

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 62 of 2015

- National Insurance Company Limited, Gill Complex, Near Gurudwara, Station Road, Durg, Distt. Durg C.G., Through Its Divisional Manager, Divisional Office- Taha Complex, Vyapar Vihar, Ring Road No.1, Bilaspur, Tah. & Distt. Bilaspur (C.G.)

---- Appellant

Versus

1. Chuneshwari W/o Late Hukum Singh Aged About 35 Years
2. Yuvraj S/o Late Hukum Singh Aged About 10 Years Minor, through Mother Smt. Chuneshwari, Wd/o Hukum Singh, aged 35 years (respondent No.1)
3. Maan Bai Wd/o Late Bhagwan Aged About 60 Years.

Respondent No.1 to 3 all are Kanwar by caste and R/o vill. Mungalani, Tah. Dongargarh, Distt. Rajnandgaon (CG)

4. Maan Singh Yadav @ Mannu S/o Bachan Singh R/o Kailash Nagar, Ward No. 19, Durg, P.S. Mohan Nagar, Distt. Durg (C.G.)
5. Sanjay Yadav S/o Hanuman Singh Yadav R/o H. No. 81, Dhamdha Naka, Durg, Distt. Durg (C.G.)
6. Mahendra Kumar, R/o In Front Of Masjid, Sanjay Nagar, Raipur, Distt. Raipur (C.G.)

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate
For Respondent No.1 & 2	:	Shri Parag Kotecha, Advocate
For Respondent No.3 & 4	:	None
For Respondent No.5	:	Shri P.R. Patankar, Advocate

Order On Board By Hon. Shri Justice Parth Prateem Sahu

18/06/2019

1. Appellant- Insurance has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (henceforth 'the Act of 1988') challenging

award dated 8.10.2014 passed by learned Additional Motor Accident Claims Tribunal, Dongargarh, District Rajnandgaon (for short 'the Claims Tribunal') in Claim Case No.47/12 whereby the Claims Tribunal allowed claim application in part, awarded total compensation of Rs.5,80,000/- along with interest at the rate of 6% p.a. and fastened liability on insurance company of making payment of amount of compensation.

2. Brief facts relevant for disposal of this appeal are that on 1.8.2012 Hukum Singh along with his daughter Kum. Triloki and friend Rohit was returning to his village Mungpani on motorcycle bearing registration No.CG07-A-6827. When they reached near village Hadgaon, one truck bearing registration No.CG04-JA-6527 (for short 'offending vehicle'), driven by non-applicant No.1/respondent No.4 herein, dashed said motorcycle as a result of which said Hukum Singh & Triloki suffered grievous injuries. Hukum Singh died on spot, whereas Triloki died in hospital while undergoing treatment. Matter was reported to concerned police station based on which Crime No.29/12 was registered against non-applicant No.1-driver. Claimants filed claim application before competent Claims Tribunal claiming compensation of Rs.14,50,000/- on account of death of Hukum Singh & Kum. Triloki.
3. Non-applicant No.1 & 2-driver & owner of offending vehicle filed their reply to claim application and denied all adverse pleadings made therein. They have pleaded that accident took place due to negligence of driver of motorcycle, 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.4,

therefore, the insurance company is liable to indemnify owner in case any compensation is awarded by the Claims Tribunal.

4. Non-applicant No.4 Insurance Company also filed its reply and denied all adverse pleadings made in claim application. It was pleaded by non-applicant No.4 that accident took place due to negligence on the part of driver of motorcycle. Driver of offending vehicle was not possessing valid and effective driving license. There was no valid fitness and permit of offending vehicle. As there was violation of conditions of insurance policy, therefore, insurance company is not liable for payment of any amount of compensation.
5. The Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties has held that accident occurred due to rash and negligent driving by driver of offending vehicle in which deceased Hukum Singh & Kumari Triloki died. The Claims Tribunal awarded a total sum of Rs.5,80,000/- as compensation and as there was no violation of any condition of insurance policy, therefore, fastened liability on insurance company to make payment of amount of compensation.
6. Learned counsel for appellant Insurance Company submits that the Claims Tribunal erroneously arrived at a finding that on the date of accident the offending vehicle was being taken for repair from one place to another and hence no permit was required for it. The Claims Tribunal recorded aforesaid finding by relying upon statement of NAW-1 Jitendra Kumar, Assistant Grade III, RTO Durg and considering document Ex.D-1, which is a letter written by owner of offending vehicle to the Transport Officer, Durg intimating that he is taking the offending vehicle to Bemetara for the purpose of repairing

