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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 271 of 2016

- The Oriental Insurance Co. Ltd. Through its Divisional Manager, Divisional Office, Ist Floor, Rama Trade Centre, Near Bus Stand, Bilaspur, Civil and Revenue District Bilaspur (C.G.) PIN - 495001

---- Appellant/Non-applicant No.4/Insurer

Versus

1. Smt. Anarkali @ Annu W/o Ajay Kumar Jaiswal, aged about 30 years, R/o Near Munnulal Shukla School, Gondpara, P.S. City Kotwali, Tahsil and District Bilaspur (C.G.)

   (Claimant)
2. Prakash Kumar Pathak, S/o Umakant Pathak, Driver, aged about 25 years, At Block Road, Takhatpur, P.S. Takhatpur, District Bilaspur, **Presently** at SECL Head Quarter, Bilaspur, P.S. Sarkanda, District Bilaspur (C.G.)
   (Driver/Non-applicant No.1)
3. M/s. Jeevan Security Service, Proprietor Col. M.M. Dutta, R/o Near J.J. Hospital, Kamal Bhawan, Bilaspur, District Bilaspur (C.G.)
   (Owner/Non-applicant No.2)
4. Kuldeep Singh, S/o late Sharan Singh, SECL Head Quarter, Bilaspur, Supervisor, SECL Security, Bilaspur, P.S. Sarkanda, District Bilaspur (C.G.)
   (Non-applicant No.3)

---- Respondents

And

Miscellaneous Appeal (Civil) No. 302 of 2016

1. Smt. Anarkali @ Annu W/o Ajay Kumar Jaiswal, aged about 30 years, R/o In front of Munnulal Shukla School, Gondpara, P.S. City Kotwali, Tahsil and District Bilaspur (C.G.)

---- Appellant/Claimant

Versus

1. Prakash Kumar Pathak S/o Umakant Pathak, Aged about 25 years, R/o Block Road Takhatpur, District Bilaspur (C.G.)
   Presently S.E.C.L. Head Office Bilaspur, P.S. Sarkanda, District Bilaspur (C.G.)
   (Driver of Tata Magic bearing No. M.P. 66-T/0343/Non-applicant No.1)
2. M/s Jeevan Security Services, Proprietor Col. M.M. Datta, R/o Kamal Bhavan near J.J. Hospital, Bilaspur, District Bilaspur (C.G.)
   (Owner of Tata Magic bearing No. M.P. 66-T/0343/Non-applicant No.2)
3. Kuldeep Singh S/o Late Sharan Singh, S.E.C.L. Head Office Bilaspur, Supervisor S.E.C.L. Security Bilaspur, P.S. Sarkanda, District Bilaspur (C.G.)
   (Non-applicant No.3)

4. Branch Manager, The Oriental Insurance Company Limited, Branch Office-First Floor Rama Trade Centre, Opposite to Rajev Plaza, Bus Stand, Bilaspur, District Bilaspur (C.G.)
(Non-applicant No.4)

---- Respondents

For Claimant	:	Shri Rajesh Jain, Advocate
For Non-applicants No.1 to 3	:	None
For Insurance Company/ Non-applicant No.4	:	Shri R.N. Pusty, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

27.02.2019

1. As both above appeals arise out of the accident occurred on 26.10.2014 involving the vehicle Tata Magic bearing registration No. MP-66/T/0343 (hereinafter referred to as the 'offending vehicle'), they are being disposed of by this common judgment.

2. M.A.(C) No. 271 of 2016 has been filed by the Insurance Company/non-applicant No.4 challenging the liability fastened upon it. M.A.(C) No. 302 of 2016 has been filed the Claimant seeking enhancement of compensation. Both appeals arise out of common award dated 23.11.2015 passed by the Fourth Additional Motor Accident Claims Tribunal, Bilaspur (C.G.) in Claim Case No. 109/2015 awarding compensation in favour of the Claimant of Rs.1,02,000/- with interest @ 6% per annum from the date of claim application till realization and fastening liability upon the non-applicant No.4/Insurance Company to pay compensation to the Claimant.

3. Brief facts of the case are that on 26.10.2014 while Claimant Anarkali @ Annu was on her way to her relatives' house at Devnandan Bilaspur on foot from Gondpara, Bilaspur, at that time at Kapilnagar turning near Seepat Road, Bilaspur, non-applicant No. 1 driver of the offending vehicle (Tata Magic bearing registration No. MP-66/T/0343), driving the same in a rash and negligent manner, dashed the Claimant. As a result thereof, the Claimant sustained grievous injuries on her hands, legs, head and waist.

4. At the time of accident, non-applicant No. 1 was driver, non-applicant No. 2 was owner, non-applicant No.3 was operator of the offending vehicle which was insured with non-applicant No.4.

