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HIGH COURT OF CHHATTISGARH, BILASPUR
M. A. (C) No. 669 of 2013

The National Insurance Co. Ltd. Through its Sr. Divisional Manager, D.O.-B1 Taha Complex, Ring Road I, Priyadarshini Nagar, Bilaspur (C.G.).

---- Appellant

Versus

1. Vijay Kumar Shekhar, aged about 24 years, S/o Shri Lalji Shekhar, Caste Satnami, R/o village Mohtara (Paraghat), P.S. and Tahsil Masturi, Distt. Bilaspur (C.G.).

……....Claimant

2. Arvind Kumar Anant, aged about 24 years, S/o Shri Bhagwat Prasad Anant, At Mohtara (Paraghat), P.S. and Tahsil Masturi, Distt. Bilaspur (C.G.).

…....Driver

3. Bhero Prasad S/o Shri Drshram, At Mohtara (Paraghat), P.S. and Tahsil Masturi, Distt. Bilaspur (C.G.).

…........Owner

---- Respondents

For Appellant	: Mr. Ratan Pusty, Advocate
For Respondent No. 1	: Mr. Rajesh Jain, Advocate
For Respondents No. 2 & 3	: Mr. Keshav Dewangan, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

25/06/2019

1. This appeal has been filed by appellant/Insurance Company under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the legality, validity and propriety of award dated 10/04/2013 passed by Sixth Additional Motor Accident Claims Tribunal, Bilaspur (C.G.) (hereinafter referred to as 'Claims Tribunal') in Claim Case No.34/2011, whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.1,73,000/- as compensation in an injury case.

2. Brief facts relevant for disposal of this appeal are that on 03/06/2010 claimant was travelling on a motorcycle of non-applicant No.1 bearing registration No.CG-10/EG/7837 (hereinafter referred to as 'offending motorcycle') as a pillion rider and going to village Mohatara from Bilaspur. When they reached near Jairamnagar Road, at that relevant time, one unknown Tractor dashed motorcycle due to which claimant/respondent No.1 suffered grievous injury over his person. He was taken to Government Hospital, Masturi and thereafter, he was brought to CIMS Hospital at Bilaspur where he took treatment as indoor patient from 03/06/2010 to 17/06/2010. Looking to grievousness of injury and not getting proper treatment, claimant took treatment at Orthocare Hospital, Bilaspur of Dr. R.K. Das from 17/06/2010 to 13/07/2010. After discharge, he was advised to take bed rest for a period of six months. Matter was reported to concerned Police Station, based on which, crime No.168/2010 was registered against unknown Tractor driver for offence punishable under Sections 279 and 337 of IPC.

3. After recovering from the injuries suffered by claimant, he filed claim application before the concerned Claims Tribunal claiming

Rs.10,50,000/- as compensation on account of injuries suffered by him.

4. Non-applicants No.1 and 2 who are driver and owner of offending motorcycle submitted reply to claim application and denied all adverse pleadings made in claim application. It was pleaded that on the date of accident, claimant was travelling on offending motorcycle with non-applicant No.1. It was further pleaded that on the date of accident, non-applicant No.1 was possessing valid and effective driving licence and offending motorcycle was insured with non-applicant No.3/Insurance Company.

5. Non-applicant No.3/Insurance Company submitted reply to claim application and pleaded that on the date of accident, driver of offending motorcycle was not possessing valid and effective driving licence and there was violation of conditions of insurance policy, therefore, Insurance Company is not liable for payment of any amount of compensation.

6. On appreciation of pleadings and evidence placed on record by respective parties, learned Claims Tribunal held that claimant suffered 25% disability in a motor accident. It was further held that there was violation of conditions of insurance policy and awarded a total sum of Rs.1,73,000/- as compensation in an injury case.

7. Learned counsel appearing for appellant/Insurance Company submitted that learned Claims Tribunal committed error in holding that on the date of accident, non-applicant No.1/driver of offending motorcycle was possessing valid and effective driving licence ignoring the fact that licence (Ex. D-1(c)) authorizes non-applicant No.1 to drive 'Light Motor Vehicle (Non-Transport)' only and it does not authorize him to drive any other vehicle. He further submitted that in view of fact that vehicle which was being driven by non-applicant No.1 is a motorcycle and he was having the licence to drive 'Light Motor Vehicle (Non-Transport)' only and thereby violated the conditions of insurance policy, therefore, appellant/Insurance Company is not having any liability to satisfy the award.

