

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 531 of 2014**

1. National Insurance Company Limited Through its Divisional Manager, Divisional Office, B-1 Taha Complex, 1st Floor, Ring Road-1, Priyadarshini Nagar, Vyapar Vihar, Bilaspur, P.S. Civil Lines, Bilaspur, Distt. Bilaspur (C.G.)

---- Appellant**Versus**

1. Sanjay Kumar Sayyam S/o Dulichand Sayyam Aged About 30 Years R/o Kurenda, Tah. Baihar, Distt. Balaghat (M.P.)
2. Kaliram Patel S/o Dukhiram Patel R/o Qtr. No. SF-956, CSEB Colony, Korba, Distt. Korba (C.G.) (**Owner of Vehicle**)
3. Rajesh Kumar Patel S/o Kaliram Patel R/o Qtr. No. SF-956, CSEB Colony, Korba, Distt. Korba (C.G.) (**Driver of Vehicle**).

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate.
For Respondent No. 1	:	Shri Dashrath Prajapati, Advocate.

MAC No. 785 of 2014

1. Sanjay Kumar Saiyyam S/o Dulichand Aged About 30 Years R/o Kurenda, Tah. Baihar, Distt. Balaghat (M.P.)

---- Appellant/Claimant**Versus**

1. National Insurance Company Ltd., Through Divisional Manager, Office- Taha Complex, Vyapar Vihar Road, In Front Of Priyadarshani Nagar, Distt. Bilaspur (C.G.) (**Insurance Co.**)
2. Kaliram Patel S/o Dukhiram Patel R/o Qtr. No. SF- 956, CSEB Colony, Korba, Distt. Korba (C.G.) (**Owner**)
3. Rajesh Kumar Patel S/o Kaliram Patel Aged About 25 Years R/o Qtr.No. Sf- 956, CSEB Colony, Korba, Distt. Korba (C.G.) (**Driver**)

---- Respondents

For Appellant	:	Shri Dashrath Prajapati, Advocate.
For Respondent No. 1	:	Shri Dashrath Gupta, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

01/05/2019

- 1) As both these appeals filed under section 173 of Motor Vehicles Act, 1988 by the Insurance Company and the claimants arises out of the common award dated 04/02/2014 passed by First Additional Motor Accident Claims Tribunal Bilaspur (C.G.) in Claim Case No. 62/2010, they are heard together and are being disposed of by this common judgment.
- 2) Appellant/Insurance Company has filed the appeal being **MAC No. 531/2014** challenging the liability fastened upon it on the ground that the driver of the offending vehicle did not have valid and effective driving license at the time of accident whereas claimant injured has filed the appeal being **MAC No. 785/2014** seeking enhancement of the amount of compensation under the award.
- 3) On a claim petition being filed by the claimant injured under section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award to the tune of Rs. 1,23,750/- alongwith interest @ 6% per annum from the date of application till realization, considering 25% negligence on part of injured claimant and 75% negligence on part of non-applicant No. 3 liability fastened upon non-applicants No. 1, 2 & 3 jointly and severally.
- 4) As per averments of the claim petition, on 04/06/2009 claimant Sanjay Kumar Saiyyam, 30 years of age earning Rs. 12,699/- per month as Constable, was going to Bilaspur from Police Station Bhatgaon ridden motorcycle alongwith one Kamlesh Kumar with a moderate speed. However, on the way non-applicant No. 3/Rajesh Kumar Patel by driving vehicle Pick-Up bearing No. CG12 E 0937 (offending vehicle) in a rash and negligent manner dashed the motorcycle of the claimant. As a

result of this accident, claimant suffered grievous injuries on various parts of the body. Due to injury suffered by him he has become 30% permanent disabled. At the time of accident the offending vehicle was owned by non-applicant No. 2 and insured with non-applicant No. 1.

- 5) **MAC No. 531/2014**: Learned counsel for the appellant/Insurance Company submits that though he has raised various grounds in this memo of appeal, however, he is not pressing all those grounds and is assailing the award on the following grounds only:-

- i. that respondent No. 3 Rajesh Kumar Patel had no valid and effective driving licence on the date of alleged accident on 04/06/2009 and driving licence is valid from 20/07/2009 to 19/07/2029 and thus the vehicle was being driven in contravention of the terms and conditions of the Insurance policy, therefore, appellant/Insurance Company was not liable to pay compensation.
- ii. that the learned Tribunal wrongly ordered first pay award to the claimant and then recover from them.

- 6) On the other hand learned counsel for the claimant/respondent No. 1 opposed the contention made by the counsel for the appellant and supports the award regarding the order of pay and recover upon the Insurance Company.

