

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
M. A. (C) No. 540 of 2014

Smt. Urmila Devi W/o Late S.K. Thapar Aged About 48 Years R/o Laxmi Nagar, Pachpedi Naka, Thana- Tikarapara, Civil & Revenue District Raipur (C.G.)

---- Appellant

Versus

1. Sunil Kumar Jaswani S/o R.D. Jaswani R/o Bhatapara, District Raipur C.G., Now District Balod Bazar (C.G.).
2. Heera Lal Driver S/o Chandika Mandle Aged About 22 Years R/o Village- Aamasiwni, Tehsil & District Raipur (C.G.).
3. I.C.I.C.I. Lombard Motor Insurance Jeent House, Kerkat Court Marga, Mahalaxmi Mumbai (M.S.)

---- Respondents

For Appellant	: Mr. Suresh Tandon, Advocate
For Respondent No. 1	: Mr. Mayank Chandrakar, Advocate
For Respondent No.2	: None
For Respondent No. 3	: Mr. K. Rohan, Advocate on behalf of Mr. Amrito Das, Advocate

Hon'ble Shri Justice Parth Prateem Sahu
Judgment On Board

17/05/2019

1. This appeal has been filed by appellant/claimant under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the legality, validity and propriety of impugned award dated 28.03.2014 passed by Third Additional Motor Accident Claims Tribunal, Raipur (C.G.) (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.54/2011 whereby learned Claims

Tribunal allowed claim application in part and awarded a total sum of Rs.1,83,947/- including medical expenses of Rs.1,58,447/- and fastened liability for payment of an amount of compensation on non-applicant/respondent No.1.

2. Brief facts necessary for disposal of this appeal are that on 29.08.2008 when appellant/claimant was travelling on his Activa two-wheeler bearing registration No.CG04-C-1431 and going towards Awanti Vihar School from Laxminagar, at that relevant time, one Truck (Dumper) bearing registration No.CG04-C-5842 driven by non-applicant/respondent No.2, dashed two-wheeler of appellant/claimant from its back side. In the aforementioned accident, appellant/claimant suffered grievous injury on his head, hands and both the legs. She took treatment in the Ramkrishna Care Hospital at Raipur.
3. After recovery from injuries, appellant/claimant filed claim application before Claims Tribunal claiming Rs.18,00,000/- as compensation from the non-applicants therein.
4. Non-applicants/respondents No.1 and 2 who are owner and driver of offending vehicle, even after service of notice, did not appear before learned Claims Tribunal and they were proceeded *ex parte*.
5. Non-applicant/respondent No.3-Insurance Company submitted reply to claim application and pleaded that it is the appellant/claimant herself who was negligent in driving her two-wheeler. It was further pleaded that non-applicant/respondent No.1-owner of offending vehicle was not possessing valid permit and fitness as well as non-

applicant/respondent No.2-driver of offending vehicle was also not possessing valid and effective driving licence to drive the vehicle on the date of accident. It was lastly pleaded that there was violation of conditions of insurance policy, therefore, they are not having any liability to satisfy the award, if any.

6. Learned Claims Tribunal on appreciation of pleadings and evidence available on record held that accident took place due to rash and negligent driving of driver of offending vehicle i.e. non-applicant/respondent No.2, appellant/claimant has not suffered any permanent disability, there was violation of conditions of insurance policy and awarded a total sum of Rs.1,83,947/- as compensation.
7. While exonerating the Insurance Company from satisfying the award, fastened the liability on non-applicants/respondents No.1 and 2-owner and driver of offending vehicle.
8. Learned counsel appearing for appellant/claimant submitted that learned Claims Tribunal has not considered the entire medical bills placed on record, but awarded only Rs.1,58,447/- while considering Exs. P-10 to P-28 and wrongly arrived at a finding that appellant/claimant did not suffer any permanent disability while doctor has been examined on her behalf who in his evidence stated that appellant/claimant suffered disability to the extent of 72% on her both legs. He further submitted that learned Claims Tribunal has not awarded reasonable amount of compensation on account of loss of income during the period of treatment, future loss of income and

meager amount of compensation has been awarded towards other heads like pain and suffering, attendant and special diet etc.

