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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 293 of 2015

- Ajay Patle S/o A Patle Aged About 31 Years R/o Beltukri, Thana And Tahsil Baloda, Distt. Janjgir Champa Chhattisgarh

---- Appellant

Versus

1. Kamalnarayan S/o Late Ramgulam Sahu Aged About 23 Years R/okhisora Thana And Tahsil Baloda, Distt. Janjgir Champa Chhattisgarh
2. I.C.I.C. Lombard General Insurance Company Ltd. Through Branch Manager, District : Bilaspur, Chhattisgarh
3. Mahendra Kumar Patle S/o Tikaitram Patle Aged About 32 Years R/o Beltukri, Thana And Tahsil Baloda, District : Janjgir-Champa, Chhattisgarh

---- Respondents

For Appellant	:	Shri Parag Kotecha with Shri Shalvik Tiwari, Advocates
For Respondent-1	:	Shri TR Chandrakar, Advocate
For Respondent- 2/Insurance Company	:	Shri Amrito Das, Advocate
For Respondent- 3/Driver	:	None appears

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

31.01.2019

1) By this appeal, appellant/owner is challenging the legality and validity of the award dated 26.11.2014 passed by the Motor Accident Claims Tribunal, Janjgir-Champa (for short, 'Claims Tribunal') in claim case No.77 of 2010, whereby learned claims Tribunal partly allowed the claim and awarded a sum of Rs.86,000/- as compensation to the claimant and exonerated the Insurance Company from its liability holding that there is violation of conditions of Insurance Policy.

2) Brief facts for disposal of this appeal are that on 07.11.2009 claimant Kamal Narayan along with his friends Kamal Rathore, Yograj

Pandey etc., were going to Amarkantak from Khisora in a Bolero Jeep bearing No.CG11BB-1472 (for short, 'offending vehicle'). On their way at about 2.30 am on 08.11.2009, at Kewchi, respondent-3 driver of offending vehicle rashly negligently drove the vehicle and met with an accident. The vehicle fell down in valley due to which Kamal Narayan sustained grievous injuries on his person and took treatment at CIMS, Bilaspur, RSB Hospital, Bilaspur, Lifeline Hospital, Bilaspur and Kaleda Hospital, Raipur. However, after taking treatment from the best hospitals within his approach, he could not recover fully and submitted himself before the District Medical Board for his examination where the Medical Board assessed his disability to the extent of 40% on his left hand upper limb. Due to the said disability, he filed a claim application before competent Claims Tribunal claiming Rs.16,18,000/- in total on all heads including medical expenditure mentioning therein that the accident took place due to rash and negligent driving of respondent- 3.

3) Appellant/non-applicant-2, owner and respondent-3 driver submitted combined reply to the claim application and pleaded that at the relevant time of accident, driver of offending vehicle was not driving the offending vehicle rashly and negligently and he was having a valid and effective driving license to drive the said vehicle. Further it was pleaded that the offending vehicle was not given on hire but claimant was using it due to friendship. It was also pleaded that on the date of accident, the offending vehicle was insured with the Insurance Company. It was further pleaded that the claimant was hale and healthy. He was able to do all his routine work by himself and his disability was fabricated.

4) Insurance Company submitted its reply in which it is specifically pleaded that the offending vehicle was insured as a private vehicle and 'Private Car Package' policy was issued to it, but on the date of accident, offending vehicle was being used as taxi. It has also been pleaded that on the date of accident driver of the offending vehicle was not possessing a valid and effective driving license, therefore, there was violation of conditions of Insurance Policy and pleaded for its exoneration from liability of payment of compensation.

5) Learned Claims Tribunal appreciating the evidence, pleadings and evidence available on record, disbelieved the disability certificate and awarded a total sum of Rs.86,000/- as compensation including Rs.65,980/- towards medical expenses. The learned Claims Tribunal arrived at a conclusion that on the date of accident the offending vehicle is being used as taxi, whereas it is registered as 'private car' and the appellant took 'private car package policy' from respondent- 2, Insurance Company and held that there is violation of conditions of Insurance Policy. Therefore, exonerated the Insurance Company from its liability.

6) Learned counsel for the appellant vehemently argued that learned Claims Tribunal committed error in exonerating the Insurance Company from its liability holding that on the date of accident offending vehicle was being used as taxi. He further argued that learned Claims Tribunal committed error in assessing the disability of claimant to the extent of 40% and further in awarding compensation on higher side.

7) Per contra, learned counsel appearing for the Insurance Company submitted that there is a categorical statement of claimant himself before the Tribunal that the offending vehicle was hired from the appellant and they paid Rs.300/- each as fare which clearly shows that on the date of accident the offending vehicle was being used as taxi, whereas the vehicle was registered as private vehicle and the owner of offending vehicle has taken 'Private Car Package' in which risk of four paid passengers is not included. He further submits that the owner of offending vehicle has taken calculated risk in using the vehicle in contravention of the conditions of the Insurance Policy. He further submits that learned Claims Tribunal rightly held that there is violation of conditions of Insurance Policy and also rightly exonerated the Insurance Company.

8) I have heard learned counsel for the parties and perused the record. From perusal of categorical statement made by claimant-Kamalnarayan (AW-1), in para-16 of his evidence before learned Claims Tribunal, it appears that claimant had settled and paid fare of the offending vehicle, owned by the appellant. It is further been stated by the claimant that he along with his friends hired the offending vehicle from the appellant. From the aforementioned categorical evidence available on record, it is evident that the vehicle on the date of accident was being hired and they were travelling in the said vehicle as passengers.

9) Yograj (AW-2) admitted the fact of accident and also stated about the injury sustained by the claimant and its treatment. Dr HS Chandel was examined as AW-3. He stated that disability certificate Ex.P9 was

issued by the Medical Board of which he was also a member and proved the disability certificate.

10) The appellant examined himself before learned Claims Tribunal as NAW-1, who proved the driving license of driver as Ex.NA-1 and the Insurance Policy as Ex.NA-2. He did not dispute that his vehicle was insured as private vehicle. From bare perusal of Ex.NA-2, it is clear that the policy bears an endorsement as a 'Private Car Package' policy.

11) Hon'ble Supreme Court in its recent judgment in the case of **Manuara Khatun and others Vs Rajesh Kumar Singh and others** reported in 2017 (4) SCC 796 while dealing with the identical situation wherein the persons were travelling in hired Tata Sumo, upheld the finding of High Court that these persons are the gratuitous passengers and exonerated the Insurance Company from its liability.

12) Looking to the specific evidence available on record, referring to the facts of the case therein and that too of a claim of injured himself who hired the vehicle, the learned Claims Tribunal have rightly held that on the date of accident the offending vehicle was being used in contravention of the conditions of the Insurance Policy.

13) So far as the argument of the appellant with respect to the certificate of permanent disability of claimant to the extent of 40% is concerned, Tribunal has not awarded any sum on the head of permanent disability. It only awarded Rs.65,980/- towards medical expenses and Rs.20,000/- towards grievous injury, pain & suffering, special diet etc.

14) In view of the aforementioned discussion, I do not find any error committed by the learned Claims Tribunal in fastening the liability for payment of compensation on the appellant and further any ground calling for interference in the impugned award.

15) The appeal being devoid of any substance, it is liable to be and is hereby dismissed.

16) No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

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