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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 133 of 2017

- Bajaj Allianz General Insurance Company Limited, Shivmohan Bhawan, Vidhan Sabha Road, Pandri, Police Station Pandri, Tahsil and District- Raipur (C.G.) Insurer of Vehicle No. CG-07-CA-4472).

---- Appellant

Versus

1. Shishupal S/o Kapil Mahananda aged about 26 years, R/o Near Qtr. No. 10/A, Jhopda Cross Street 4, Sector 5, Bhilai, Tahsil and District Raipur (C.G.) **(Claimant)**
2. Manoj Kumar S/o Shambhunath age 23 years, R/o In-front of Durga Mahavidhyalaya Camp 2, Ward No. 23, Chhawni, Pawer House Bhilai, Tahsil and Dist.- Durg (C.G.) **Driver of Vehicle No. CG-07-CA-4472**
3. Chetan Sahu S/o Gendlal Sahu age 31 years R/o Village Kurud, Purani Basti Ward No. 14, Near Parri Talab, Kurud, Thana Jamul, Tahsil and Dist.- Durg (C.G.) **Owner of Vehicle No. CG-07-CA-4472.**

---- Respondents

For Appellant	:	Shri Nilesh Kumar Thakur with Shri Rohitashav Singh, Advocate.
For Respondent No. 1	:	Shri S. K. Agrawal, Advocate.
For Respondent Nos. 2 & 3	:	None

Hon'ble Shri Gautam Chourdiya, J
Judgment On Board

06.05.2019

1. This is insurer's appeal filed under Section 173 of the Motor Vehicle Act against the award dated 08.11.2016 passed by 6th Additional Motor Accident Claims Tribunal, Durg in Claim case No. 137/2013, whereby in a injury case the Tribunal has awarded a total sum of Rs. 99,050/- along with interest @ 9 % p.a. from the date of application till realization in favour of the claimant, fastening liability on

non-applicant No. 3/Insurance Company.

2. As per averments made in the claim petition, on the date of accident i.e. 15.02.2013, at about 09.00 am when the claimant was riding Motorcycle alongwith his friend, near J P Chowk, non-applicant No. 1- Manoj Kumar, while driving the offending vehicle bearing registration No CG07,C.A./4472, rashly and negligently, dashed the injured/claimant, as a result thereof, he sustained multiple injuries including permanent disability to the extent of 12%. The vehicle is owned by non-applicant No. 2- Chetan Sahu and insured with Non-applicant No. 3- Bajaj Allianz General Insurance Company Ltd., appellant herein.

3. The instant appeal filed by the Insurance Company only on the ground that the driver of the offending vehicle has fake driving licence.

4. Learned counsel for the appellant/Insurance Company submits that the driving license of the driver of the offending vehicle was found fake and therefore, the Tribunal has fallen error in fastening the liability of payment of compensation upon the insurance company.

5. On the other hand, learned counsel appearing for respondents supported the award impugned and submitted that the appellant has utterly failed to prove the driving license of respondent No.2 as forged and fake and that respondent No.3/owner is guilty of willful violation of policy conditions. Therefore, the Tribunal has rightly fastened the liability of payment of compensation upon the appellant/insurance company, which does not call for any interference.

6. I have heard the learned counsel appearing for the parties and perused the order impugned including records of Tribunal.

7. It is settled position of law that to prove the defence, the appellant/insurance company has to satisfy two conditions (i) the driver of the offending vehicle was not possessing valid and effective driving license (ii) the owner of the vehicle is guilty of willful violation of policy conditions.

8. Coming to the facts of the case, for the reasons best known to the appellant/insurance company, it neither produced the copy of driving license nor examined any authenticated RTO person and/or the investigator to prove the driving license of the driver of the offending vehicle as forged and fake. It further failed to prove that the owner of the vehicle has willfully violated the terms of the policy. In the absence whereof, the Tribunal has not committed any error in saddling the liability upon the insurance company warranting interference of this Court in the instant appeal.

9. Learned counsel for the appellant/I.C. raised one more ground in the memo of appeal that the compensation amount is on higher side which reduced suitably but looking to the injuries sustained by the claimant, nature of his job and loss of earning, the learned Tribunal awarded sufficient amount of compensation, I do not find any scope for interference in the amount of compensation awarded by the Tribunal.

10. In view of the above, the appeal being devoid of merit is liable to be and is hereby dismissed.

11. Today the case is listed for order on transfer of 50% deposited money from the State Bank of India High Court Branch to the Central Bank of India Padmanabhpur Branch Durg as per PUD dated

08.03.2019 received from 6th Additional Motor Accident Claims Tribunal, Durg, However with the consent of the parties the case is heard & decided finally as above. Therefore, the entire amount of Rs. 1,07,156/- deposited by the Insurance Company in the State Bank of India, High Court Branch, Bilaspur pursuant to the order passed by this Court dated 30.01.2017 in form of FDR, shall be transferred to the Central Bank of India, Padmanabhpur of Brach, Durg in the account of 6th Additional Motor Accident Claims Tribunal, Durg bearing No.- 3368450745, IFSC Code- CBINO 283481, District- Durg, C.G.

12. Copy of this order be sent to the 6th Additional Motor Accident Claims Tribunal, Durg to do the needful.

Sd/-

(Gautam Chourdiya)
Judge

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