

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 392 of 2015

- The Oriental Insurance Company Limited Through Branch Manager, Behind Itwari Bazar, Raigarh, Tahsil And District - Raigarh Chhattisgarh

---- Appellant/insurer

Versus

1. Sanjay Shriwas S/o Shri Jaggu Shriwas Aged About 35 Years, occupation Barber, R/o Village Jasra, P.S. Kosir, Tahsil Sarangarh, District Raigarh Chhattisgarh.
2. Munna Singh Rajput S/o Kashinath Rajput Aged About 35 Years, occupation driver, R/o Sadress Rasulpur Chapra Bihar Present Address Krishna Solvent Plant, Chatamuda, Sarangarh Road, Raigarh, District Raigarh Chhattisgarh.d
3. M/s Krishna Solvent Director Vishnu Prasad Agrwal S/o Radheshya Agrawal R/o Sarangarh Road, Chatamuda, Raigarh District Raigarh Chhattisgarh.

---- Respondents

MAC No. 391 of 2015

- The Oriental Insurance Company Limited Through Branch Manager Behind Itwari Bazar, Raigarh, Tahsil And District Raigarh Chhattisgarh

---- Appellant/insurer

Versus

1. Jagmohan Shriwas S/o Munudaou Shriwas Aged About 30 Years, occupation driver, R/o Bhadora, P.O. Pirda, P.S. Malkharoda, District Janjgir Champa Chhattisgarh.
2. Munna Singh Rajput S/o Kashinath Rajput Aged About 35 Years, occupation driver, R/o Sadress Rasulpur Chapra Bihar Present Address Krishna Solvent Plant, Chatamuda, Sarangarh Road, Raigarh, District Raigarh Chhattisgarh
3. M/s Krishna Solvent Director Vishnu Prasad Agrwal S/o Radheshya Agrawal R/o Sarangarh Road, Chatamuda, Raigarh District Raigarh Chhattisgarh.

---- Respondents

For Appellant	:	Shri Raj Awasthi, Advocate.
For Respondent No.1	:	Shri Roop Naik, Advocate.
For Respondent Nos. 2 & 3	:	None.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

19/02/2019

As both these appeals filed by the insurance company under Section 173 of the Motor Vehicles Act, 1988, arise out of the same accident occurred on 24.12.2011 involving motorcycle bearing NO. CG 11 CA 7084 and Metador Truck bearing No. CG 13 D 5502, driven by non-applicant No.1, owned by non-applicant No.2 & insured with non-applicant No.3, they are being disposed of by this common judgment.

02. As per averments in the claim petitions, 24.12.2011 Jagmohan Shrivastava was riding motorcycle bearing NO. CG 11 CA 7084, in which his brother-in-law Sanjay Shrivastava was sitting as a pillion rider. When they reached near Kondatarai Singh Daba, non-applicant No.1 Munna Singh Rajput by driving Metador Truck bearing No. CG 13 D 5502 in a rash and negligent manner, dashed their motorcycle as a result of which both Jagmohan and Sanjay suffered grievous injuries. Crime was registered against non-applicant No.1 by the police.

03. Both the injured claimants filed separate claim petitions under Section 166 of the Motor Vehicles Act seeking compensation for the injuries suffered by them in the said accident.

04. After considering the pleadings and the evidence adduced by the parties, the Motor Accident Claims Tribunal, Raigarh passed separate awards dated 22.1.2015, thereby awarding 5,90,230/- in favour of claimant Jagmohan in Claim Case No.125/2012 (MAC No.391/2015) and Rs.55,248/- in favour of claimant Sanjay Shrivastava in Claim Case No.126/2012 (MAC No.392/2015), with interest @ 6% per annum on

the said amounts from the date of claim petitions till realization, fastening liability on non-applicant No.3/insurance company jointly and severally along with non-applicants No. 1 & 2/driver & owner of the offending vehicle.

05. Learned counsel for the appellant/insurer submits that at the time of accident, non-applicant No.1/driver was not having a valid and effective licence to drive the offending vehicle. Further, since there was collision between two vehicles, the Tribunal should have considered the issue of contributory negligence on the part of injured Jagmohan but the same has not been considered.

06. On the other hand, learned counsel for the respondents/claimants supports the impugned awards and submit that the Tribunal considering all the relevant aspects of the matters has rightly fastened liability on the insurance company and awarded compensation to the claimants which need no interference by this Court.

07. No counter appeal has been filed by the respondents as submitted by learned counsel for the parties.

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

09. So far as contributory negligence on the part of rider of motorcycle i.e. claimant Jagmohan is concerned, no evidence whatsoever has been adduced by the insurance company on this point. As per FIR (Ex.P/3), filed and proved by the claimants, it is specifically mentioned therein that the accident occurred due to rash and negligent driving of the offending vehicle by non-applicant No.1 Munna Singh Rajput. As per Ex.P/2 final charge sheet was filed against non-applicant No.1 for the offence under Sections 279, 337 & 338 of IPC. The claimant Jagmohan has specifically stated in his evidence that non-applicant No.1 was driving the offending vehicle in a rash and negligent manner. This evidence has not been rebutted by the non-applicants including the insurance company in cross-examination. Further, non-applicant No.1/driver has also not been examined in this

case. Thus, considering the overall evidence on record, in particular the fact that the insurance company has not led any evidence with regard to contributory negligence, the Tribunal was fully justified in not holding claimant Jagmohan contributory negligent to any extent.

10. As regards the issue of valid and effective driving licence, the insurance company has only examined its investigator Raghvendra Kumar Singh as NAW-1. In cross-examination he states that he has no knowledge as to on what date he went to District Transport Office, Saran for enquiring about the licence and on what date he made application for the said purpose. Ex.D/1C is the particulars of licence of non-applicant No.1 issued by District Transport Officer, Saran, Chhapra, which shows that validity of the licence was till 4.11.2002. Ex.D/2C and Ex.D/3C are the reports of the investigator Raghvendra Kumar Singh. No person from the concerned RTO has been examined by the insurance company to support the investigator's report. As per seizure memo Ex.P/7, driving licence of non-applicant No.1 was seized, which was valid till 13.10.2014. Admittedly, in this case, the accident occurred on 24.12.2011 and as such, it appears that on the date of accident the driver was having a valid and effective driving licence. Therefore, considering the fact that only investigator has been examined by the insurance company, no any person from the concerned RTO has been examined to support the evidence of the investigator and the seizure memo shows that the driver was having a valid and effective licence on the date of accident, the Tribunal was justified in recording a finding that there was no breach of policy conditions and fastening liability on the insurance company jointly and severally along with driver and owner of the offending vehicle.

11. In the result, both the appeals filed by the insurance company being devoid of any substance are liable to be dismissed and are dismissed accordingly.

**Sd/
(Gautam Chourdiya)
Judge**