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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 421 of 2014

- Smt. Sangeeta Sunhare W/o Kedarnath Sunhare, aged about 21 years, R/o Purur, P.S. Gurur, District- Balod (C.G.)

---- Appellant/Claimant

Versus

1. Chhannu Lal S/o Ramashray Sahu, aged about 23 years, R/o Village Atang, Police Station Kurud, District- Dhamtari (C.G.)
(Driver of the offending vehicle No. C.G.04-T-3172)
2. Yad Ram Sahu S/o Sobha Ram Sahu, R/o Pachpedi Naka, Raipur, District-Raipur (C.G.)
(Owner of the offending vehicle No. C.G.04-T-3172)
3. United India Insurance Company Limited, Divisional Office, Krishna Complex, Kachcheri Chowk Raipur, Tahsil and District- Raipur (C.G.)
(Insurer of the offending vehicle No. C.G.04-T-3172)

---- Respondents/Non-applicants

For Appellant	:	Shri Shikhar Bakhtiyar, Advocate
For Respondents 1 & 2	:	None
For Respondent No.3	:	Smt. Chitra Shrivastava, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

15.05.2019

I.A. No. 1:

This is an application for condonation of delay of 26 days in filing the appeal.

Heard.

For the reason mentioned in the application which is supported by the affidavit, the same is allowed and the delay in filing the appeal is condoned.

Heard on admission.

The appeal being arguable is admitted for hearing.

Heard finally with the consent of both the parties.

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimant/Appellant, seeking enhancement of the compensation awarded by the Second Additional Motor Accident Claims Tribunal, Balod, District Balod (C.G.) vide award dated 10.12.2013 passed in Claim Case No. 70 of 2013.

2. The Claimant/Appellant, claimed compensation of Rs.30,99,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for injury sustained by her in the motor accident.

3. Brief facts of the case are that on 24.06.2011 the Claimant was coming along with her husband from Purur to Balod Gahan by motorcycle- Hero Honda Passion Plus bearing registration No. CG07/LL/ 6037, at that time, near Purur square, offending vehicle- Mahindra Jeep bearing registration No. CG-4/T/3172, which was being driven by non-applicant No.1- Chhannu Lal, owned by non-applicant No.2 and insured with non-applicant No.3, was coming in a rash and negligent manner, dashed the motorcycle in which the Claimant was pillion rider. As a result thereof, the Claimant sustained grievous injuries on various parts of the body and her left hand was fractured.

4. The learned Tribunal, in the impugned award has awarded a compensation of Rs.38,100/- in favour of the Appellant/Claimant with interest @ 6% per annum from the date of application till its realization and has fastened liability upon the non-applicants No. 1 and 2/driver and owner jointly and severally to pay compensation to the Claimant. The Tribunal has exonerated the Insurance Company/non-applicant No.3 on the ground that the driver of the offending was not having a licence for transport vehicle.

5. As submitted by learned counsel for the parties, no counter appeal has been filed by the Respondents.

6. Learned counsel for the Appellant/Claimant submits that unjust and meager compensation has been awarded by the Tribunal. He further submits that Doctor Vinod Pandey was examined as AW-2 and he has stated that the humerus bone of the Appellant has been fractured and steel rod was fitted in her hand and she needed future treatment, the amount of compensation awarded by the Tribunal deserves to be enhanced suitably. He further submits that the Tribunal has wrongly exonerated the Insurance Company/non-applicant No.3 from its liability to indemnify the claim of the Claimant.

7. On the other hand, learned counsel for Respondent No.3/Insurance Company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court.

