NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on : 29.03.2019

Order pronounced on : 03.05.2019

MAC No. 224 of 2013

- Iffco Tokio General Insurance Co.Ltd. 3rd Floor, Shop No. 345-347, Ganga Shopping Mall, Near Mata, G.E.Road, Raipur, Teh. And Distt. Raipur C.G., Chhattisgarh

---- Appellant

Versus

1. Smt.Mangriya Bai, W/o Baririk Prajapati aged about 52 Years, thru- Her Son Shri Rajbhan Prajapati, R/o Vill. Budhera, P.S. Kharora, Raipur, Distt. Raipur Chhattisgarh
2. Netram Sahu S/o Mannulal Sahu R/o Village- Tulsi Dahariya, P.S. Kharora, Raipur, District : Raipur, Chhattisgarh (Driver)
3. Mannu Lal Sahu S/o Mandhir Ram Sahu R/o Village- Tulsi Dahariya, P.S. Kharora, Raipur, District : Raipur, Chhattisgarh (Owner)

---- Respondents

For Appellant	:	Shri K Rohan, Advocate on behalf of Shri Amrito Das, Advocate
For Respondents- 2 and 3	:	Shri Ravi Maheshwari, Advocate
For Respondent- 1	:	None appears

Hon'ble Shri Justice Parth Prateem Sahu

CAV Order

1. Appellant/Insurance Company has challenged the impugned award dated 29.11.2012 passed by 7th Additional Motor Accident Claims Tribunal, Raipur in Claim Case No. 104 of 2011 whereby learned Claims Tribunal partly allowing the claim application, awarded a total sum of Rs.1,17,737/-.

2. Brief facts for disposal of this appeal are that on 29.07.2010 at about 10 am one motor cycle bearing No.CG04-DC-7634 (for short, 'offending vehicle') dashed respondent- 1 Smt Mangriya Bai, claimant near bridge of

village Bhaisa. In the aforementioned accident, claimant Mangriya Bai sustained severe injuries on different parts of her body along with fracture over her femur bone. She took treatment at Balaji Hospital, Raipur for about 15 days as inpatient and thereafter, at Dr BR Ambedkar Hospital, Raipur, which is a Government Hospital. Claimant became permanent disabled due to the injuries suffered by her in accident.

3. Driver and owner of offending vehicle, respondents- 2 and 3 respectively submitted their reply to claim application and denied all adverse allegations levelled against them. They pleaded that on the date of accident offending vehicle was insured with appellant- Insurance Company, therefore, Insurance Company was liable to pay compensation.

4. Appellant- Insurance Company also submitted reply to claim application and denied allegations therein with respect to the accident. It was also pleaded that there was contributory negligence on the part of injured claimant herself; on the date of accident respondent- 2, driver of offending vehicle was minor and there was no driving license with him to drive offending vehicle; and in view of above, there is violation of conditions of Insurance Policy, hence Insurance Company is not liable for payment of compensation.

5. Learned Claims Tribunal on appreciating the evidence and other material available on record, held that accident took place due to rash and negligent driving of offending vehicle by its driver and further that there is violation of conditions of Insurance Policy, awarded a sum of Rs.1,17,737/-. While exonerating the Insurance Company from its liability,

it was directed that Insurance Company first pay the amount of award to the claimant and thereafter recover the same from owner of offending vehicle.

6. Learned counsel for appellant/Insurance Company argued that learned Claims Tribunal erred in directing Insurance Company to first pay the amount of compensation and thereafter to recover the same from owner of offending vehicle even after holding that there was no liability on the Insurance Company on account of violation of conditions of Insurance Policy as on the date of accident the person who was driving offending vehicle was a minor and not possessing license to drive motor vehicle. He also submitted that the compensation awarded is on higher side.

7. I have heard learned counsel for the parties and perused the records.

8. It is not in dispute that offending vehicle was insured with appellant-Insurance Company on the date of accident. NAW-1 Ravi Prakash Verma, an employee of Insurance Company in his evidence before the Tribunal stated that Insurance Policy Ex.D/1 was issued in favour of respondent- 3 ie owner of offending vehicle for a period from 27.07.10 to 26.07.2011.

9. The appellant/ Insurance Company to prove the issue, with respect to violation of conditions of Insurance Policy, produced Ravi Prakash Verma (NAW-1). He proved the Insurance Policy Ex.D1 and also proved conditions mentioned in the policy that vehivle should be driven by the person possessing valid and effective driving license. Admittedly, on the date of accident, respondent- 2 who was driving motorcycle bearing

No.CG04-D-7634 has shown to be 17 years in Ex.P7 seizure memo and Ex.P8 ie arrest memo. Vide Ex.P/7 Police seized offending motorcycle, registration certificate of offending motorcycle and Insurance Policy from possession of respondent-2 but he has not produced his driving license. On the basis of above factual matrix, learned Claims Tribunal held that respondent- 1 was not possessing valid and effective driving license and further held that there was violation of conditions of Insurance Police.

10. The finding recorded by learned Claims Tribunal with respect to the non-possessing of valid and effective driving license by respondent- 2 was not challenged by respondents- 2 and 3 which attained its finality.

11. The question which has been raised by learned counsel for the appellant that when there is finding recorded by learned Claims Tribunal that there is violation of conditions of Insurance Policy on account of driver of offending vehicle not possessing a valid and effective driving license learned Claims Tribunal ought not to have directed to first pay the amount of compensation and then to recover the same when there no liability of Insurance Company for payment of amount of compensation.

12. The issue of violation of condition of Insurance Policy for want of valid and effective driving license has been considered by Hon'ble Supreme Court in the matter of **Shamanna and another Vs Divisional Manager, Oriental Insurance Company Limited and others** reported in 2018 (9) SCC 650, wherein offending Jeep driven by the person who was not possessing a valid and effective driving license met with an accident and learned Claims Tribunal while awarding compensation to the

claimants, after recording that there is violation of conditions of Insurance Policy issued direction upon the Insurance Company therein to first pay the amount of compensation and then to recover the same from owner of offending vehicle and High Court setting aside that direction, held as under :

> "11. In the present case, to deny the benefit of 'pay and recover', what seems to have substantially weighed with the High Court is the reference to larger Bench made by the two-Judge Bench in **Parvathneni**[1] case which doubted the correctness of the decisions which in exercise of jurisdiction under Article 142 of the Constitution of India directing insurance company to pay the compensation amount even though insurance company has no liability to pay. In **Parvathneni (supra)** case, the Supreme Court pointed out that Article 142 of the Constitution of India does not cover such type of cases and that:
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> > "5. If the insurance company has no liability to pay at all, then, it cannot be compelled by order of the court in exercise of its jurisdiction under Article 142 of the Constitution of India to pay the compensation amount and later on recover it from the owner of the vehicle. "
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> 12. The above reference in **Parvathneni (supra)** case has been disposed of on 17.09.2013 by the three-Judge Bench keeping the questions of law open to be decided in an appropriate case.
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> 13. Since the reference to the larger bench in **Parvathneni** (supra) case has been disposed of by keeping the questions of law open to be decided in an appropriate case, presently the decision in **Swaran Singh**[2] case followed in **Laxmi Narain Dhut**[3] and other cases hold the field. The award passed by the Tribunal directing the insurance company to pay the

[1] National Insurance Co. Ltd. v. Parvathneni and another(2009) 8 SCC 785
[2] National Insurance Co., Ltd., Vs Swaran Singh(2004) 3 SCC 297
[3] National Insurance Insurance Company Limited Vs Laxmi Narain Dhut(2007) 3 SCC 700

> compensation amount awarded to the claimants and thereafter, recover the same from the owner of the vehicle in question, is in accordance with the judgment passed by this Court in **Swaran Singh** (supra) and **Laxmi Narain Dhut** (supra) cases. While so, in our view, the High Court ought not to have interfered with the award passed by the Tribunal directing the first respondent to pay and recover from the owner of the vehicle. The impugned judgment (Shamanna Vs Laxman, 2016 SCC online Kar 6928) of the High Court exonerating the insurance company from its liability and directing the claimants to recover the compensation from the owner of the vehicle is set aside and the award passed by the Tribunal is restored."

13. In view of law laid down by Hon'ble Supreme Court in aforementioned cases and in the facts and circumstances of this case, in my considered opinion, learned Claims Tribunal has not committed any error in directing appellant- Insurance Company to first pay the amount of compensation and thereafter to recover the same from owner of offending vehicle by filing application for execution of award. The learned Claims Tribunal had already granted liberty to appellant for filing an application for execution of award to recover amount of compensation from the owner is in conformity with judgment passed by learned Supreme Court in the matter of **Oriental Insurance Company Vs Nanjappan** reported in 2004 (13) SCC 224 which was also reiterated by Hon'ble Supreme Court in the matter of **Shamanna and another** (supra).

14. So far as the other ground that amount of compensation is awarded on higher side is concerned, I have perused the document placed on record and marked as Exhibits during the course of recording evidence it would show that amount of Rs.77,737/- was only towards medical

expenses. The medical documents would also show that respondent suffered left subdural haemorrahage with left frontal contusion with midline shift (0.7 cm) right side with mild diffuse cerebral oedema with haemosinus with fracture right occipital bone. In view of nature of injury suffered and the medical bills placed on record and exhibited in evidence, it cannot be said that the appellant had not proved the medical documents. The amount awarded on other heads also cannot be said to be on higher side. In the opinion of this Court, the amount awarded by learned Claims Tribunal cannot be said to be a bonanza in view of the nature of injury suffered by the appellant.

15. In view of aforementioned discussion, I do not find any good ground calling interference in this appeal. Therefore, the appeal being devoid of merit, is liable to be and is hereby dismissed.

16. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma