NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 585 of 2013

1. The Oriental Insurance Company Ltd. Through its Divisional Manager, Divisional Office, 1st Floor, Rama Trade Center, Near Bus Stand, Bilaspur (C.G.) PIN -495001. (**Non-applicant No. 3**)

---- Appellants

Versus

1. Gaurav Pandey S/o Aryan Pandey Aged About 37 Years R/o Qtr.No. MIG-11/34 SADA Colony, Jamnipali, Darri Katghora, District Korba (C.G.) (**Claimant**)

2. Nizamuddin S/o Qamruddin Aged About 39 Years R/o Inrava, Jangipur, District Gajipur (U.P.) (**Driver**)

3. Anand Kumar Singh S/o Vibhuti Narayan Singh Aged About 44 Years R/o Subhash Nagar, New Colony, Dadrighat, District Gajipur (U.P.) (**Owner**)

---- Respondents

For Appellant	:	Shri R.N. Pusty, Advocate.
For Respondent No. 1	:	Shri Anant Bajpai, Advocate.
For Respondent Nos. 2 & 3	:	Shri Malay Kumar Bhaduri, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

25/04/2019

1) This appeal is by the Oriental Insurance Company Ltd. under Section 173 of the Motor Vehicles Act, 1988 (in short “the Act”) against the award 26/03/2013 passed by Additional Motor Accident Claims Tribunal, Katghora, Korba (C.G.), in Claim Case No.65/2010 awarding total compensation of Rs. 11,15,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants No. 1, 2 & 3 jointly and severally.

2) As per claim petition, on 10/08/2009 claimant/Gaurav Pandey, 34 years of age, earning Rs. 20,000/- per month from transporting business by driving Car bearing No. CG 12 D 7430 was going towards Mainpat from Korba. At a place Kedai Jharna turn on the main road, non-applicant No. 1/ Nizamuddin driving a tanker bearing No. UP61 J 7551 (Offending vehicle) rashly and negligently dashed the said Car. As a result of this accident the claimant sustained grievous injury/fracture in waist hip and pelvic region and became 45% permanently disabled. His Car is also said to have been damaged. The claimant received treatment in hospitals at Korba, Raipur and Mumbai. Offending vehicle was owned by non-applicant No.2/ Anand Kumar Singh and insured with non-applicant No.3/Oriental Insurance Co. Ltd.

3) On claim petition being filed by the claimant under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above in para 1 of this judgment.

4) Learned counsel for the appellant/Insurance Company submitted as under:-

i. that claimant himself was the driver of the Car and accident occurred due to collision between the Car and Tanker. As there was head on collision between the two vehicles, therefore, there was contributory negligence. The claimant himself was equally responsible for accident.

ii. That there is specific breach of policy and there was no driving licence with the driver of the offending vehicle and after the award passed by the learned Tribunal some documents are obtained from Investigating Officer and <u>I.A. No. 3</u> in this appeal under Order 41 Rule 27 of C.P.C. for taking the documents <u>Annexure A to F</u> on record has been filed.

iii. Learned Counsel for the appellant further submits that he has filed application under Order 41 Rule 27 of C.P.C. for bringing on record the particulars of driving licence of the driver of offending vehicle/Tanker as Annexure A & B to the said application and the same may be taken on record and the application dated 2707/2013 filed by respondent No. 2 & 3 for owner and driver taking the documents on record as Annexure-R/2/1 is liable to be rejected.

iv. That income of the claimant is not established by leading cogent evidence and loss of income due to alleged permanent disability, is not proved and learned Tribunal also committed illegality in considering the functional disability at 45% and same is on higher side. It can be reduced appropriately looking to the injury, business and job of the claimant.

5) Learned counsel for respondent No. 2 & 3 /owner and driver opposes the contention made by the learned counsel for the appellant. He submitted that documents regarding the driving license is seized by the investigating officer in criminal case were submitted before the Tribunal. Therefore, the learned Tribunal rightly fastened the liability upon Insurance Company. He also submitted that alongwith application under Order 41 Rule 27 of C.P.C. document of driving licence particular also submitted in this appeal. Therefore, the document may be taken on record. No any breach of policy is caused by the owner of the vehicle and driving licence held by the driver of the offending vehicle was valid and effective at the time of accident. Therefore, there is no any substance in appeal learned Tribunal rightly fastened the liability upon Insurance Company and there is just and proper compensation awarded in favour of the claimant and therefore, there is no need for any interference in the award.

