

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 360 of 2013**

- Mo. Farukh S/o Abdul Rashid, aged about 65 years, resident of Kharsiya Road, Ambikapur, P. S. Ambikapur, District- Surguja (Chhattisgarh)

---- Appellant/Owner**Versus**

1. Filip Tirkey, S/o Late Poulus Tirkey, aged about 59 years, Resident of Patthalgaon, P.S. Patthalgaon, District- Jashpur (Chhattisgarh).
2. Mo. Sattar Shah, S/o Mo. Madu Shah, aged about 39 years, Caste-Musalman, Resident of Karbala Road, Jashpur, P.S. Jashpur, District-Jashpur (Chhattisgarh) (Driver).,
3. The New India Insurance Company Limited, Mandal Karyalay, Raipur (Chhattisgarh) (insurer of Shamim bus No. C.G. 15A/5485).

---- Respondents

For the appellant/Owner : Shri Sunil Tripathi, Advocate
 For the respondent No. 3/ I.C. : Shri H. P. Agrawal, Advocate

MAC No. 1049 of 2014

- Mo. Farukh S/o Abdul Rashid, aged about 65 years, resident of Kharsiya Road, Ambikapur, P. S. Ambikapur, District- Surguja (Chhattisgarh)

----Appellant**Versus**

1. Janak Lal Gupta, S/o Shri T. Sahu, aged about 55 years, Occupation- Assistant Sub Inspector, at present P.S. Patthalgaon, District- Jashpur (Chhattisgarh)
2. Mo. Sattar Shah, S/o Mo. Madu Shah, aged about 39 years, Caste-Musalman, Resident of Karbala Road, Jashpur, P.S. Jashpur, District Jashpur (Chhattisgarh). (Driver)
3. The New India Insurance Company Limited, Mandal Karyalay, Raipur (Chhattisgarh).

---- Respondents

For the appellant/Owner : Shri Sunil Tripathi, Advocate

For the respondent No. 3/I.C. : Shri H. P. Agrawal, Advocate

MAC No. 1156 of 2014

- Janak Lal Gutpta (Asst. Police Sub Inspector), son of Shri T. Sahu, aged about 55 years, Presently posted at Patthalgaon, District- Jashpur, Chhattisgarh.

----Appellant

Versus

1. Md. Sattar Shah, son of Md. Madu Shah, aged about 35 years, Caste Musalman, residence of Karbala Road, Jashpur (Driver).
2. Md. Farukh, son of Shri Abdul Rashid, residence of Kharsiya Road, Ambikapur, District- Sarguja, Chhattisgarh. (Registered Owner).
3. The New India Insurance Company Limited, Divisional Office, Raipur, Chhattisgarh. (Insurance Company).

---- Respondents

For the appellant/claimant	: None
For the respondent No. 2/Owner	: Shri Sunil Tripathi, Advocate
For the respondent No. 3/I. C.	: Shri H. P. Agrawal, Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment On Board

15/05/2019

1. Since all the three appeals filed under Section 173 of the Motor Vehicle Act arise out from the same accident and two different awards dated 11.01.2013 & 29.08.2014, passed by Additional Motor Accident Claims Tribunal, Kunkuri, District- Jashpur, Chhattisgarh and all three cases arise in Claim cases No. 24/2008 & 03/2008, respectively, therefore, they are heard together and are being disposed of by this common judgment.
2. The owner of the offending vehicle (Bus) bearing registration No. C.G. 15A/5485 filed two appeals i.e MAC No. 360/2013 in respect of Filip Tirkey (injured) & MAC No. 1049/2014 in respect of Janaklal

Gupta (injured) under section 173 of the Motor Vehicle Act challenging the liability fastened upon him to pay compensation to the said claimants, while exonerating the Insurance company from its liability to pay compensation to the claimant on the ground that one digit engine number is different from the number mentioned in the insurance policy. So far as default pointed out by the Registry in MAC No. 1049/2014 filed by owner of the offending vehicle that in the said appeal, respondent No. 1/claimant – Janak Lal Gupta did not serve with the notice is concerned, said Janak Lal Gupta (claimant) has also filed an appeal being MAC No. 1156/2014 seeking enhancement of the amount of compensation under award, and in the said appeal, on 20.3.2019 it is listed for final hearing in the month of May, 2019 with the connected appeal filed by the owner of the offending vehicle i.e. MAC Nos. 1049/2014 and 360/2013 challenging the part of award by which the liability has been fastened upon him, therefore, there is need to serve notice upon respondent No. 1 in MAC No. 1049/2014. Thus, the default pointed out by the Registry in MAC No. 1049/2014 is overruled.