5. In M.A.(C) No. 271 of 2016 filed by the Insurance Company:

Shri R.N. Pusty, learned counsel for the Insurance Company/non-applicant No.4 submits that on the date of accident the driver of the offending vehicle was not having a valid and effective driving licence as the vehicle in question was a transport vehicle whereas the driver was having licence for LMV and he had no licence to drive a transport vehicle and/or a passenger carrying commercial vehicle. He further submits that the offending vehicle was insured as passenger carrying commercial vehicle. As such, on account of there being breach of policy conditions, the Tribunal was not justified in fastening liability on the Insurance Company.

Shri Rajesh Jain, learned counsel for the Claimant, opposes the contention made by learned counsel for the Insurance Company. He placed reliance on the decision of Hon'ble Supreme Court in the matter of ***Mukund Dewangan*** Vs. ***Oriental Insurance Company Limited, (2017) 14 SCC 663***.

6. In M.A.(C) No. 302 of 2016 filed by the Claimant:

Shri Rajesh Jain, learned counsel for the Claimant submits that at the time of accident, the Claimant was taking tuition and was earning Rs.5,000/- per month and due to the accident, the Claimant sustained injuries on various parts of the body and her work had been suffered for about three months, but the Tribunal has not awarded any amount to this effect. He further submits that the amount of Rs.5,000/- towards pain & suffering awarded by the Tribunal is on the lower side and needs to be enhanced suitably.

On the other hand, Shri R.N. Pusty, learned counsel for the Insurance Company submits that the Tribunal has rightly assessed compensation on the basis of evidence available on record and therefore, the same needs no interference by this Court.

7. Heard learned counsel for the parties and perused the material available on record.

8. The issue involved in the appeal i.e. M.A.(C) No. 271 of 2016 has already been considered by the Hon'ble Supreme Court in the matter of *Mukund Dewangan* (supra) whether a driver who is having a licence to drive the "light motor vehicle" is competent to drive "transport vehicle" of that class in absence of such an endorsement, and it was held therein as under:-

> "Held, the effect and amendment of Form 4 by insertion of "transport vehicle" related only to 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 – There was 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 – Further held, even otherwise the Form could not control the substantive provisions carved out in Ss.10(2)(d) and 10(2)(e) and the interpretation of the Form has also to be in tune with the Statement of Objects & Reasons and the provisions of the Act inserted by virtue of the amendment- Interpretation of Statues - Basic Rules – Harmonious Construction – Subordinate/Delegated Legislation/Rules Under the Act – Central Motor Vehicles Rules, 1989, Form 4 and R.14 (before and after 28.03.2001)."

9. Applying the ratio of law laid down by the Supreme Court in the matter of *Mukund Dewangan* (supra), it is apparent that the driver of the vehicle in question was holding the valid and effective driving licence and even in absence of any endorsement as such in his driving licence authorizing him to drive the said transport vehicle, it cannot be held that he was not possessing valid and effective driving licence at the relevant time. Therefore, this Court finds no substance in the appeal i.e. M.A.(C) No. 271 of 2016 preferred by the Insurance Company and the same is liable to be dismissed.

10. M.A.(C) No. 302 of 2016:

As regards income of the Claimant, though the Claimant has pleaded that she is taking tuition and was earning Rs.5,000/- per month and however, no evidence in support thereof has been adduced. Thus, considering the gravity of the injuries suffered by the Claimant, the period of hospitalization and medical documents available on record, this Court is of the opinion that the Claimant is entitled for Rs.15,000/- towards loss of income for three months @ Rs.5,000/- per month on notional basis.

11. Further, considering that as per Ex.-A-21, the Claimant was hospitalized in Apollo Hospitals, Bilaspur from 27.10.2014 to 01.11.2014, she would have suffered physical & mental pain during hospitalization, this Court is of the view that the amount of Rs.5,000/- awarded by the Tribunal towards pain & suffering deserves to be enhanced to Rs.10,000/-. Thus, the Claimant/Appellant is entitled for compensation in the following manner:-

manner:-

Sl.No.	**Heads**	**Calculation (In rupees)**
1.	For medical expenses	Rs.87,000/- (as awarded by the Tribunal)
2.	For special diet	Rs.5,000/- (as awarded by the Tribunal)
3.	For conveyance	Rs.5,000/- (as awarded by the Tribunal)
4.	For pain & suffering	Rs.10,000/-
5.	Loss of three months income to the Claimant @ Rs.5,000/- per month	Rs.15,000/-
	Total Compensation	**Rs.1,22,000/-**

12. Since the Tribunal has already awarded Rs.1,02,000/-, after deducting the same from the above amount, the Claimant/Appellant is held entitled for additional compensation of Rs.20,000/- with interest @ 6% per annum from the date of application till its realization.

13. In the result:

- M.A.(C) No. 271 of 2016 preferred by the Insurance Company being without any substance is hereby dismissed.

- M.A.(C) No. 302 of 2016 preferred by the Claimant is allowed in part. The impugned award is hereby modified to the extent that the Claimant is held entitled for an additional compensation of Rs.20,000/- with interest @ 6% per annum from the date of application till its realization. However, rest of the conditions of the impugned award shall remain intact.

14. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

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