 54/94 in the provisions contained in sections 2(21) and 10(2)(d) relating to the light motor vehicle. The definition of 'light motor vehicle' has to be given full effect to

1 (2017) 14 SCC 663

and it has to be read with section 10(2)(d) which makes it abundantly clear that 'light motor vehicle' is also a 'transport vehicle', the gross vehicle weight or unladen weight of which does not exceed 7500 kgs. as specified in the provision. Thus, a driver is issued a licence as per the class of vehicle i.e. light motor vehicle, transport vehicle or omnibus or another vehicle of other categories as per gross vehicle weight or unladen weight as specified in section 2(21) of the Act. The provision of section 3 of the Act requires that a person in order to drive a 'transport vehicle' must have authorization. Once a licence is issued to drive light motor vehicle, it would also mean specific authorization to drive a transport vehicle or omnibus, the gross vehicle weight or motor car, road roller or tractor, the unladen weight of which, as the case may be, does not exceed 7500 kg. The insertion of 'transport vehicle' category in section 10(2)(e) has no effect of obliterating the already defined category of transport vehicles of the class of light motor vehicle. A distinction is made in the Act of heavy goods vehicle, heavy passenger motor vehicle, medium goods vehicle and medium passenger motor vehicle on the basis of 'gross vehicle weight' or 'unladen weight' for heavy passenger motor vehicle, heavy goods vehicle, the weight, as the case may be, exceed 12000 kg. Medium goods vehicle shall mean any goods carriage other than a light motor vehicle or a heavy goods vehicle; whereas 'medium passenger motor vehicle' means any public service vehicle or private service vehicle or educational institution bus other than a motorcycle, invalid carriage, light motor vehicle or heavy passenger motor vehicle.

"59. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as amended on 28-03-2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in Section 2(21) and the provisions of Section 10(2)(d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in Section 10(2)(e) of the Act 'Transport Vehicle' would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in Section 10(2)(e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed.

60. Thus we answer the questions which are referred to us thus:

60.1. "Light motor vehicle" as defined in Section 2(21) of the Act would include a transport vehicle as per the weight prescribed in Section 2(21) read with Sections 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54 of 1994.

60.2. A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg. and holder of a driving licence to drive class of "light motor vehicle" as provided in Section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under Section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28-03-2001 in the form.

60.3. The effect of the amendment made by virtue of Act No.54 of 1994 w.e.f. 14-11-1994 while substituting clauses (e) to (h) of Section 10(2) which contained "medium goods vehicle" in Section 10(2)(e), "medium passenger motor vehicle" in Section 10(2)(f), "heavy goods vehicle" in Section 10(2)(g) and "heavy passenger motor vehicle" in Section 10(2)(h), with expression "transport vehicle" as substituted in Section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of Section 10(2)(d) and Section 2(41) of the Act i.e. light motor vehicle.

60.4. The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect."

14. In the light of definition of 'transport vehicle' given in the Act of 1988 and considering its earlier judgments, in the above cited judgment Hon'ble Supreme Court has held that a person holding license to drive 'light motor vehicle' can drive a transport vehicle of said category, having gross weight not exceeding 7500 kgms and no separate endorsement on the license is required to drive a transport vehicle/light goods vehicle/light passenger vehicle.

15. In view of above finding record by the Tribunal that on the date of accident driver of offending vehicle was not possessing valid and effective driving license is not sustainable and is liable to be and is hereby set aside.

16. Driver of offending vehicle failed to produce on record valid and effective permit or fitness certificate of his vehicle, as vehicle registered as 'light motor vehicle' (taxi) and therefore, valid permit and fitness certificate is required for plying the vehicle on public road. As there was no valid and effective permit or fitness certificate of vehicle produced on record, therefore, the Tribunal has rightly held that there is violation of condition of insurance policy and rightly exonerated the insurance company from its liability, which cannot said to be an erroneous finding.

17. So far as, other ground raised by learned counsel for the appellant that the Tribunal committed error in assessing permanent disability to the extent of 15% instead of 30% as mentioned in disability certificate as (Ex.P-35) is concerned.

