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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 35 of 2015

Hdfc Ergo General Insurance Company Limited Branch Office, Jagdalpur Bastar, At Present- Devendra Nagar, Near Railway Line, P.S. Devendra Nagar Civil and Revenue Distt. Raipur, Chhattisgarh

---- Appellant

Versus

1. Gurunath S/o Sadan Aged About 40 Years R/o Village- Khamhargaon, Tah. Jagdalpur, P.S. Jagdalpur Civil and Revenue Distt. Jagdalpur C.G.
2. Laxminarayan S/o Itwariram Aged About 35 Years R/o Danteshwari Ward, P.S. Jagdalpur,Civil and Revenue Distt. Jagdalpur C.G.
3. Rajendra Prasad S/o Baijnath Prasad R/o Village- Khamhargaon, Tah. Jagdalpur, P.S. Jagdalpur, Civil and Revenue Distt. Jagdalpur C.G.

---- Respondents

For Appellant:	: Shri Bhaskar Payashi, Advocate : along with Shri Rohitashva Singh, : Advocate.
For Respondents:	: None

Single Bench:Hon'ble Shri Sanjay Agrawal, J
Order On Board

28.08.2019

1. This Miscellaneous Appeal has been preferred by Non-Applicant No. 3/HDFC Ergo General Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act of 1988') questioning the legality and propriety of the award dated 16.09.2014 passed by the First Additional Motor Accidents Claims Tribunal (hereinafter referred to as the 'Claims Tribunal'), Bastar place at Jagdalpur in Claim Case No. 45/2014, by which, the learned Claims Tribunal while allowing the claim in part awarded a total amount of compensation to the tune of Rs. 23,867/- (Twenty Three Thousand Eight Hundred Sixty Seven Only) with 6% interest per annum from the

date of filing of Claim Petition till its realization while fastening the liability upon the Insurance Company. The parties to this appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Learned counsel for the Appellant submits that while passing the award impugned, the Claims Tribunal has committed an illegality in fastening the liability upon the Insurance Company. According to him, the vehicle in question was not insured and the provisions prescribed under clause (c) of Section 134 of the Act, 1988 has not been complied with by the owner and driver of the offending vehicle, therefore, no liability as such could be fastened upon it. The award impugned is, therefore, liable to be set aside and/or modified. In support, he placed his reliance upon the principles laid down in the matter of ***The Oriental Insurance Company Limited, Raipur (CG) V. Shrikant Singh and others*** decided by the Division Bench of this Court in ***MAC No. 1040 of 2008*** on 13.10.2011.

3. I have heard learned counsel for the Appellant and perused the entire record carefully.

4. A claim enumerated under Section 166 of the Act of 1988 has been made by the Applicant/Claimant Gurunath on account of the accident occurred on 22.01.2010. According to him, he was going by offending vehicle “Pickup- Chhota Hathi” bearing its Registration No. CG-17-D-1454 owned by Non-Applicant No. 2 Rajendra Prasad for the purposes of campaigning in village Panchayat Election along with his friends namely, Laxman, Jairam and others after obtaining prior permission of the owner of the said vehicle. It was pleaded in the claim petition that the vehicle in question, insured with Non-Applicant No. 3/Insurance

Company, was being driven rashly and negligently by its driver, namley, Laxminarayan. As a result of which, he lost his control and due to which, the applicant fell down and sustained serious injuries and has become unconscious. He was admitted into B. R. Ambedkar Hospital at Raipur for the period commencing with effect from 23.01.2010 upto 05.02.2010 for his treatment and pleaded further that he was "Hamal" by profession and used to earn Rs. 4,500/- (Four Thousand Five Hundred Only) per month and, thus, total amount of compensation to the tune of Rs. 7,50,000/- (Seven Lakhs Fifty Thousand Only) has been claimed.

5. The aforesaid claim was contested by Non-Applicants No. 1 and 2, the driver and owner of the vehicle in question by saying that it was not being driven rashly and negligently by its driver and pleaded further that since it was insured with Non-Applicant No.3, therefore, in case of any liability being fastened, the same could be indemnified by the said Insurance Company. While Non-Applicant No. 3/Insurance Company contested the claim mainly on the ground that the vehicle in question was not insured and no particulars as required under clause (c) of Section 134 of the Act of 1988 has been furnished by the driver and owner of the said vehicle, therefore, no liability could be fastened upon it. It is contested further on the ground that the driver of the offending vehicle was not holding the effective and valid driving license and the applicant was not a third party as he was travelling in the alleged vehicle. Therefore, the Claim Petition as framed deserves to be dismissed.

6. The Claimant has produced as many as two witnesses in support of his

claim, while none was examined by the Non-Applicants.

7. After considering the evidence led by the applicant, it has been held by the Claims Tribunal that the alleged accident occurred on 22.01.2010 due to rashness and negligent driving of its driver, in which, the applicant has sustained grievous injuries. It held further that the driver of the offending vehicle was holding the effective and valid driving license. As a consequence, while fastening the liability upon the Insurance Company awarded a total amount of compensation to the tune of Rs. 23,867/- with 6% interest per annum from the date of filing of the claim petition till its realisation.

