NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 1363 of 2019

- Branch Manager, The Oriental Insurance Company Ltd. Branch Office, Rama Trade Centre, Rajiv Plaza, In Front Of Old Bus Stand, Bilaspur, Tahsil And District- Bilaspur, Chhattisgarh.

---- Appellant

Versus

1. Udai Pratap Singh S/o Late Hardayal Singh Aged About 23 Years R/o N.L. Sidar, Plot No. 799/04, Gulab Nagar, Mopka, P.S.- Sarkanda, Tahsil And District- Bilaspur, Chhattisgarh, Presently R/o Village Faraswani, House No. 312/02, Ward No. 10, District- Janjgir Champa, Chhattisgarh Pin No. 495688.
2. Sanjay Kumar Kurre S/o Pardeshi Ram Kurre Aged About 25 Years R/o Satya Nagar, Near Murra Factory, Ameri, Tifra, Bilaspur, P.S.- Sirgitti, Tahsil And District- Bilaspur, Chhattisgarh... Driver Of Tractor No. Cg-10d-6888 And Trolley No. C.G.-10d-7868,
3. Shridhar Sahu S/o Late Nandram Sahu Aged About 40 Years R/o Ashok Nagar, Sarkanda, P.S.-Sarkanda, Tahsil And District- Bilaspur, Chhattisgarh Owner Of Tractor No. CG-10G-6888 And Trolley No. CG-10D-7868. **---- Respondents**

For Appellant: Shri Hanuman Prasad Agrawal, Advocate.
For Respondents: None.

Single Bench:Hon'ble Shri Sanjay Agrawal, J

Award On Board

26.07.2019

1. This Miscellaneous Appeal has been preferred by Non-applicant No.3/the Oriental Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') questioning the legality and propriety of the award dated 15.04.2019 passed by the Third Additional Motor Accident Claims Tribunal (hereinafter referred to as 'the Claims Tribunal'), Bilaspur in Claim Case No.760/2017, by which, the learned Claims Tribunal while allowing the claim in part has fastened the

liability upon the insurance company.

2. Briefly stated the facts of the case are that on 27.10.2016, the Applicant Uday Pratap Singh was going to the college along with his brother Ramakant Markam by his motorcycle bearing its registration number CG-10-EQ-6902 while sitting behind him as a pillion rider and as soon as they reached near Indira Vihar Gate at Nutan Chowk, Bilaspur, it was dashed vehemently by the offending vehicle “Tractor” attached with its trolley bearing its registration numbers CG-10-D-6888 and CG-10-D-7868 respectively from its opposite side. It was pleaded in the Claim Petition that at the relevant time, the offending vehicle was being driven rashly and negligently by its driver, namely, Sanjay Kumar Kurre, Non-applicant No.1, owned by Non-applicant No.2 Shridhar Sahu and which was insured with the Appellant/Insurance Company. Owing to the alleged accident, the Applicant sustained serious injuries and admitted into the hospital immediately. It is pleaded further in the Claim Petition that the Applicant is studying B.Com, III year and used to earn Rs.3000/- (Rupees Three Thousand only) per month by way of tuition and thus claimed total amount of compensation to the tune of Rs.7,50,000/- (Rupees Seven Lacs Fifty Thousand only).

3. The owner and the driver of the vehicle in question were treated ex parte while Non-applicant No. 3/Insurance Company contested the claim mainly on the ground that the driver of the offending vehicle was not holding the valid and effective driving licence and it was being plying without any valid permit in utter violation of the insurance policy, therefore, the Insurance Company cannot be held liable.

4. After considering the evidence led by the parties, it has been held

by the Claims Tribunal that the alleged accident occurred on 27.10.2016 due to rashness and negligent driving of the driver of the offending vehicle, by which, the Applicant sustained serious injuries. It held further that the Insurance Company has failed to prove that the vehicle in question was being used in utter violation of the insurance policy and as such while allowing the claim in part and that by fastening liability upon the Insurance Company awarded total sum of Rs. 1,56,804 (Rupees One Lac Fifty Six Thousand Eight Hundred and Four only) with 6% interest per annum from the date of filing of the claim petition till its realization.

5. Being aggrieved, Non-applicant No.3/Insurance Company has preferred this appeal. Shri Agrawal, learned counsel for the Appellant submits that the award impugned, as passed by the Claims Tribunal holding that the vehicle in question was not being used with valid permit, is apparently contrary to law. He submits further that the owner and the driver of the vehicle in question were ex parte, therefore, an application was made before the concerned trial Court for summoning the owner in order to ascertain whether the vehicle in question was being plied with valid permit or not. However, without considering the said application in its proper manner, the Claims Tribunal has committed an illegality in fastening the liability upon the Insurance Company.

6. I have heard learned Counsel for the Appellant and perused the entire record carefully.

7. The main contention of the Non-applicant No.3/Insurance Company herein is that the vehicle in question was being used in utter violation of the insurance policy as it was being plied without any valid permit, and therefore, no liability as such could be fastened upon the Insurance

Company.

8. In order to establish the aforesaid fact, the burden was heavily upon the Insurance Company to prove that the vehicle in question was being used without any valid permit. However, from perusal of the record, it appears that the Appellant/Insurance Company has utterly failed to establish the said fact. It is the duty of the Insurance Company to get it verified from the concerned Regional Transport Authority, particularly, when the owner was ex parte and it was not possible for the claimant to produce the same. However, no effort as such was ever made by the Appellant/Insurance Company nor has tried to call any of the officers of the concerned Regional Transport Authority to prove the said fact. Even no application was made in this regard before the concerned Authority in order to ascertain this fact that whether any permit was issued with regard to the said offending vehicle or not. In such circumstances, it is difficult to hold that the vehicle in question was being used without any permit, as alleged by the Appellant/Insurance Company.

9. At this juncture, the principles laid down by the Supreme Court in the matter of ***Kamala Mangalal Vayani and others*** Vs. ***United India Insurance Company Limited and other*** reported in **(2010) 12 SCC 488:2010 ACJ 1441** are to be seen. That is the case where the owner-cum-driver was proceeded ex parte and it was not in dispute that the vehicle in question was not insured and the Claimants cannot be expected to prove the fact that it had a valid permit or to prove the fact the owner of the vehicle had not committed the breach of any of the terms and conditions of the policy. In that factual scenario, it was observed by the Supreme Court that the insurer, who denied its liability, was required to

establish the fact that it had no valid permit and observed further at paragraph 7 as under:-

> **7.** It was open to the insurer to apply to the transport authority concerned for a certificate to show the date on which the permit was granted and that as on the date of the accident, the vehicle did not have a permit, and produce the same as evidence. It failed to do so.

10. Here in the instant case, as observed herein above, the insurer who is trying to deny its liability mainly on the ground that the vehicle in question had no valid permit has failed even to apply before the concerned Authority for obtaining the certificate in order to show that the alleged offending vehicle was being used without permit. In such circumstances and based upon the aforesaid principles, the Claims Tribunal has not committed any illegality in fastening the liability upon the Appellant/Insurance Company. The finding so recorded as such deserves to be and is hereby affirmed.

11. In view of the foregoing discussions, I do not find any substance in this appeal. The appeal being devoid of merits is, accordingly, dismissed at admission stage itself. No order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE

Nikita