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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No.163 of 2020

HDFC General Insurance Co. Ltd., Through Office In-Charge/Competent Officer, HDFC General Insurance Co. Ltd., Second Floor, Pujari Complex, Pachpedi Naka, Raipur, District Raipur, (C.G.), at present Devendra Nagar Road, Raipur (C.G.) (Insurer of Vehicle Hywa No. CG-04-JB-6172) (Non-Applicant No.3).

---- Appellant

Versus

1. Ravikant Verma, S/o Raghvendra Verma, Aged About 29 Years, R/o Village Gaitra, Thana Kharora, District Raipur, Chhattisgarh (Claimant).

2. Umesh Kumar Yadav, S/o Biyasha Yadav, Office In-Charge/Competent Officer, Vikrey Minerals Pvt. Ltd., Police Line, Nehru Nagar, Raipur, Old Dhamtari Road, District Raipur Chhattisgarh (Driver of Vehicle Hywa No.CG-04-JB-6172) (Non-Applicant No.1).

3. Vikrey Minerals Pvt. Ltd., R/o Office In-Charge/Competent Officer, Police Line, Nehru Nagar, Raipur, Old Dhamtari Road, District Raipur, Chhattisgarh (Owner of Vehicle Hywa No.No.CG-04-JB-6172) (Non-Applicant No.2).

---- Respondents

For Appellant	:	Shri Rohistashva Singh, Advocate.
For Respondents	:	None.

Hon'ble Shri Justice Sanjay S. Agrawal

Order On Board

06.02.2020

1. This Miscellaneous Appeal has been preferred by Non-Applicant No.3/HDFC General Insurance Company Limited, under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988') questioning the legality and propriety of the award dated 04.10.2019 passed by the 4th Additional Motor Accident Claims Tribunal, Raipur (C.G.) (for short 'the Claims Tribunal') in Claim Case No.543/2015, by which the learned Claims Tribunal, while allowing the claim in part, has awarded the total amount of compensation to the tune of Rs.5,65,622/- with 7.5% interest per annum from the date of filing of the claim petition till its realisation, while fastening the liability upon the Insurance Company. The parties to this Appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated, the facts of the case are that on 17.10.2014 at about 8:00 pm, Applicant Ravikant Verma was returning along with his friend by his motorcycle from village Kharora to village Gaitra and as soon as he reached near the Dharamkaanta of the village Chicholi, he was hit from his opposite side by the offending vehicle *'Hywa'* bearing Registration No.CG 04 JB 6172, which was owned by Non-Applicant No.2/Vikrey Minerals Private Limited and was insured with Non-Applicant No.3/HDFC General Insurance Company Limited. At the relevant time, the offending vehicle *'Hywa'* was being driven rashly and negligently by its

driver namely Umesh Kumar Yadav/Non-Applicant No.1, as a result of which, the alleged accident occurred and owing to which, the Applicant got injured badly and was admitted into the hospital, where he was treated from 17.10.2014 upto 24.10.2014 and thereafter from 31.10.2014 upto 03.11.2014.

3. On account of the aforesaid accident, the claimant instituted a claim petition enumerated under Section 166 of the Act of 1988 by submitting *inter alia* that he suffered from permanent disability due to the alleged accident and pleaded further that he was a 'Fitter' by profession and used to earn Rs.8,000/- per month and thus, a total amount of compensation to the tune of Rs.19,44,000/- has been claimed under various heads.

4. The aforesaid claim has been contested by Non-Applicant No.1/Driver and Non-Applicant No.2/Owner of the vehicle in question by submitting that the driver of the offending vehicle was holding the effective and valid driving license, since the vehicle in question has been insured with the said insurance company, and therefore, in case of any liability being fastened, the same could be indemnified by the said company.

5. Non-Applicant No.3, the Insurer, while disputing the involvement of the alleged offending vehicle contested the claim on the ground that the driver of it was not holding the effective and valid driving license to drive the alleged vehicle, as the same was a commercial one, and therefore, in absence of the endorsement as such, he was not authorized to drive the same. Therefore, no liability could be fastened upon it.

6. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 17.10.2014 at about 10:00 pm, as a result of which, the Applicant has sustained permanent disability to the extent of 20% and observed further that the vehicle in question was not being used in violation of the insurance policy. In consequence, while fastening the liability upon the Insurance Company awarded a total amount of compensation as observed hereinabove.

7. Being aggrieved, the Non-Applicant No.3 has preferred this appeal. Shri Rohitashva Singh, learned counsel for the Appellant submits that the Claims Tribunal has committed an illegality in holding that the vehicle in question was involved in connection with the said accident. While referring to the First Information Report (Ex.P/2), it is contended by him that the alleged report was lodged after 4 days of the occurrence of the alleged accident and in view of the Discharge Ticket (Ex.P/4) it was evident that the vehicle in question was a 4 wheeler distinct from the vehicle owned by insured, therefore, the Tribunal ought to have held that the vehicle in question was not involved in connection with the said accident. Having failed to consider these documentary evidence in its proper manner, the Tribunal has erred in fastening the liability upon the insurance company.

8. I have heard learned counsel for the Appellant and perused the entire papers annexed with this memo of appeal carefully.

9. The main contention of the Appellant herein is that the vehicle in question was not involved in connection with the said accident,

and therefore, no liability as such, could have been fastened upon the Appellant/Insurance Company.

10. In order to substantiate the aforesaid contention, the Appellant/insurer ought to have placed the cogent and reliable evidence on record. However, no evidence whatsoever have been led, so as to arrive at a conclusion that the vehicle in question was not involved in the alleged accident. That apart, a bare perusal of the FIR (Ex.P/2) and Final Report (Ex.P/1), a criminal case was registered against the driver of the offending vehicle and no complaint whatsoever was lodged either by the driver or the owner of the vehicle in question that the alleged vehicle has wrongly been involved in connection with the said crime. It appears further that much reliance has been placed upon the statement of Dr. Ketan Shah, who was examined as the Non-Applicant Witness No.1, however, his evidence was led only with regard to the injury sustained by the Applicant. Besides, he was the hearsay witness and was not present at the time of occurrence of the alleged accident, therefore, based upon his testimony no inference as alleged by the Appellant herein could be drawn that the vehicle in question was not involved in the said accident.

11. Considering the facts and circumstances of the case and considering further the lodging of the FIR (Ex.P/2), which led to the filing of charge-sheet (Ex.P/1) against the driver of the offending vehicle, I am not inclined to accept the contention of Shri Singh, as alleged herein.

12. Consequently, I do not find any substance in this appeal. The appeal being devoid of merit, is hereby dismissed at admission stage itself. No order as to costs.

Sd/-
(**Sanjay S. Agrawal**)
Judge

Deepti Jha