18. Perusal of (Ex.P-35) would reveal that Dr. S.S. Bhatiya issued disability certificate of 30% by mentioning disability as moderate disability. Disability certificate has been proved by Dr. S.S. Bhatiya who is Orthopaedic expert and posted at District Hospital, Bilaspur. However, Dr. S.S. Bhatiya has not specifically stated in his statement that appellant suffered disability with respect to whole body or any particular part of the body.

19. Claimant himself examined as (AW-1) and admitted in his cross-examination that at present he was facing little problem over his left leg and he is able to move and walk and also able to perform his regular work day to day.

20. No specific question has been put to doctor, as to what in-convenience and problem will be faced by claimant in performing his work for the purpose of earning his livelihood, even claimant in his statement has not specifically stated that as to what problem he is facing in performing his work and earning his livelihood.

21. In view of above evidence (documentary and oral), I do not find any mistake in assessing disability of the appellant as 15% by the Tribunal.

22. So far as, ground raised by learned counsel for the appellant that the Tribunal awarded very meagre amount towards non-pecuniary damages i.e. special diet and pains & suffering etc is concerned. Ex. P-36 discharge summary issued by Ashirwad Nursing Home would show that claimant was admitted as indoor patient from 12.03.2010 to 22.03.2010. The Tribunal awarded only 5,000/- towards pains & suffering ignoring that claimant took treatment as indoor patient from 12.03.2010 to 22.03.2010 and Dr. S.S. Bhatiya also stated in his evidence that road was also inserted in his femur bone for the purpose of uniting it. In view of aforementioned facts and circumstances of this case, this court is of the opinion that claimant will be entitled for an amount of Rs.10,000/- towards pains & suffering instead of Rs.5,000/- & Rs. 2,000/- towards attendant including diet charges, looking to the period of treatment and nature of injuries suffered by him.

23. Now claimant is entitled for a total sum of Rs.15,500 towards medical expenses, Rs.1,000/- towards special diet, Rs.1,000/- for conveyance expenses, Rs.10,000/- towards pains & suffering, Rs.2,000/- towards attendant including diet charges and Rs.97,200/- towards future loss of income.

24. In view of above, claimant will be entitled for Rs.1,26,700/- instead of Rs.1,19,700/- as awarded by the Tribunal. This amount of compensation will carry interest @ 6% p.a. from the date of application till its realization. Rests of the conditions of impugned award shall remain intact.

25. Learned counsel for the appellant submits that in the facts of the case the Tribunal ought to have directed to pay and recover against the insurance company. Section 149 (1) of the Act of 198 caste duty upon the insurer to satisfy judgement and awards. Hon'ble Supreme Court in the matter of **Amrit Paul Singh and Anr v. Tata AIG General Insurance Company Limited and Ors**[2] has considered the violation of conditions of insurance policy on account of not having valid permit on the date of accident. Hon'ble Supreme Court after exonerating the insurance company from its liability to satisfy the award had directed for pay and recover. Relevant part of judgement is reproduced herein below :-

> "We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh (supra) and Lakhmi Chand (supra) in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the "Tripitaka", that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the tribunal as well as the High Court had directed the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh (supra) and other cases pertaining to pay and recover principle."

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2 (2018) 7 SCC 558

26. In the case at hand also there is breach of policy conditions as there was no valid permit and fitness therefore, even under law the insurance company is not having the liability to satisfy the award it is directed that the part of the award which is not satisfied by the respondent owner will be first deposited by the insurance company and thereafter, to recover the same from respondent. no.1 (owner of offending vehicle). This direction will only be effective if the execution of award is not concluded after recording full satisfaction of appellant. Insurance company will be at liberty to recover the amount of compensation paid by him in terms of procedure prescribed in the matter of **Oriental Insurance Company Limited v. Shri Nanjappan and Ors**[3]

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

Sd/-

(Part Prateem Sahu)
Judge

Jamal/-

3 AIR 2004 SC 1631