6) Learned counsel for the claimant/respondent No. 1 supports the award.

7) Heard on the appeals and application I.A. No. 03 and application dated 27/07/2013 filed by appellant and respondents No. 2 & 3 under Order 41 Rule 27 of C.P.C. respectively. Perused the record alongwith impugned award.

8) Learned counsel for the appellant/Insurance Company submitted the document Annexure-B i.e. particular of driving licence was already sent to the counsel of the Insurance Company who appeared before the Tribunal but unfortunately the document was misplaced and could not be produced before the Tribunal. Therefore, the driving licence particulars which is necessary for adjudication of the issue of breach of policy is required to be taken on record. Learned counsel for respondents opposed the above contention made by the counsel for appellant and supported the application filed by them under Order 41 Rule 27 of C.P.C. and submitted that the owner and driver have already submitted the documents regarding the driver of the offending vehicle having effective driving licence at time of accident. It needs to be taken on record also.

9) Considering the facts and circumstances of the case, the fact that claim petition was filed on 25/06/2010 before the Tribunal, Non-applicant No. 3 Insurance Company appeared before the Tribunal on 6/10/2010, the trial was going on before the Tribunal for considerable period of 3 years and award was passed on 26/03/2013 and during this long period neither the Insurance Company nor the owner made any sincere effort to file the documents which they are seeking to file before this Court, keeping in view the provisions of Order 41 Rule 27 of C.P.C. this Court is of the opinion that there is no sufficient ground for allowing the applications under Order 41 Rule 27 of C.P.C. filed by the appellant and the respondent driver and owner of the

vehicle. Accordingly, both the applications are rejected.

10) Now the case is decided on merits as per available evidence on record.

11) Regarding the contributory negligence on part of claimant, no any evidence has been adduced by the appellant/non-applicant No. 3 in this case. Claimant injured examined himself and Ex. P-2 FIR is lodged against Non-applicant No. 1, who is the driver of the offending vehicle and as per Ex. P-1 charge sheet is filed against the driver of offending Tanker. Therefore, without any evidence, it cannot be considered that the claimant is liable for contributory negligent, there is no any evidence on record to consider this fact the driver of the Car/claimant is liable for any contributory negligence, therefore, contention made by the appellant counsel has no substance.

12) So far as the issue of driving licence is concerned no any evidence has been adduced by the Insurance company to prove that driver of the offending vehicle Non-applicant No. 1 was not having a valid and effective licence on the date of accident. On the contrary as per Ex. P-1 Charge Sheet was filed against non-applicant No. 1 under section 279, 337 and 338 of I.P.C. only. In the Charge Sheet it has been mentioned that apart from other document of the vehicle driving license of driver/non-applicant No. 1 was also seized. As per Seizure Memo Ex. P-9 driving licence of non-applicant No. 1 was seized by the Police. Thus considering the facts and circumstances of the case, the oral and documentary evidence available on record, the fact that no evidence has been adduced by the Insurance Company to prove that the non-applicant no. 1 was not having a valid and effective driving license, this Court is of the opinion that the Tribunal was fully justified in holding that the Insurance Company has failed to prove the breach of policy conditions and fastening liability upon Insurance Company.

13) Learned Counsel for the appellant specifically argued that there is no any loss of income proved by the claimant regarding his permanent disability. It is not disputed by the party, the claimant was working as a transporter, as per report of Doctor Ex. P-72, 45% permanent disability is caused to claimant due to injury sustained in the accident and AW-03 Doctor Rudra Pal Singh Kanwer also proved the document Ex. P-72 issued by the Medical Board of the District Hospital, Korba. Thus having regard to the nature and extent of injury suffered by the claimant 45% disability caused to him as the medical reports Ex. P-24, Ex. P-37, the nature of job of the claimant, the evidence of AW-03 Dr. Rudra Pal Singh Kanwer this Court is of the opinion that the Tribunal was justified that due to injury sustained by the claimant he has suffered loss of income for which he needs to be compensated. The assessment of compensation by the Tribunal appears to be based on proper appreciation of the entire evidence available on record and being so, there is no scope for reduction of compensation in this appeal.

14) In the result, the appeal filed by the appellant being without any substance is liable to be dismissed and is, accordingly, dismissed.

-Sd/-
(Gautam Chourdiya)
Judge

Chandrakant