

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 968 of 2013**

- Smt. Pano Bai W/o Budhan Bareth Aged About 30 Years R/o village Andola, Post- Dahiya, P.S. Kosir, Distt. Raigarh, Chhattisgarh

---- Appellant**Versus**

1. Khaderan Singh, S/o Kapil Singh Rajput R/o Jutmil Gate, Raigarh, Tah. And Distt. Raigarh C.G., At Present R/o Thru- Ram Prasiddh Singh, S/o Devnandan Singh, R/o Kodatarai, Raigarh, Tah. And Distt. Raigarh Chhattisgarh (Driver of offending vehicle Bus No.CG 13-D 0910)
2. Ram Prasiddh Singh S/o Devnandan Singh R/o Kodatarai, Raigarh, Tah. And Distt. Raigarh Chhattisgarh (Owner of offending vehicle Bus No.CG 13-D 0910)
3. The Oriental Insu.Co.Ltd. S/o Thru- Divisional Manager, The Oriental Insu.Co.Ltd., Branch Office Sande Market, Raigarh, Tah. And Distt. Raigarh C.G., District : Raigarh, Chhattisgarh (Insurer of offending vehicle Bus No.CG 13-D 0910)

---- Respondents**MAC No. 1128 of 2013**

- Ramprasidhh Singh S/o Devnandan Singh Aged About 56 Years, Occupation- Vehicle owner, R/o Village Kodatarai, Tah and distt Raigarh, Chhattisgarh

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

1. Smt.Pano Bai, W/o Budhan Bareth Aged About 30 Years R/o village- Andola, Post- Dahiya, P.S. Koshir, Tah. Sarangarh, Distt. Raigarh, Chhattisgarh ---Claimant
2. Khaderan Singh S/o Kapil Singh Rajput R/o Jute Mill Gate, Raigarh, Tah. And Distt. Raigarh C.G., At Present C/o Ramprasiddh Singh, S/o Devnandan Singh, Vehicle owner, Age- 56 Yrs, R/o Kodatarai, Tah. Raigarh, Distt. Raigarh Chhattisgarh (Driver)
3. The Oriental Insu.Company S/o Thru- Divisional Manager, The Oriental Insu.Co.Ltd., Branch Office- Sunday Market, Raigarh, Tah. And Distt. Raigarh, Chhattisgarh (Insurer)

----Respondents

For Appellant/claimant	:	Shri Amiyakant Tiwari, Advocate
For Respondent/Owner	:	Shri Amit Sharma, Advocate
For Respondent/Insurance Company	:	Shri Anumeh Shrivastava, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
03.07.2020

1. These two appeals are arising out of same impugned award passed on 11.09.2013 in Claim Case No. 35 of 2009 by the Motor Accident Claims

Tribunal, Raigarh, Chhattisgarh (for short, 'Claims Tribunal') whereby learned Claims Tribunal allowed claim application in part and awarded total sum of Rs.83,953/- as compensation.

2. MAC-968 of 2013 is filed by the injured Claimant for seeking enhancement of amount of compensation awarded by learned Claims Tribunal and MAC-1128 of 2013 is filed by owner of Bus bearing No.CG 13 D-0910 (for short, 'offending bus') challenging fastening of liability upon him by the learned Claims Tribunal.

3. Facts relevant for disposal of these appeals are that on 25.04.2008 at about 10 am, offending bus driven by NA1-Khaderan Singh dashed a tractor standing on road side, due to which Claimant- Smt. Pano Bai who was sitting on the side of window in offending bus suffered grievous injuries over her left hand and during the course of treatment, her left hand was amputated from above elbow. Accident was reported to the concerned Police Station, based upon which criminal case was registered against NA1, driver of offending bus. Claimant filed application under Section 163A of the Motor Vehicle Act, 1988 (for short, '163A of the Act 1988') mentioning therein that due to amputation of her left hand above elbow, she suffered permanent disability and claimed Rs.5,02,000/- as compensation on different heads.

4. NA1/driver and NA2/owner of offending bus submitted reply to claim application, denying the fact of accident as pleaded in claim application. It was also pleaded that claimant suffered injuries on account of her own negligence. Claimant in her claim application pleaded that offending bus met with an accident with a Tractor-Trolley but driver and owner of Tractor-Trolley have not been arrayed as party to claim application, therefore, claim is not maintainable. On the date of accident, NA1/driver of offending bus was possessing valid and

effective driving license and offending bus was insured with Insurance Company/NA3. The Insurance Company is liable to satisfy the amount of compensation.