and after repairing, he will obtain permit of offending vehicle. However, document Ex.D-1 does not bear date of receipt and even NAW-1 has specifically stated that he is not aware about the date on which said letter of intimation has been submitted in the office of RTO, Durg. In these circumstances, the Claims Tribunal ought not to have relied upon this document. Learned counsel for the appellant further submits that non-applicant No.1 & 2, who are driver & owner of offending vehicle respectively, have initially not made any specific pleading in their reply with respect to plying of offending from Dhamdha to Bemetara for the purpose of repairing and the same has been incorporated in reply by way of an amendment only, which is an afterthought.

7. On the other hand, learned counsel for claimants/ respondent No.1 to 3 supported the impugned award passed by the Claims Tribunal and pleaded that the Claims Tribunal after considering overall facts, circumstances and evidence available on record, has rightly passed the impugned award which does not call for any interference.
8. Learned counsel for respondent No.5-owner of offending vehicle submits that owner has taken a specific defence in his reply that on the date of accident offending truck was being plied from one place to another for the purpose of repairing regarding which prior intimation was also given to the Transport Officer, Durg vide Ex.D-1. Referring to Section 66 (3) (p) of the Act of 1988, he submits that the Act of 1988 itself provides that permit is not required if a transport vehicle is proceeded empty to any place for the purpose of repair.
9. I have heard learned counsel for the parties and perused the record.

10. Perusal of reply filed on behalf of driver & owner of offending vehicle

would reveal that initially reply was filed on 4.12.2012 in which it has nowhere been mentioned that on the date of accident the offending vehicle was being plied from one place to another for the purpose of repairing. The Claims Tribunal vide order dated 5.2.2013 allowed application filed under Section 140 of the Act of 1988 by holding that on the date of accident there was no valid permit and fitness of offending vehicle and directed owner & driver of offending vehicle to make payment of interim amount of compensation. After passing of this order, on 5.4.2013 an application for amendment in reply to claim application has been filed which came to be allowed by Claims Tribunal vide order dated 14.6.2013. A glance of document Ex.D-1 would show that though this document bears seal and signature of Receipt & Despatch Clerk of Regional Transport Office, Durg but it does not contain date of receipt of said letter. Even, NAW-1 Jitendra Kumar, who was working as Assistant Grade III in Regional Transport Office, Durg, has admitted in his cross-examination that in receipt (Ex.D-1) date is not mentioned below signature. This witness has further admitted that every letter or document received in the office is to be entered into receipt & despatch register maintained in the office and that he had not brought said register with him. Apart from above, another important aspect of the case is that owner of offending truck did not enter into witness box to prove pleadings made by him in his reply to claim application. Furthermore, the owner of offending truck has not filed any document/bills with respect to repair of his vehicle at Bemetara, as pleaded by way of amendment. Even the owner of offending truck has not produced earlier permit of offending vehicle to show his bonafides that said permit expired just few days prior to the

date of accident.

11. In the light of above material and evidence available on record, it is evident that defence taken by non-applicant No.2/respondent No.5 that at the time of accident the offending truck was being plied from one place to another for the purpose of repairing, is an afterthought in order to avoid his liability to pay compensation. The Claims Tribunal failed to appreciate the evidence on record in its proper perspective and therefore arrived at a wrong finding that respondent No.5 has proved the fact that offending vehicle was being plied from one place to another for the purpose of repairing, therefore, it was exempted from permit under Section 66 (3) (p) of the Act of 1988. The aforesaid finding of the Claims Tribunal being not based on proper appreciation of material available on record is liable to be set aside and it is hereby set aside.

12. Now the question arises for consideration of this Court is whether in the present case the insurer can be directed to pay compensation to claimants and recover the same subsequently from insured i.e. owner of offending vehicle.

