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HIGH COURT OF CHHATTISGARH BILASPUR

M. A. (C) No. 280 of 2014

(Arising out of award dated 12.02.2014 passed in Claim Case No.54 of 2013 by the Additional Member of the Additional Motor Accident Claims Tribunal, Ramanujganj, District Balrampur-Ramanujganj, (C.G.).

1. Shivnarayan Singh S/o Ramvrisha Singh aged about 32 years, R/o Village Kevali, P.S. Ramanujganj, Civil District Surguja, Revenue District Balrampur-Ramanujganj, District Balrampur-Ramanujganj, C.G.

2. Ram Chandra Gupta S/o late Sarju Gupta, aged about 48 years, R/o Village Navadih, P.S. Trikunda, Civil District Surguja, Revenue District Balrampur-Ramanujganj, District Balrampur-Ramanujganj, C.G.

---- Appellants

Versus

1. Chandrama Yadav S/o Ishwar Yadav, aged about 30 years, R/o Village Trikunda, P.S. Trikunda, Civil District Surguja, Revenue District Balrampur-Ramanujganj, District Balrampur-Ramanujganj, C.G.
2. National Insurance Company Limited through Branch Manager, Branch Kamthi Line, Rajnandgaon, P.S. Rajnandgaon, Civil & Revenue District Rajnandgaon, District Rajnandgaon, C.G.

---- Respondents

For Appellants : Shri Manoj Paranjpe, Advocate
For Respondent No.1 : Shri C. Jayant K. Rao, Advocate
For Respondent No.2 : Shri Shivendu Pandya, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Parth Prateem Sahu, Judge

22.07.2020

1. This is owner's appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the impugned award dated 12.02.2014 passed by the Additional Member of the Additional Motor Accident Claims Tribunal, Ramanujganj, District Balrampur-Ramanujganj, (C.G.). (hereinafter referred to as 'Claims Tribunal') in Claim Case No.54 of 2013 whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.87,900/- as compensation in an injury case.

2. Brief facts relevant for disposal of this appeal are that, on 10.03.2010, non-applicant No.1 while driving the Tractor bearing registration No.CG15/A/7507 (hereinafter referred to as 'offending vehicle'), dashed the claimant and in that accident, the claimant suffered grievance injuries over his person. The accident was reported to the concerned police station and after completion of investigation, the charge-sheet/final report was also filed before the Court of Judicial Magistrate.

3. The injured/claimant filed claim application under Section 166 of the M.V. Act seeking compensation of Rs.35,89,015/- against the driver, owner and Insurance Company of offending vehicle.

4. The appellants who are non-applicants No.1 and 2 filed reply to claim application denying the fact of accident. Respondent No.1 was driving the motorcycle without there being any license and he met with an accident due to his own negligence without coming into the contact with the Tractor. The compensation claimed is highly exaggerated. The owner and Insurance Company of the motorcycle have not been arrayed as party respondents in the claim application. On the date of accident, non-applicant No.1/driver of the offending vehicle was possessing valid and effective driving license to drive the vehicle.

5. Non-applicant No.3/Insurance Company submitted reply to claim application pleading therein that on the date of accident, the offending vehicle was not insured with the Insurance Company and no insurance policy was issued in favour of the Tractor. The Tractor came to be insured only for the period from 12.03.2010 to 11.03.2011 for agricultural purpose and the Insurance Company is not liable to pay any amount of compensation.

6. Learned Claims Tribunal on appreciation of the pleading and evidence placed on record by respective parties held that the offending vehicle was being driven by non-applicant No.1 on 10.03.2010 and caused accident by his rash and negligent driving, there was no negligence on the part of the injured, permanent disability could not be proved and on the date of accident, the offending vehicle was not insured with the Insurance Company and awarded a total compensation of Rs.87,900/- and fastened the liability upon the appellants to satisfy the amount of compensation.

7. Shri Manoj Paranjpe, learned counsel for the appellants submits that the appellant No.2/owner of the offending vehicle has paid the amount to the agent of the Insurance Company and the amount of premium deposited on 10.03.2010, which is evident from Ex.D/2 i.e. copy of receipt of premium amount issued by the Respondent-Insurance Company, but the learned Claims Tribunal has failed to consider the document Ex.D/2. He also submits that the date of accident is 10.03.2010 and the premium deposit was also of 10.03.2010 and therefore, it is the burden upon the respondent-Insurance Company to proof that the accident is prior to time of deposit of amount of premium with the Insurance Company. In support of his contention, he also argued that normally the agent of the Insurance Company collects the premium and deposit the amount of premium

with the Insurance Company. If the amount of premium is deposited on 10.03.2010, there will a presumption that the agent of the Insurance Company has taken the amount of premium from appellant No.2/owner prior to 10.03.2010. Therefore, once if the amount of premium is accepted/collected by the authorised agent, then the liability to indemnify the insured will be on the Insurance Company. He also submits that the driver of the motorcycle i.e. the claimant was not possessing valid and effective driving license and therefore, he is not entitled for any amount of compensation. He submits that the learned Claims Tribunal has recorded the admission made by the claimant that he was not possessing the license to drive the motorcycle on the date of accident, but even then, the liability has been fastened upon the appellants. He places reliance in the matter of **Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak and Others** reported in **(2002) 6 SCC 455** to support his contention.