8. According to the learned counsel for the Appellant neither the insurance policy was produced nor the provisions prescribed under clause (c) of Section 134 of the Act, 1988 was complied with by the driver and owner of the said offending vehicle. Therefore, no liability as such could be fastened upon it.

9. In order to consider the aforesaid contention of the appellant, I examined the entire record and from perusal of it, particularly, the seizure memo (Ex. P-2) would show that certain papers relating to the vehicle in question were seized from the driver of the offending vehicle. According to which, the insurance policy of the vehicle in question, which is valid from 31.08.2009 upto 30.08.2010 was recovered, but no document, much less the copy of insurance policy was attached with it. In absence thereof, it is difficult to ascertain its particulars. That apart, the driver and owner of the offending vehicle has neither produced the same on record nor have entered into the witness box in order to establish this fact that the vehicle in question was insured with the said

Insurance Company. Thus, the initial burden could not have been discharged by them.

10. At this juncture, the provision prescribed under Section 134 of the Act, 1988, which is relevant for the case is reproduced herein as under-

> **134. Duty of driver in case of accident and injury to a person.-** When any person is injured or any property of a third party is damaged, as a result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall-
>
> (a) unless it is not practicable to do so on account of mob fury or any other reason beyond his control, take all reasonable steps to secure medical attention for the injured person, [by conveying him to the nearest medical practitioner or hospital, and it shall be the duty of every registered medical practitioner or the doctor on duty in the hospital immediately to attend to the injured person and render medical aid or treatment without waiting for any procedural formalities], unless the injured person or his guardian, in case he is a minor, desires otherwise;
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> (b) give on demand by a police officer any information required by him, or, if no police officer is present, report the circumstances of the occurrence, including the circumstances, if any, for not taking reasonable steps to secure medical attention as required under clause (a), at the nearest police station as soon as possible, and in any case within twenty-four hours of the occurrence;
>
> [(c) give the following information in writing to the insurer, who has issued the certificates of insurance, about the occurrence of the accident, namely:-
>
> (i) insurance policy number and period of its validity;
>
> (ii) date, time and place of accident;
>
> (iii) particulars of the persons injured or killed in the accident;
>
> (iv) name of the driver and the particulars of his driving license.
>
> Explanation.-For the purposes of this section, the expression "driver" includes the owner of the vehicle.]

11. A bare perusal of the aforesaid provision, particularly sub-clause (i) of clause (c) of it, would show that the duty is cast upon the driver and owner of the vehicle in question to furnish the information in writing to

the insurer regarding the Insurance Policy number and the period of its validity. However, as observed herein above, neither the information required mandatorily under the aforesaid provision was complied with nor the copy of it was produced by them for the reasons best known to them. They have even not entered into the witness box in order to show that the vehicle in question was insured with the Appellant/Insurance Company.

12. At this juncture, the principles laid down in the matter of ***The Oriental Insurance Company Limited, Raipur (CG) V. Shrikant Singh and others*** decided by the Division Bench of this Court in ***MAC No. 1040 of 2008*** on 13.10.2011, as relied upon by learned counsel for the Appellant, are to be seen, where the driver of the offending vehicle has failed to fulfill the requirement provided under sub-clause (iv) of clause (c) of Section 134 of the Act, in that factual scenario, while interpreting clause (c) of the said provision, it has been held at paragraph 7 as under:-

> 07) Section 134 of the Act, 1988, provides that it is the duty of the driver to give the following information in writing to the insurer, who has issued the certificates of insurance, about the occurrence of the accident, namely:
> (I) insurance policy number and period of its validity;
> (II) date, time and place of accident;
> (III) particulars of the persons injured or killed in the accident;
> (IV) name of the driver and the particulars of his driving licence.
>
> Further, in the explanation, it has been clarified that for the purposes of this section, the expression “driver” includes the owner of the vehicle. Therefore, sub-clause (iv) of clause (c) of Section 134 imposes a duty upon the owner and driver of the vehicle to disclose the particulars of the driver and his driving licence. Thus, if particulars have not been produced by the owner or driver, there is breach of statutory provisions of the Act, 1988 and for that, the insurance company cannot be held liable.

13. By complying the aforesaid principles to the case in hand and the

particularly with regard to the fact that neither the copy of insurance policy was placed on record nor the provision required to be fulfilled mandatorily was complied with by the driver and owner of the vehicle in question under clause (c) of Section 134 of the Act of 1988. It is thus, evident that the statutory provision of the Act of 1988 has been breached by them.

14. In view of the foregoing discussions, I allow this appeal and exonerate the Appellant/Insurance Company from its liability to pay compensation to the Claimant. The finding of the Claims Tribunal in relation to Issue No. 2 as well as fastening the liability upon the Insurance Company is hereby set aside. However, it will be open for the claimant to realize the amount of compensation so assessed by the Claims Tribunal from the owner and driver of the offending vehicle.

15. The amount which is in deposit shall be allowed to be withdrawn by the Insurance Company. However, if the same or any part thereof has been disbursed, the Appellant/Insurance Company shall be at liberty to recover it from the owner and driver of the offending vehicle. No order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE

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