9. Per contra, learned counsel appearing for respondent No.1/owner of offending vehicle submitted that learned Claims Tribunal has already awarded an exaggerated amount of compensation, which is contrary to the materials available on record. He further submitted that owner and driver have already filed cross objection challenging the finding with respect to quantum of amount of compensation and further exonerating the Insurance Company from its liability.
10. Leaned counsel appearing for respondent No.3/Insurance Company supported the impugned award and submitted that learned Claims Tribunal after considering the entire material available on record arrived at a correct finding and awarded reasonable amount of compensation, which do not call for any interference.
11. I have heard learned counsel appearing for parties and perused entire record carefully.
12. So far as the argument raised by learned counsel for the appellant/claimant with respect to amount of compensation is concerned, perusal of record would show that appellant/claimant has submitted discharge summary of Ramkrishna Care Hospital vide Ex. P-10 wherein on final diagnosis, the doctors have found the fracture injury on "B/L SUP. INF. PELVIC RAMI WITH ABRASION OVER RIGHT FA". Appellant/claimant has also submitted discharge summary of her admission in the hospital from 27.09.2008 to

26.10.2008 of Ramkrishna Care Hospital, which is marked as Ex. P-13 wherein on final diagnosis, the doctors found "INFECTED HAEMETOMA WITH SUP DERMAL GANGREVE OF (Lt) THIGH AND (Lt) ABDOMEN WITH OLD CASE OF FRACTURE B/L SUP-INF PUBIC RAMI WITH BED SORE GD I WITH HAEMATOMA (Lt) THIGH".

- 13.** Learned counsel appearing for appellant/claimant even after making the specific query as to what were the medical bills which have not been taken into consideration by learned Claims Tribunal while computing the amount towards the medical expenditure failed to point out the same from the records, therefore, in the opinion of this Court, learned Claims Tribunal awarded the entire amount of medical expenditure as claimed and placed bills on record in this regard.
- 14.** The other argument raised by learned counsel for appellant/claimant is that learned Claims Tribunal has not calculated the period of treatment for award of amount towards loss of income during period of treatment in appropriate manner.
- 15.** Perusal of record would show that since the date of accident i.e. 29.08.2008 till 02.12.2008, appellant/claimant was in continuous treatment for one or the other reasons. She is required to take treatment even as indoor patient from 24.11.2008 to 02.12.2008 which itself shows that appellant/claimant could not able to perform work of any nature for these periods. Even otherwise, the period from 29.08.2008 to 02.12.2008 is a period of treatment only, but after

discharge from the hospital, looking to the nature of injuries and infection suffered by the appellant/claimant, she could not have performed her work for further two months, more particularly, she suffered a fracture on pelvic bone.

- 16.** In view of the aforementioned documentary evidence available on record with respect to taking treatment of appellant/claimant as indoor patient in Ramkrishna Care Hospital, in the opinion of this Court, learned Claims Tribunal erred in assessing the loss of income for a period of three months, which should be five months. As appellant/claimant has not filed any documentary evidence in support of her income as claimed, therefore, Claims Tribunal has rightly assessed the monthly income on national basis i.e. Rs.3,500/-.
- 17.** In view of above, appellant/claimant will be entitled for a total sum of Rs.17,500/- instead of Rs.10,500/- towards loss of income during period of treatment.
- 18.** The next ground raised by learned counsel for appellant/claimant is that learned Claims Tribunal awarded very meager amount towards other heads is concerned, perusal of award would show that amount towards physical and mental agony has been awarded as Rs.5,000/-, which in view of the injuries suffered and period of treatment is definitely on lower side. The medical document which is available on record shows that apart from fracture suffered by appellant/claimant, she suffered infection on her hips, legs etc., for which, she undergone treatment as indoor patient continuously for about a

month, therefore, in the opinion of this Court, appellant/claimant will be entitled for an amount of Rs.20,000/- towards physical and mental agony instead of Rs.5,000/-.

- 19.** In the facts and circumstances of the case, as appellant/claimant is resident of Raipur city itself, therefore, amount awarded towards attendant and special diet need not required to be interfered with and leaned Claims Tribunal is justified in awarding Rs.10,000/- towards attendant and special diet.
- 20.** On the basis of above recalculation, now the appellant/claimant will be entitled for total sum of Rs.2,05,947/- (1,58,447 + 17,500 + 20,000 + 10,000) instead of Rs.1,83,947/-. This amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of claim application till its realization. The other conditions imposed by learned Claims Tribunal shall remain intact.
- 21.** Now the question arises for consideration before this Court is with respect to cross objection filed by learned counsel appearing for respondent No.1/owner of the offending vehicle.
- 22.** In view of aforementioned discussions and findings recorded by this Court with respect to award of compensation, argument raised by learned counsel appearing for respondent No.1 that amount of compensation awarded by learned Claims Tribunal is on higher side is not sustainable and it is hereby repelled.
- 23.** The next argument raised by learned counsel for respondent No.1 that learned Claims Tribunal wrongly exonerated the Insurance

Company from its liability as on the date of accident, driver of offending vehicle was possessing a licence authorizing him to drive 'Light Motor Transport Vehicle' and 'Heavy Goods Vehicle' therefore, on the date of accident, driver of offending vehicle was possessing valid and effective driving licence to drive the offending vehicle.

24. In view of the amendment incorporated in the Motor Vehicles Act, 1988 in the year 1994, though the category of vehicles have been included in Transport Vehicle, but in the case at hand, licence produced by non-applicant/respondent No.2 before learned Claims Tribunal does not bear the endorsement authorizing him to drive 'Transport Vehicle', but it specifically mentions the authorization to drive 'Light Motor Vehicle' only.
25. Respondent No.3/Insurance Company examined licence clerk of Regional Transport Authority, Raipur, namely, Rajesh Bhargawa, who in his evidence categorically stated that non-applicant/respondent No.2-driver of offending vehicle has been authorized to drive 'Heavy Goods Vehicle' only on 30.06.2009. He clarified that prior to 30.06.2009, licence was not issued to him to drive 'Transport Vehicle'.
26. The issue with respect to the persons having a particular class of license authorizing to drive a particular category of vehicle, but on the date of accident found driving the vehicle other than the category of vehicle mentioned in the licence has been considered by the Hon'ble

Supreme Court in the matter of **Mukund Dewangan v. Oriental Insurance Company Limited**¹ has held as under :-

“59. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as amended on 28-03-2001. Any other interpretation would be repugnant to the definition of “light motor vehicle” in Section 2(21) and the provisions of Section 10(2)(d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of ‘light motor vehicles’ and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in Section 10(2)(e) of the Act ‘Transport Vehicle’ would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger

1 (2017) 14 SCC 663

motor vehicle which earlier found place in Section 10(2)(e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed.

60. Thus we answer the questions which are referred to us thus:

60.1. "Light motor vehicle" as defined in Section 2(21) of the Act would include a transport vehicle as per the weight prescribed in Section 2(21) read with Sections 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54 of 1994.

60.2. A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg. and holder of a driving licence to drive class of "light motor vehicle" as provided in Section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under Section 10(2)(d)

continues to be valid after Amendment Act 54/1994 and 28-03-2001 in the form.

60.3. The effect of the amendment made by virtue of Act No.54 of 1994 w.e.f. 14-11-1994 while substituting clauses (e) to (h) of Section 10(2) which contained “medium goods vehicle” in Section 10(2)(e), “medium passenger motor vehicle” in Section 10(2)(f), “heavy goods vehicle” in Section 10(2)(g) and “heavy passenger motor vehicle” in Section 10(2)(h), with expression “transport vehicle” as substituted in Section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of Section 10(2)(d) and Section 2(41) of the Act i.e. light motor vehicle.

60.4. The effect of amendment of Form 4 by insertion of “transport vehicle” is related only to the 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 as it was and has not been changed and there is 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.”

27. In view of the above, respondent No.2 who was possessing the licence to drive 'Light Motor Vehicle' cannot be permitted to drive the offending vehicle which is a 'Heavy Goods Vehicle' (Truck Dumper). In the case at hand, non-applicant/respondent No.1-owner of offending vehicle did not entered into the witness box to prove that after looking to the licence produced before him and satisfying that non-applicant/respondent No.2-driver was authorized to drive offending vehicle i.e. 'Heavy Goods Vehicle' and only thereafter, the vehicle was given in his possession. The burden of proof that he satisfied himself after perusing the licence produced before him to be genuine is on the owner of offending vehicle, which he utterly failed to discharge. Though a copy of licence has been filed vide Ex. D-3 having its endorsement to drive 'Transport Vehicle', but in the records of the Regional Transport Authority, Raipur i.e. Licensing Authority no such endorsement and entry has been made in the records of Hiralal that he has been authorized to drive 'Heavy Goods Vehicle' prior to 30.06.2009, which was proved by Insurance Company by examining employee of Regional Transport Office as witness in their behalf. As per evidence available on record, owner or driver of offending vehicle failed to discharge their burden to prove that the driver of the offending vehicle was possessing valid and effective driving licence as held by Hon'ble Supreme Court in the matters of **National**

Insurance Co. Ltd. v. Swaran Singh and Others² and Pepsu Road Transport Corporation v. National Insurance Company³.

- 28.** In view of aforementioned facts and evidence emerging on record, learned Claims Tribunal has rightly arrived at a finding that there is violation of conditions of insurance policy and exonerated the Insurance Company from its liability. The aforementioned finding recorded by learned Claims Tribunal in view of the above discussion do not call for any interference.
- 29.** For the foregoing reasons, the appeal filed by appellant/claimant is allowed in part in following terms:-
- (a) appellant/claimant will be entitled for a total sum of Rs.2,05,947/- as compensation along with interest @ 6% per annum from the date of application till its realization. Other conditions imposed by learned Claims Tribunal will remain intact.
- (b) impugned award passed by learned Claims Tribunal is modified to the extent as indicated above.
- 30.** Cross objection filed by respondent No.1 is dismissed.

Sd/-

**(Parth Prateem Sahu)
Judge**

Yogesh

² (2004) 3 SCC 29
³ (2013) 10 SCC 217