5. NA3/Insurance Company submitted reply to the claim application and denied all the pleadings of claim application. It was denied that claimant suffered accidental injuries causing permanent disability in the accident while sitting in offending bus. Insurance Company also denied the fact of NA1 to be the driver and NA2 to be owner of offending bus. It is further pleaded that NA1 was not having valid and effective driving license on the date of accident. There was breach of conditions of Insurance Policy.

6. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties, held that accident occurred due to rash and negligent driving of offending bus by NA1, ie driver of offending bus. Claimant suffered injuries while travelling on offending bus resulting in permanent disability. There was breach of conditions of Insurance Policy, as on the date of accident driver of bus was not possessing valid and effective driving license and fastened the liability to pay amount of compensation upon NA1 and 2, driver and owner of offending bus, while exonerating Insurance Company/NA3 awarded a sum of Rs.83,953/- as total compensation.

7. Shri Amiyakant Tiwari, learned counsel for the Claimant submitted that learned Claims Tribunal erred in not awarding any amount towards loss of income due to permanent disability but awarded only Rs.25,000/- towards pain and suffering on account of injuries suffered by the claimant. It is also submitted that learned Claims Tribunal has assessed loss of income due to permanent disability on lump-sum basis as Rs.25,000/-, which is erroneous in the facts and circumstances of this case, where claimant lost her left hand and in these facts of

the case, learned Claims Tribunal ought to have considered loss of income to the extent of 45% as disability assessed by Medical Board vide Disability Certificate Ex.P79. Learned Claims Tribunal also erred in awarding meagre amount on other heads. He prays for enhancement of amount of compensation suitably. He also submits that if Court comes to a conclusion that exoneration of Insurance Company is correct, then, a direction be issued of pay and recover against respondent/Insurance Company.

8. Per contra, Shri Amit Sharma, learned counsel appearing for owner of offending bus (NA2) submits that amount of compensation awarded to the claimant by the learned Claims Tribunal is just and proper in the facts and circumstances of the case. He also submits that claimant failed to prove her income and therefore, learned Claims Tribunal has not committed any error in assessing the amount of loss of income due to disability on lump-sum basis. It is submitted that owner of offending vehicle has preferred separate appeal MAC-1128 of 2013 challenging the fastening of liability upon him for satisfying amount of compensation on the ground that learned Claims Tribunal erred in not considering the driving license of NA1/driver of offending bus produced before learned Claims Tribunal as Ex.D1C. He also submits that the license Ex.D1c is issued by the competent authority but the respondent-Insurance Company has not proved that the license is fake or not valid and effective. He further contended that the Tribunal while taking note of Ex.D1c has erroneously recorded a finding that it was issued subsequent to the date of accident.

9. Shri Anumeh Shrivastava, learned counsel for the Insurance Company submits that amount of compensation awarded by learned Claims Tribunal is just and proper in the facts and circumstances of the case, particularly, when the claimant herself failed to prove her income. He further submitted that Insurance

Company sent the copy of license available on record for its verification from the licensing authority as mentioned therein, ie RTO Office, Hazaribagh and by its letter it was informed that license sent for verification is a fake license and the number mentioned in the driving license was issued in the name of some other person, not in the name of NA1, driver of offending vehicle, namely, Khaderan Singh. He further submits that impugned award passed by the learned Claims Tribunal after taking into consideration all the facts and circumstances of the case and the evidence placed on record by the respective parties, which does not call for any interference.

10. We have heard learned counsel for the parties and perused the record.

11. So far as Claimant's appeal (MAC-968 of 2013) for enhancement of amount of compensation of the impugned award is concerned, the claimant, in support of her claim, filed Ex.P1 Final Report, Ex.P2 FIR, Ex.P3 Seizure Memo, Ex.P6 to P.73 Medical prescriptions, test reports and medical bills, Ex.P74 X-ray report of Dr BR Ambedkar Memorial Government Hospital, Raipur, mentioning amputation of her left arm, Ex.P.78 Discharge ticket of the hospital and Ex.P79 Disability Certificate issued by District Medical Board, Raigarh. The accident is proved by the documents placed on record as Ex.P1 to P3, which are the documents of Criminal Case registered by concerned Police Station, mentioning the involvement of offending bus in the accident, in which the claimant was travelling as passenger. The plea of negligence of claimant as raised by learned counsel for NA1 and 2/driver and owner of offending bus is not to be considered in a case where application for claim of compensation is filed under Section 163A of Motor Vehicle Act, 1988.