13. As the deceased persons were third party, therefore, as per provision of Section 149 of the Act of 1988 it will be primary responsibilities and duty of insurance company to first pay amount of compensation and then to recover the same from owner of offending vehicle. The doctrine of "pay and recover" has been considered by the Hon'ble Supreme Court in several decisions. In the case of **National Insurance Company Ltd. v. Challa Bharathamma & ors** reported in **(2004) 8 SCC 517** there was breach of condition of insurance policy

as the vehicle was plied on road without a permit and in this situation, keeping in the mind the beneficial object of the Act, 1988, the Hon'ble Apex Court has directed the insurer to first pay the amount to the claimants and then to recover the same from the insured. Para-13 of the said judgment reads thus:-

“13.The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured. In the instant case considering the quantum involved we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured.”

14. Recently, in the matter of Amrit Paul Singh & another v. Tata AIG General Insurance Company Ltd. & ors reported in (2018) 7 SCC 558 the Hon'ble Supreme Court while dealing with the similar issue has held thus:-

“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

15. Considering the ratio laid down in the above decisions of Hon'ble Supreme Court, the beneficial object of the Act, 1988 and fact that there was a valid and effective insurance policy on the date of accident and further considering the fact that payment of compensation by owner & driver is merely a possibility but payment by an insurance company is a certainty, this Court is of the view that it would be proper to direct the insurer to first pay amount of compensation to claimants, though in law it has no liability, and then recover it from the insured i.e. owner of offending vehicle in accordance with law.
16. Learned counsel for the appellant also raised a ground that the Claims Tribunal erroneously awarded default interest also. On perusal of impugned award it reveals that the Claims Tribunal awarded interest at the rate of 6% p.a. from the date of filing of application till its realization. The Claims Tribunal also held that if the amount of compensation is not paid within two months than the amount of compensation will carry interest at the rate of 9% p.a. The Act of 1988 provides discretionary power to the Claims Tribunal to award compensation and interest thereon, but it nowhere provides for awarding default interest. The Hon'ble Supreme Court in the matter of National Insurance Company v. Keshav Bahadur & ors

reported in (2004) 2 SCC 370 has considered issue of awarding penal interest and held thus:-

“13. Though Section 110CC of the Act (corresponding to Section 171 of the New Act) confers a discretion on the Tribunal to award interest, the same is meant to be exercised in cases where the claimant can claim the same as a matter of right. In the above background, it is to be judged whether a stipulation for higher rate of interest in case of default can be imposed by the Tribunal. Once the discretion has been exercised by the Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is no scope for retrospective enhancement for default in payment of compensation. No express or implied power in this regard can be culled out from Section 110CC of the Act or Section 171 of the new Act. Such a direction in the award for retrospective enhancement of interest for default in payment of the compensation together with interest payable thereon virtually amounts to imposition of penalty which is not statutorily envisaged and prescribed. It is, therefore directed that the rate of interest as awarded by the High Court shall alone be applicable till payment, without the stipulation for higher rate of interest being enforced, in the manner directed by the Tribunal.”

17. The authoritative pronouncement made by Hon'ble Supreme Court made it more clear and specific that the Tribunals under the provisions of the Act of 1988 have no power to award default interest. Hence, the award of default interest @ 9% in the present case by the Claims Tribunal is not sustainable and it is hereby set aside.
18. For the foregoing discussions, the appeal is allowed in part and the impugned award of Claims Tribunal fastening liability on appellant-insurance company to pay compensation to claimants is hereby set aside. Appellant Insurance Company is though exonerated from its liability to pay compensation to the claimants, but keeping in mind the beneficial object of the Act, 1988 as also dictum of Hon'ble Supreme Court in the above matters, this Court directs the insurer of offending vehicle viz., appellant herein, to first pay amount of compensation as awarded to claimants/appellants and thereafter to recover the same

from respondent-owner of offending vehicle in the manner as provided in the matter of Oriental Insurance Company Limited v. Shri Nanjappan & others reported in AIR 2004 SC 1631.

19. Amount of compensation awarded by the Claims Tribunal shall carry simple interest at the rate of 6% p.a. only.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-