8. Shri C. Jayant K Rao and Shri Shivendu Pandya, learned counsel for respondents No.1 and 2 supports the impugned award. Shri Pandya learned counsel appearing for respondent No.2 submits that the appellants in support of the submission that premium for insuring the vehicle was handed over to the agent of the Insurance Company prior to the date of accident has not been proved as they have not

examined the said agent, with whom, appellant No.2 has handed over the amount of premium towards the policy for the Tractor nor any receipt prior to the date of 10.03.2010 was placed on record. The Insurance Company has examined S.R. Rahul, the then Branch Manager of the Branch at Ambikapur. S.R. Rahul (NAW(3)-1) in his evidence has denied the suggestion given that the broker of Mahindra Insurance Company, by name Arvind, has accepted the amount of premium of Rs.4,777/- on 09.03.2010 and specifically stated that no such document is issued and related with his Insurance Company and further admitted that the owner of the Tractor has not deposited the amount of premium in his office, but the Mahindra Finance Company has deposited the amount of policy. Even after mentioning the name of the agent of the Mahindra Finance Company, appellant No.2 has not examined the said witness to proof that the amount of premium has been paid prior to 10.03.2010. He further points out that the perusal of copy of First Information Report (Ex.P/42) clearly mentions the time of accident as 10.30 AM on 10.03.2010 of which, the report has been lodged on the same day at 12.30 PM and going by the time shown in the First Information Report, the premium could not be deposited with the Insurance Company prior to the time of accident. He submits that the learned Claims

Tribunal has rightly arrived at a finding that on the date and time of accident, the offending vehicle was not insured.

9. We have heard learned counsel for the respective parties and perused the record carefully.

10. So far as the submission made by learned counsel for the appellants that as per the premium deposit receipts, the premium has been paid on 10.03.2010 on the date of accident itself, then the burden is upon the Insurance Company to proof that it is the deposit after the date of accident.

11. We are not convinced with the submission made by learned counsel for the appellants for more than one reason. Firstly, the time of accident as mentioned in the First Information Report (Ex.P/42) is 10.30 AM, which is not disputed by the appellants. There is no mention of time of the deposit of the premium in the receipt placed on record as Ex.D/2. The appellants have not examined even the agent in their support to say that as to what date and time, the amount of premium was deposited with the said agent and at what time the said agent has deposited it with respondent No.2/Insurance Company. Appellant No.2/owner of the offending vehicle had not discharged his burden by bringing the person who is said to have deposited the insurance premium amount of offending vehicle as witness before the

learned Claims Tribunal and unless and until, appellant No.2 bring it on record as to the time of payment of the amount of premium, the burden cannot be shifted upon the Insurance Company. Secondly, the contract between the Insurance Company and appellant No.2 i.e. the insurer and insured, will commence only from the date of acceptance of premium and issuance of policy. In the facts and circumstances of the case, there are chances to have deposited the premium amount after the accident and therefore, there was heavy burden upon the shoulders of appellant No.2/owner of the offending vehicle to proof that the amount of premium was deposited prior to the time of accident, which was not discharged by him. In view of above, the said ground raised by learned counsel for the appellants is not sustainable and is hereby rejected.

12. The other submission made by learned counsel for the appellants that on the date of accident, the driver of motorcycle i.e. the claimant is not possessing valid and effective driving licence, therefore, he will not be entitled for any amount of compensation is concerned, non-possessing of driving license will not mean that the said person was not knowing the driving of the said vehicle i.e. the motorcycle. Absence of driving license will make him liable for penalty under the M.V. Act etc., but his claim cannot be defeated on

that ground only; more so, no negligence was found by the Claims Tribunal of the claimant.

13. The case law of **Pramodkumar Rasikbhai Jhaveri** (supra) relied upon by learned counsel for the appellants is on different facts and not applicable to the facts of the present case.

14. The Hon'ble Supreme Court in the matter of **Mangla Ram v. Oriental Insurance Company Limited and others** reported in **(2018) 5 SCC 656** has held thus :

> “33. In other words, we are inclined to hold that there is no title of evidence about the motorcycle being driven negligently by the appellant at the time of accident. The respondents did not produce any such evidence. That fact, therefore, cannot be assumed. Resultantly, the argument of the respondents that the appellant did not possess a valid motorcycle driving licence at the time of accident, will be of no significance. Thus, we hold that there is no legal evidence to answer the issue of contributory negligence against the appellant.”

15. In view of the aforementioned dictum of Hon'ble Supreme Court and facts and circumstance of the case, second submission made by learned counsel for the appellants is also not sustainable and is hereby rejected.

16. For the foregoing reasons, we do not find any tenable grounds calling interference in the impugned award. The appeal being devoid of any substance, is liable to be and is hereby dismissed.

Sd/-	Sd/-
(P. R. Ramachandra Menon) **Chief Justice**	**(Parth Prateem Sahu)** **Judge**

Yogesh