- 7) **MAC No. 785/2014**: Learned counsel for the appellant/claimant submits that though he has raised various grounds in this memo of appeal, however, he is not pressing all those grounds and is assailing the award on the following grounds only :-

- i. that the learned Tribunal has not awarded any amount on the head of loss of income whereas there is pleading regarding 30% permanent disability.

- ii. that the learned Tribunal wrongly held that there was 25% contributory negligence on part of the appellant/claimant injured.
- 8) On the other hand learned counsel for the respondent/Insurance Company opposed the contention raised by the appellant counsel and he submits that claimant himself admitted in his statement that offending vehicle can be seen from 500 feet away and seen before 2 minutes, prior to accident and road is 50-60 feet wide, two vehicles easily passed through this road and there is head on collision between the two vehicles, therefore, he also equally liable as driver of the motorcycle as contributory negligence is considered by Tribunal.
- 9) Heard learned counsel for the parties and perused the material available on record.
- 10) **MAC No. 531/2014**: After perusal of the record it is found that learned Tribunal has rightly considered this matter vide para 14, 15, 16, 17 and 18 in which the learned Tribunal recorded finding that driver of the offending vehicle was not in possession of effective and valid licence at the time of accident on 04/06/2009 for driving of the L.M.V. vehicle however, the Insurance Company was issued a valid Insurance Certificate, therefore, Insurance Company is liable to first pay the compensation and if the insurance Company wishes to initiate proceeding for the recovery of compensation from the insured persons and driver i.e non-applicant No. 2 and 3 but Insurance Company cannot escape itself to first pay the compensation whatever awarded by the learned Tribunal. This principle derived from citation rendered in ***Aiyapan V/s United India & Others 2013 (3) 169 SCC*** which has been subsequently reiterated by the Hon'ble Supreme Court in ***Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796*** which is based on the citation rendered in **Manager, National Insurance Company Limited vs. Saju P. Paul & Anr., (2013) 2 SCC 41.**

- 11) In this case by evidence of NAW-1 Sanjay Vastrakar Grade-III employee of district Transport Authority stated that at the time of accident on 04/06/2009 Rajesh Kumar Patel have no any driving license and driving license is issued in favour Non-applicant No. 3. Rajesh Kumar Patel which is valid from 20/07/2009 to 19/07/2029 and particular of driving license also proved according to Ex. D-1 before the Tribunal and no any contrary evidence is adduced by the driver and owner of the vehicle. Therefore, the learned Tribunal rightly given this finding, thus at the time of accident driver of offending vehicle was not having valid and effective license and order of "pay and recover" according to Manura Khatun (Supra).
- 12) In the operative part, award specific for pay and recover is not mentioned by the learned Tribunal but the finding is in favour of Insurance Company and pay and recover is also mentioned in the award para 18. Looking to this finding of learned Tribunal, it is the case of only pay and recover, therefore, the Insurance Company first pay and then recover according to the award from owner and driver non-applicant No, 2 and 3 according to Saju Pal judgment (Supra).
- 13) Under the facts and circumstances of the case whatever discussed above the situation does not want to any interference with the award passed by the learned Tribunal. Consequently, the appeal preferred by National Insurance company is hereby dismissed.
- 14) **MAC No. 785/2014:** After perusal of the record it is evident that the learned Tribunal has considered the matter in details in para No. 22 where it has recoded finding although the appellant suffered with 30% permanent disability even though he has in the service of Police Department, hence it cannot be inferred that the appellant is disabled to earn income.

Claimant is a public servant and obtained salary as per

prior to the accident, after accident, in this case no loss or earning looking to the claimant is a public servant and obtaining salary as per prior to accident and no loss of earning caused to the claimant. Therefore, learned Tribunal was justified in not considering the loss of earning due to accident permanent disability.

- 15) So far as concerned to the 25% contributory negligence on the part of appellant/claimant, it is found that the learned Tribunal has considered the matter *in extenso* in para 10 of the award as to 25% contributory negligence of the appellant and 75% contributory negligence to non-applicant No. 3 driver of offending vehicle which is based on the statement of the appellant/claimant himself (AW-01) in which it has been corroborated that vehicle can be seen from 500 feet away and seen before 2 minutes, prior to the unfortunate accident and road is 50-60 feet wide, two vehicles easily passed through this road and there is head on collision between the two vehicles.
- 16) Under such a documentary description it left no room for the interference in the finding of the learned Tribunal. The finding recorded by the learned Tribunal is absolutely correct and justified and no need any interference.
- 17) In the result:-
 - i. **MAC No. 531/2014** preferred by the Insurance Company being without any substance is hereby dismissed.
 - ii. **MAC No. 785/2014** preferred by the applicant being without any substance is hereby dismissed.

**-Sd/-
(Gautam Chourdiya)
Judge**