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

9. From perusal of the impugned award as well as record of the claim petition, it is seen that non-applicant-1- Chhannu Lal, driver of the offending vehicle, was having a licence to drive the light motor vehicle but he had not obtained endorsement therein to drive transport vehicle. Therefore, the issue involved in this case has already been considered by the Hon'ble Supreme Court in the matter of ***Mukund Dewangan*** Vs. ***Oriental Insurance Company Limited*** reported in ***(2017) 14 SCC 663*** whether a driver who is having a licence to drive the "light motor vehicle" is competent to drive "transport vehicle" of that class in absence of such an endorsement, and it was held therein as under:-

> "Held, the effect and amendment of Form 4 by insertion of "transport vehicle" related only to categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same – There was no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect – Further held, even otherwise the Form could not control the substantive provisions carved out in Ss.10(2)(d) and 10(2)(e) and the interpretation of the Form has also to be in tune with the Statement of Objects & Reasons and the provisions of the Act inserted by virtue of the amendment- Interpretation of Statues - Basic Rules – Harmonious Construction – Subordinate/Delegated Legislation/Rules Under the Act – Central Motor Vehicles Rules, 1989, Form 4 and R.14 (before and after 28.03.2001)."

10. Perusal of record shows that as per document -Ex.-D/1 – driving licence of non-applicant No.1, he was having a valid and effective licence to drive the light motor vehicle which was valid from 15.04.2011 to 20.04.2031 and the same was proved before the Tribunal. That fact is not disputed by both the parties. Even as per Ex.-D/2, a report was given by the RTO that the non-applicant has a licence to drive motorcycle with light motor vehicle. As per Ex.-D/3, insurance policy of passenger carrying commercial vehicle, package policy and the offending vehicle-Mahindra Jeep bearing registration No. CG-4/T/3172 is a light motor vehicle. Thus, applying the ratio of law laid down by the Supreme Court in the matter of *Mukund Dewangan* (supra), it is apparent that the driver of the vehicle in question was holding a valid and effective driving licence and even in the absence of any endorsement as such in his driving licence authorizing him to drive the said transport vehicle, it cannot be held that he was not possessing the valid and effective driving licence at the relevant time. The finding so recorded by the learned Claims Tribunal in this regard is, therefore, liable to be and is hereby set aside. It is accordingly held that the driver of the offending vehicle was holding the valid and effective driving licence and was not driving the same in violation of the terms and conditions of the insurance policy.

11. So far as argument advanced by the learned counsel for the Appellant/Claimants regarding unjust and meager compensation by the Tribunal is concerned, considering the facts and circumstances of the case, the oral and documentary evidence adduced by the parties, this Court is of the opinion that the Tribunal was justified in awarding Rs.5,000/- towards pain & suffering; Rs.5,000/- towards inconvenience in life; Rs.3,000/- for attendant; Rs.1,000/- towards special died; Rs.6,000 towards loss of earning; Rs.16,600/- for medical bills and Rs.1,500/- for repairing of motorcycle. Thus, the Tribunal has awarded a total amount of compensation of Rs.38,100/- in favour of the Claimant.

12. Apart from above, looking to the injuries sustained by the Claimant and Ex.-P/93, a certificate, she had suffered 11% functional disability in relation to particular limb and the statement of Doctor Vinod Pandey (AW-2) who stated that the Claimant was hospitalized from 18.07.2011 to 25.07.2011 and her humerus bone has been fractured and steel rod was fitted in her hand and she needed future treatment. Therefore, this Court is of the view that the interest of justice will be safeguard by providing lump sum additional compensation of Rs.50,000/- towards physiotherapy; future treatment and inconvenience caused to the Claimant during hospitalization.

13. Since the Tribunal has already awarded Rs.38,100/-, after adding additional amount of compensation of Rs.50,000/- towards physiotherapy; future treatment and inconvenience caused to the Claimant during hospitalization etc, thus, the Claimant/Appellant are held entitled for total compensation of Rs.88,100/- with interest @ 6% per annum from the date of application till its realization.

14. In the result, the appeal is allowed in part with modification in the impugned award to the above extent. The liability of payment of total compensation shall be of Respondent No.3/Insurance Company. The Insurance Company is granted two months from today for depositing the total compensation amount along with interest before the concerned Tribunal. Respondents No. 1 and 2 shall have right to recover the amount, if any, already paid by them from the Insurance Company/non-applicant No.3 in accordance with law.

15. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

vatti