12. To appreciate submission of learned counsel appearing for the claimant that she suffered amputation of her left hand which is proved by Ex.P78 Discharge Ticket of BR Ambedkar Hospital, Raipur and Ex.P74 X-ray report of the Hospital, wherein it was mentioned that the claimant suffered deformity and wound over her left elbow while travelling in bus and in process of treatment, amputated left stump. Disability Certificate, produced as Ex.P79 also mentions about the amputation of left hand.

13. Claimant was examined as AW1 to prove her case and further, to prove her Disability Certificate, she got examined by Dr SC Awasthi (AW3) Arthopedic Specialist, one of the members of District Medical Board, Raigarh. In his evidence Dr Awasthi stated that he has issued Disability Certificate to the extent of 45% permanent disability on account of amputation of her left hand above the elbow. So far as the percentage of disability mentioned in the certificate issued by the Medical Board and proved by Dr SC Awasthi AW3 is concerned, Part-II of Schedule under the Act 1923 prescribes 70% permanent disability in earning capacity, where amputation from tip of acromion to less than 11.43 below tip of olecranon. In the case at hand, looking to the medical evidence, medical prescriptions, discharge ticket, Disability Certificate and statement of Dr SC Awasthi, AW3, there is amputation of her left arm above elbow.

14. In view of above, percentage of disability mentioned by the District Medical Board and also considering the disability as provided under Part-II of the Schedule of the Act 1923, disability of the claimant can be taken to be 50% for the purpose of calculating loss of earning capacity.

15. Now, the question arises for consideration of this Court is, whether the income as pleaded by claimant in her claim application to be Rs.3,000/- per

month from earnings by selling of vegetables. Learned Claims Tribunal in paragraph-14 of the award have held that the appellant suffered 45% permanent disability and she definitely suffered loss of income. But learned Claims Tribunal awarded lump-sum amount of Rs.25,000/- by recording that appellant failed to prove her income as well as occupation.

16. Claimant/appellant has shown to be a married woman. She might have her family behind her and even if it is considered that appellant was only a house wife, then also, she has to discharge her obligations and duty towards her family of cleaning house, washing clothes, cooking and taking care of children and husband, apart from other family members.

17. Hon'ble Supreme Court in the matter of **Lata Badhawa and others Vs State of Bihar and others** reported in (2001) 8 SCC 197 has considered the issue of income of a housewife and held the income of a house wife as Rs.3,000/- per month. In this case, accident occurred in the year 1989 and the appeal was decided by Hon'ble Supreme Court in the year 2001.

18. In the case at hand, accident is of year 2008 and looking to the price index, cost of living and wage structure, income of claimant can be assessed as Rs.3,000/- as pleaded in the claim application for the purpose of computation of compensation to be awarded to her. We held that the claimant/appellant's loss of earning capacity will be 50%. Therefore, loss suffered by the claimant will come to Rs.1,500/- per month and Rs.18,000/- (1500 x 12) per annum. On the date of accident, appellant was aged about 35 years and therefore, appropriate multiplier would be 16. By multiplying yearly loss of income with 16, total amount of compensation towards loss of earning comes to Rs.2,88,000/-. As the claim is under Section 163A of Motor Vehicles Act, 1988, appellant will be entitled for a

sum of Rs.23,953/- towards medical expenses as awarded by learned Claims Tribunal. Further, Rs.5,000/- towards pain and suffering as provided under Schedule II of the Act, 1988. the total amount of compensation comes to Rs.3,16,953/- (288000 + 23,953 + 5000).

19. Now, we will consider the ground raised in MAC-1128 of 13, filed by NA-2/owner of offending vehicle with regard to fastening liability upon owner of offending vehicle and excluding the Insurance Company from its liability on the ground of fake license.

20. Learned Claims Tribunal has formulated specific issue- "Whether there was breach of conditions of Insurance Policy and NA3 is to be absolved from its liability and thereafter, proceeded to decide the issue on the basis of evidence available on record by respective parties".