3. One MAC No. 1156/2014 is also filed under Section 173 of the Motor Vehicle Act by the Claimant- Janaklal Gupta for seeking enhancement of the compensation, but despite repeated calls, no one has appeared on behalf of claimant- Janaklal Gupta.
4. Brief facts necessary for disposal of these appeals are that when on 25.07.2007, one Janak Lal Gupta, Assistant Sub-Inspector (injured) along with his colleague Filip Tirkey (pillion rider) was going toward Jashpur in his (Filip Tirkey) Motorcycle bearing registration No. CG 14A/8718, on the way near Loro Ghat first turning, due to rash and negligent driving of the offending vehicle (bus) bearing registration No. CG15A/5485 by its driver- Mohd. Sattar Shah, both the persons namely- Janak Lal Gupta & Filip Tirkey sustained grievous injuries resulting into permanent disability. The offending vehicle is owned by Mohd. Farukh and insured with the New India Assurance Co. Ltd.
5. On claim petition being filed by claimants i.e. Janak Lal Gupta under

Section 166 of the Act, being claim case No. 03/2008 (MAC No. 1156/2014), the Tribunal considering the evidence led by the parties awarded a compensation of Rs.49,514.12/-. The Tribunal directed that the said amount payable by Non-applicant Nos. 1 & 2 to the claimant along with interest @ of 5% per annum from the date of application till the date of award. The Tribunal further directed that after the date of award till its realisation, the total compensation amount shall carry interest @ 9% per annum.

6. On a claim petition being filed by claimant- Filip Tirkey under Section 166 of the Act, being claim case No. 24/2008 (MAC No. 360/2014), the Tribunal considering the evidence led by the parties awarded a compensation of Rs.2,48,552/-. The Tribunal directed that the said amount payable by Non-applicant Nos. 1 & 2 to the claimant along with interest @ of 5% per annum from the date of application till the date of award. The Tribunal further directed that after the date of award till its realisation, the total compensation amount shall carry interest @ 9% per annum.
7. Learned counsel for the owner of the offending vehicle submits that only one digit of engine number is different from the number mentioned in the insurance policy and only on the basis of which, learned Claims Tribunal has exonerated the Insurance Company from its liability of paying compensation. He further submits that several opportunities were given to the Insurance Company but no any ground regarding engine number is differently mentioned (one digit number) in the policy was taken by the Insurance Company and no evidence adduced by the Insurance Company in that regard, therefore, learned Tribunal has committed legal error in exonerating the Insurance Company from its liability to pay compensation to the claimants. He further submits that the Insurance policy was issued in favour of the owner of the offending vehicle, which was valid 05.05.2007 to 04.05.2008, and only one digit engine number is different from the number mentioned in the Insurance policy, whereas chassis number is absolutely correct, except this no other ground was assigned by the Claims Tribunal while exonerating the

Insurance Company from its liability and, therefore, finding regarding fastening the liability upon the owner is liable to be set aside.

8. Learned counsel for the respondent/Insurance Company submits that the one digit of engine number is differently mentioned in the RC Book possessed by the owner of the offending vehicle. He further submits that owner of the offending vehicle did not adduce any evidence controverting the finding arrived at by the Claims Tribunal that one digit of engine number is different from the number mentioned in the insurance policy and owner of the offending vehicle did not examine to prove the aforesaid fact and, therefore, learned Claims Tribunal is absolutely justified in exonerating the insurance company from its liability to pay compensation to the claimants, which does not call any interference.
9. I have heard the counsel appearing for the parties and material available on record including award impugned.
10. It is true that the offending vehicle is owned by Non-applicant No. 2-Mohd. Farukh and insured with Non-applicant No. 3- The New India Insurance Company Limited. Furthermore, any objection was not raised by the Insurance Company in its written Statement that the vehicle was not insured with the Insurance Company. The finding of Claims Tribunal for exonerating the Insurance Company from its liability is based on only one ground that one digit of the engine number is different from the number mentioned in the Insurance Policy whereas chassis number is absolutely and correctly mentioned on the RC book and also in the Insurance policy therefore, part of impugned award, by which the Claims Tribunal has saddled the liability upon the driver and owner of the offending vehicle, is liable to be set aside and is accordingly set aside the appeal filed by owner of the offending vehicle deserves to be allowed with regard to the liability part.
11. So far as MAC No. 1156/2014 is concerned, it is stated that despite repeated calls, none has appeared on behalf of claimant – Janak Lal Gupta. However, The Claims Tribunal, in its discretion, awarded a total sum of Rs. 49,514.12/- as compensation in favour of claimant for the injuries sustained by him in the motor accident occurred on

25.07.2007, which in the facts and circumstances of the case cannot be said to be shockingly on lower side. Thus, when the above amount of compensation is examined in the context of above broad features of the case, I do not find any scope for interference in the amount of compensation awarded by the Tribunal.

12. For the reasons mentioned hereinabove, both the appeals (MAC No. 360/2013 & 1049/2014) filed by the appellant/owner of the offending vehicle is allowed to the extent indicated hereinabove, whereas appeal (MAC No. 1156/2014) filed by the claimant for enhancement of the compensation is liable to be and is hereby dismissed.
13. It is made clear that amount, if any, is deposited by the owner pursuant to the impugned award, the same may be recovered by him as per law.

Sd/-

Gautam Chourdiya
Judge