8. Per contra, learned counsel appearing for respondent No.1/claimant submitted that it is the liability of appellant/Insurance Company to satisfy the award as claimant is third party.

9. Learned counsel appearing for respondents No.2 and 3 submitted that non-applicant No. 1 was having valid and effective driving licence to drive 'Light Motor Vehicle (Non-Transport)', which was issued by competent authority, therefore, he was authorized to drive 'Motorcycle with Gear' also. He further submitted that when he was having licence to drive four-wheeler, therefore, he can also drive two-wheeler and learned Claims Tribunal has not committed any error in passing the impugned award.

10. I have heard learned counsel appearing for parties and perused the record carefully.

11. The short question which is involved in this case is whether non-applicant No.1 who was possessing licence to drive 'Light Motor

Vehicle (Non-Transport) only', can be permitted to drive 'Motorcycle with Gear' also or not ?

12. A copy of licence has been placed on record as Ex. D-1(c), which specifically bears that Arvind Kumar Anant was authorized to drive 'Light Motor Vehicle' only. The licence has been issued on 22/06/2007 and having its validity up to 21/06/2027. Ex. D-2 is the particulars of licence issued by the Regional Transport Office, Bilaspur. After verifying the details mentioned in Ex. D-1(c), verification report has been issued on 24/08/2012 (Ex. D-2) by the Regional Transport Office, Bilaspur wherein it has been mentioned that licence was issued to non-applicant No.1 authorizing him to drive 'Light Motor Vehicle (Non-Transport)' only.

13. Section 10 of M.V. Act provides for form and contents of licences to drive, which reads as under :-

> **"10. Form and contents of licences to drive. —**(1) Every learner's licence and driving licence, except a driving licence issued under section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.
>
> (2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:—
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> (a) motor cycle without gear;
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> (b) motor cycle with gear;
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> (c) invalid carriage;

(d) light motor vehicle;
[(e) transport vehicle;]
(i) road-roller;
(j) motor vehicle of a specified description."

14. Glance of above provision makes it clear that sub-section(2) of Section 10 of M.V. Act provides for entitling the holder to drive a motor vehicle of one or more of the following classes. Class(2)(a) provides for 'motorcycle without gear', class (2)(b) provides for 'motorcycle with gear' whereas class (2)(d) provides for 'Light Motor Vehicle'.

15. In the aforesaid provisions as classified types of vehicle, for which, licence are required specifically, if person wants to drive any class of vehicle as mentioned in sub-section (2) of Section 10 of M.V. Act.

16. Section 11 of M.V. Act provides for additions to driving licence. It provides that if a person obtains a driving licence to drive any other class of vehicle, then he can make an application under Section 11 of M.V. Act and Licencing Authority in the same particulars of licence will authorize him to drive any other class of vehicle as well.

17. The issue with respect to person who met with an accident while driving two-wheeler, but having licence to drive 'Light Motor Vehicle' has been considered by Hon'ble Supreme Court in the matter of **Oriental Insurance Co. v. Zaharulnisha & Ors**[1] and held as under:-

> "18. In the light of the above-settled proposition of law, the appellant- insurance company

1 **2008 AIR SCW 3251**

> cannot be held liable to pay the amount of compensation to the claimants for the cause of death of Shukurullahin in road accident which had occurred due to rash and negligent driving of scooter by Ram Surat who admittedly had no valid and effective licence to drive the vehicle on the day of accident. The scooterist was possessing driving licence of driving HMV and he was driving totally different class of vehicle which act of his is in violation of Section 10(2) of the MV Act."

18. In the light of aforementioned judgment passed by Hon'ble Supreme Court in **Zaharulnisha** (supra), if the facts of case at hand is taken into consideration, it is evident that on the date of accident, driver of offending motorcycle was possessing licence authorizing him to drive 'Light Motor Vehicle (Non-Transport)' only, therefore, it could not be said that he was possessing valid and effective driving licence to drive motorcycle, which is in contravention of the provisions of Section 3 of M.V. Act as there is no valid and effective driving licence, therefore, there is violation of conditions of insurance policy.

19. In view of above discussions, finding recorded by learned Claims Tribunal that there is no violation of conditions of insurance policy is not sustainable and is hereby set-aside.

20. Now after recording the aforementioned finding, it takes me to another ground that in the aforesaid circumstances, Insurance Company can be held liable to satisfy the award.

21. No doubt, sub-section (1) of Section 149 of M.V. Act castes a liability upon insurer to pay the person entitled to benefit of award as statutory legal fiction to effect that it will be a liability of insurer in respect to third party risk to satisfy the award.

22. The Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. v. Swaran Singh and Others**[2] has dealt with the meaning, application and interpretation of various provisions and after considering aforementioned judgment of **Swaran Singh** (supra) in the matter of **Zaharulnisha** (supra), held as under:-

> "16. The judgment proceeds to hold that under the MV Act, holding of a valid driving licence is one of the conditions of contract of insurance. Driving of a vehicle without a valid licence is an offence. However, the question herein is whether a third party involved in an accident is entitled to the amount of compensation granted by the Motor Accidents Claims Tribunal although the driver of the vehicle at the relevant time might not have a valid driving licence but would be entitled to recover the same from the owner or driver thereof. It is trite that where the insurers, relying upon the provisions of violation of law by the assured, take an exception to pay the assured or a third party, they must prove a wilful violation of the law by the assured. In some cases, violation of criminal law, particularly violation of the provisions of the MV Act, may result in absolving the insurers but,

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2 **(2004) 3 SCC 297**

the same may not necessarily hold good in the case of a third party. In any event, the exception applies only to acts done intentionally or "so recklessly as to denote that the assured did not care what the consequences of his act might be". The provisions of sub- sections (4) and (5) of Section 149 of the MV Act may be considered as to the liability of the insurer to satisfy the decree at the first instance. The liability of the insurer is a statutory one. The liability of the insurer to satisfy the decree passed in favour of a third party is also statutory.

19. In the result, the appeal is allowed to the limited extent and it is directed that the appellant-insurance company though not liable to pay the amount of compensation, but in the nature of this case it shall satisfy the award and shall have the right to recover the amount deposited by it along with interest from the owner of the vehicle, viz. respondent No. 8, particularly in view of the fact that no appeal was preferred by him nor has he chosen to appear before this Court to contest this appeal. This direction is given in the light of the judgments of this Court in *National Insurance Co. Ltd. v. Baljit Kaur and Others [(2004) 2 SCC 1]* and *Deddappa and Others v. Branch Manager, National Insurance Co. Ltd. [(2008) 2 SCC 595]*."

23. The Hon'ble Supreme Court in the matter of **S. Iyyapan v. M/s. United India Insurance Company Ltd. & Anr.**[3] having considered the provisions of Section 149 of M.V. Act with respect to liability of insurer and held as under:-

> “17. The heading “Insurance of Motor Vehicles against Third Party Risks” given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of 1939 Act) itself shows the intention of the legislature to make third party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons travelling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force.”

24. The insurance policy (Ex.D-3) has been approved by Bharat Bhushan Das (DW-2(3)), Administrative Officer of National Insurance Company Limited, Bilaspur. He admitted in paragraph-2 of his evidence that Ex. D-3 is a 'Package Policy' and risk of pillion rider is covered in the said insurance policy.

25. Considering the ratio laid down in above referred judgments of Hon'ble Supreme Court as also considering the beneficial object of

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3 **AIR 2013 SC 2262**

M.V. Act as well, this Court is of the view that it will be in larger interest of justice to direct the insurer to first pay the amount of compensation to claimant and then to recover it from insured i.e. owner of offending motorcycle in accordance with law, though in law it has no liability to pay amount of compensation.

26. For the foregoing reasons, appeal is allowed in part and impugned award passed by learned Claims Tribunal is modified to the extent indicated above. Appellant/Insurance Company is though exonerated from its liability to pay the compensation to claimant, but keeping in mind the beneficial object of M.V. Act as also the dictum of Hon'ble Supreme Court in the above referred cases, this Court directs insurer of offending motorcycle i.e., appellant herein, to first pay the amount of compensation to the claimant and have the said sum recovered from non-applicant No.2/respondent No.3, owner of offending motorcycle in the manner as provided in the matter of **Oriental Insurance Company Limited v. Shri Nanjappan and Others**[4].

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh

4 **AIR 2004 SC 1631**