21. NA2, owner of offending bus submitted reply to the claim application and only pleaded that on the date of accident, NA1/driver of offending bus was possessing valid and effective driving license.

22. Insurance Company in support of its plea that driver of offending bus was not possessing valid and effective driving license on the date of accident, has placed on record the verification report issued by the District Transport Office, Hazaribagh of driving license No.3/19/04/Hazaribagh in the name of Khaderan Singh. In that report, it is mentioned that the said license number was not issued in the name of Khaderan Singh. The said information was supplied to one Raghavendra Pratap Singh of Hazaribagh, Advocate, who was said to be the Investigator. The said document has been filed as Ex.D5. The Investigator has written a letter Ex.D6 to the Branch Manager, Oriental Insurance Company, Hazaribagh, mentioning that driving license which has been sent for verification

was not issued in the name of Khaderan Singh and is said to be fake on that basis and further mentioned in the letter that the said driving license was issued in favour of one Hiranman Mahato. Issuance of driving license in the name of Hiranman Mahato has also been stated in Ex.D7. Raghavendra Pratap Singh, who is investigator and Advocate was examined as NAW3/1 on behalf of Insurance Company to prove documents Ex.D4 to D7. He was cross-examined by the counsel appearing on behalf of claimant at length. But his evidence has not been remitted from the evidence recorded in chief. In his evidence, he has stated that he gave an application for verification of license No.3/19/04.

23. From the above documentary evidence, it appears that the license has been sent for verification and verified, issued in the name of one Hiranman Mahato. The license No.3/19/04.

24. NA1/Driver of offending bus entered into the witness box and examined himself, who in his evidence stated that he is possessing driving license to drive the offending bus as Ex.D1 and marked as Ex.D1c. In cross-examination, he admits that his name is Rakesh @ Khaderan Singh and further that earlier he has got the license prepared in the name of Khaderan Singh from RTO Office, Hazaribagh, Bihar. The license was prepared by him through an agent. He has given his name, address and other particulars to the agent and on the basis of which license was given to him. He also admits that he has not signed any license form. He further submits that subsequently, he came to know that his license issued from the RTO Office, Hazaribagh was fake. He also admits that he is Matric pass, but in that certificate, his name was not mentioned as Rakesh Singh @ Khaderan Singh, but only as Rakesh Singh. He further says that in document Ex.D1, he has not got his name recorded as Rakesh Singh @

Khaderan Singh. The NA-1, Driver has placed on record to be his license only Ex.D1c and not the other one.

25. Perusal of document Ex.D1c on the basis of which driver of offending bus NA1 stated that he was having valid driving license which was issued from the RTO Office, Shahdol, MP on 27.06.1999 to drive LMV/Non-transport. For Heavy Transport vehicle, date of issue has been shown as 31.10.2008.

26. In the case at hand, owner of offending bus has pleaded in his reply to claim application that driver/NA1 was possessing valid and effective driving license. By way of amendment in the reply to claim application, NA2/owner of offending bus stated that NA1 was having driving license issued from RTO office, Shahdol, MP, which is a valid and effective driving license and therefore, Insurance Company is liable to satisfy the amount of compensation. As we have discussed in preceding paragraphs, the driving license issued by the RTO Office, Shahdol, MP, though issued in the year 1999, but authorising him to drive LMV and endorsement on it to drive Heavy Transport. This license which was produced on record by NA1 has not been verified by the Insurance Company nor objected to it to be a fake driving license or the license not issued from the RTO Office, Shahdol. Apart from the above, registration certificate of offending bus would show that unladen weight of vehicle is 4560 kg and gross weight of vehicle is 5700 kg. In the said certificate under the class of vehicle it has been mentioned that 'Light Public Service Vehicle'.

27. Under the Motor Vehicle Accident 1988 'Light Motor Vehicle' has been defined in Section 2 (21) of the Motor Vehicle Act, 1988, which reads as under:

“light motor vehicle” means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms.”

28. In view of aforementioned definition of LMV and the description of offending bus mentioned in the registration certificate, it is clear that offending bus comes within the category of LMV and as per the driving license placed on record as Ex.D1c also mentioned about the driving license, issued on 27.06.99 for LMV. Learned Claims Tribunal has considered that driving license produced on record as Ex.D1 to be issued in the year 2010, whereas, the accident was of prior date and have exonerated the Insurance Company, holding that on the date of accident, driver of offending bus was not possessing valid and effective license.

29. NA1 has placed on record driving license issued in the name of Rakesh Kumar Singh while recording evidence, mentioning his name as Rakesh Kumar Singh @ Khaderan Singh. To prove the same, he himself is Rakesh Singh though named in the claim application as Khaderan Singh only has placed on the record the copy of claim application bearing No.80/11 and 81/11 as Ex.D2 and Ex.D3 in which his name has been shown as Rakesh Singh @ Khaderan Singh as NA1 and Shri Ram Prasadhh Singh, NA2/owner of offending bus in the present claim case to be owner of the offending bus. Bus number in those claim cases is also same as of this case ie CG13D-0910 These evidences brought on record by NA1, driver of offending bus was not controverted by the Insurance Company by placing any admissible piece of evidence on record.

30. In view of aforementioned un-controverted evidence placed on record by NA1, driver of offending bus in his defense that he is possessing valid and effective driving license to drive LMV since 1999 and also that he is the person

whose name is Rakesh Kumar Singh @ Khaderan Singh, in our opinion, learned Claims Tribunal committed error in dis-believing the license Ex.D1c issued by the RTO Office, Shahdol, MP on the ground that the date of issuance is 26.02.2010, but have failed to consider the original date of issuance mentioned in that license in the column –27.06.1999 and have considered the date of issuance of license card and arrived at a wrong finding that Ex.D1c is issued post the date of accident. Currency of license is envisaged under Section 14 of the Act of 1988. Section 2 (b)(1)(a) prescribes for effective period of license for twenty years or until the holder attains age of fifty years for any other license than of transport vehicle and carrying goods of dangerous hazardous nature.

31. Hon'ble Supreme Court in the matter of **Mukund Dewangan** (supra) while considering the issue whether the person holding license with an endorsement of LMV can be held to be authorised to drive any other type of vehicle ie any light transport vehicle, held as under:

“60. Thus we answer the questions which are referred to us thus:

60.1 ‘Light motor vehicle’ as defined in [section 2\(21\)](#) of the Act would include a transport vehicle as per the weight prescribed in [section 2\(21\)](#) read with [section 2\(15\)](#) and [2\(48\)](#). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of [Amendment Act No.54/1994](#).

60.2 A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, ‘unladen weight’ of which does not exceed 7500 kg. and holder of a driving license to drive class of “light motor vehicle” as provided in [section 10\(2\)\(d\)](#) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the “unladen weight” of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle

class as enumerated above. A licence issued under [section 10\(2\)\(d\)](#) continues to be valid after [Amendment Act](#) 54/1994 and 28.3.2001 in the form. 60.3 The effect of the amendment made by virtue of Act No.54/1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of [section 10\(2\)](#) which contained “medium goods vehicle” in [section 10\(2\)\(e\)](#), medium passenger motor vehicle in [section 10\(2\)\(f\)](#), heavy goods vehicle in [section 10\(2\)\(g\)](#) and “heavy passenger motor vehicle” in [section 10\(2\)\(h\)](#) with expression ‘transport vehicle’ as substituted in [section 10\(2\)\(e\)](#) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of [section 10\(2\)\(d\)](#) and [section 2\(41\)](#) of the Act i.e. light motor vehicle. 60.4 The effect of amendment of Form 4 by insertion of “transport vehicle” is related only to the 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 as it was and has not been changed and there is 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.”

32. In light of law laid down by Hon’ble Supreme Court and the facts and circumstances of the case as discussed in preceding paragraphs, finding recorded by learned Claims Tribunal with regard to issue No.5 and exonerating Insurance Company from its liability is not sustainable and it is liable to be and is hereby set aside.

33. In view of above, now the liability to satisfy the amount of compensation will be upon the Insurance Company.

34. In the result,

a) MAC-1128 of 2013 is allowed and the Insurance Company is held to be liable to satisfy the amount of compensation;

b) MAC-968 of 2013 is allowed in part and it is held that the appellant/claimant to be entitled for a total amount of compensation of Rs.3,16,953/- (Rs.2,88,000/- towards loss of earning, Rs.23,953/-

towards medical expenses, Rs.10,000/- towards pain and suffering), instead of Rs.83,953/-.

c) Amount of compensation will carry 6% interest from the date of filing of claim application till its realization.

35. The impugned award passed by learned Claims Tribunal is modified to the extent as indicated above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge