NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1307 of 2014

- Yashwant Verma son of Mannulal Verma, aged about 24 years, resident of New Hanuman Mandir, near Sonkar Badi, Police Station-Purani Basti, District Raipur C.G. (Registered owner and driver of Motor Cycle Star City No. CG 04 CY 5429)

-----Appellant/ Non-applicant 1

VERSUS

1. Premchand Sahu son of Bhuwan Lal Sahu, aged about 30 years, resident of Village-Urla, B.M.Y. Charoda, Bhilai, Police Station-Bhilai-3, Tahsil Patan, District Durg C.G. **--------Claimant**
2. The New India Insurance Company Limited, Registered and Head Office-New India Insurance, Building-87, Mahatma Gandhi Road, Fort Mumbai 400001, through the Divisional Manager, Divisional Office, First Floor, Madina Building, Jail Road, Raipur, Tahsil and District Raipur, C.G. Branch Manager, Branch Office-Parakh Bhawan, Station Road, Durg Tahsil and District Durg. C.G. **---- Respondents**

For Appellant	:	Mr. Shikhar Bakhtiyar, Advocate
For Respondent 2	:	Mr. Sudhir Agrawal, Advocate.

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

Order on Board

Per Parth Prateem Sahu, J.

20/10/2020

1. Non-applicant 1 (appellant herein) driver-cum-owner of the offending vehicle has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short “Act of 1988”) challenging the impugned award dated 26-09-2014 passed by learned Sixth Additional Motor Accident Claims Tribunal, District Durg C.G. in claim case no. 49/2013 whereby learned Claims Tribunal allowed application filed under Section 166 of the Act of 1988, awarded Rs. 1,39,445/- as compensation after deducting 50% of the amount towards contributory negligence while exonerating the Insurance Company from its liability, fastened liability upon the appellant/ driver-cum-owner of the offending vehicle to satisfy the award.

2. Facts relevant for disposal of this appeal are that on 16-11-2008 at about 06:30 p.m. Respondent 1/ claimant was travelling on a motor cycle from village Urla to Kumhari along with his friends by name Dhanesh Ram Sahu and Punit Ram Sahu. On the way, when they reached near village Kugda in between Urla-Kumhari, motor cycle bearing registration no. CG 04 CY 5429 (offending vehicle) dashed the motor cycle of claimant/ Respondent 1. In the aforementioned accident, claimant suffered grievous injuries over his person. Accident was reported to concerned police station based upon which, crime was registered against appellant for offences punishable under Section 279, 337 and 338 of IPC.

3. Respondent 1/ claimant filed an application under Section 166 of the Act of 1988 pleading therein that prior to the date of accident, he was working as labourer earning Rs. 3,000/- per month. In the accident, he suffered grievous injuries over his chest, head and face. For his treatment, he was taken to Life Worth Super Specialty Hospital, Raipur, where he took treatment as an in-patient from 16-11-2008 to 21-01-2009. On account of motor accidental injuries, he became permanently disabled and unable to earn his livelihood, he claimed Rs. 17,25,000/- as compensation.

4. Non-applicant 1/ appellant submitted reply to the claim application admitting therein that he was driver-cum-owner of the offending vehicle. It was the claimant who was driving his vehicle rashly and negligently and dashed with his vehicle. He has been falsely implicated in criminal case. Offending vehicle was insured with Non-applicant 2-Insurance Company, he was possessing valid and effective driving licence, hence the liability, if any, for payment of amount of compensation would be upon the Insurance Company.

5. Non-applicant 2/ Insurance Company submitted reply to the claim application pleading therein that the owner of the offending vehicle has not produced the registration certificate of the offending vehicle. Offending vehicle was insured in the name of Yashwant Kumar Verma. Copy of the licence has not been

placed on record, thereby, there was breach of conditions of Insurance Policy and in such a situation, Insurance company is not having any liability to satisfy the amount of compensation. Claimant/ driver of the other motor cycle was not having the valid and effective driving licence.

6. Upon appreciation of pleadings and evidence placed on record by the respective parties, learned Claims Tribunal has held that Non-applicant 1/ appellant drove his motor cycle rashly and negligently and caused the accident to claimant's motor cycle bearing registration no. CG 07 F 9519 in which claimant suffered grievous injuries. Claimant/ Respondent 1 suffered 30% permanent disability. There was breach of conditions of Insurance Policy, contributory negligence of driver of both vehicles and awarded Rs. 1,39,445/- as compensation after deducting 50% towards the contributory negligence on the part of claimant himself.

7. Mr. Shikhar Bakhtiyar, learned counsel for the appellant submits that the Claims Tribunal has erroneously exonerated the Insurance Company from its liability. Application filed under Order 8 Rule 1(3) CPC for producing the copy of licence before the Claims Tribunal was erroneously dismissed. He submits that after dismissing the application under Order 8 Rule 1(3) CPC which is for producing the copy of licence held that there was breach of conditions of insurance policy as on the date of accident, the appellant was not possessed with valid and effective driving licence which is not correct in view of the copy of licence placed on record by the appellant before the Claims Tribunal. It is further contended that along with the appeal also appellant has filed the copy of licence dated 23-07-2013.

8. Mr. Sudhir Agrawal, learned counsel for the Respondent 2-Insurance Company submits that the appellant has not placed on record the driving licence before the Claims Tribunal which he was possessing on the date of accident within time. He also points out that the Claims Tribunal taking into consideration that the copy of licence has not been placed on record within

time, the application under Order 8 Rule 1(3) CPC has been rightly dismissed. He also points out that in view of the facts and circumstances of the case as well as the oral and documentary evidence available on record, learned Claims Tribunal passed just and proper award which does not call for any interference.

9. No-one appeared on behalf of the Respondent 1/ claimant.

10. We have heard learned counsel for the respective parties and also perused the record of the claim case.

11. When the appeal came up for final hearing before this Court on 02-09-2020, considering the submission made by the learned counsel for the appellant, pleadings made in the appeal as well as the order-sheet dated 23-07-2013 wherein learned Claims Tribunal has recorded that the appellant/ Non-applicant 1 has filed an application under Order 8 Rule 1(3) CPC and also the copy of licence placed before this Court as Annexure A-3, we have directed the learned counsel for the Insurance Company to get the driving licence Annexure A-3 to be verified from the concerned Office of RTO. In our order, we have also directed to get the certificate from the competent authority whether the person holding the licence under verification is authorised to drive motor cycle or not. In compliance of the order passed by this Court, learned counsel for the Insurance Company submitted covering memo along with copy of licence issued in the name of appellant Yashwant Kumar Verma, authorising him to drive Light Motor Vehicle and Motor Cycle with Gear (MCwG) having its validity from 06-06-2006 to 05-06-2026. One letter is also enclosed along with covering memo dated 03-10-2020 issued by investigator Chhagan Lal Sahu, in which, it is mentioned that the licence holder CG07 20060002977 can drive Motor Cycle with Gear.

12. From the aforementioned covering memo and submission of the learned counsel for the Insurance Company that upon verification the photocopy of

licence produced along with the appeal, the licence was found to be a valid licence authorising him to drive Motor Cycle with Gear, apart from the Light Motor Vehicle, it is proved that, on the date of accident, Appellant was driving the vehicle with a valid and effective driving licence.

13. Apart from the above, while going through the records, we have come across the extract of the driving licence available on record of the claim case with part-III of the record of the same licence issued by the licencing authority to be issued for Motor Cycle with Gear and Light Motor Vehicle dated 06-06-2006 having its validity upon to 05-06-2026. Once the copy of licence and the insurance policy is available on record which has not been rebutted by the Insurance Company, in the considered opinion of this Court, learned Claims Tribunal erred in not conducting proper enquiry as prescribed under Section 68 of the Act of 1988 and Rule 226 of the Chhattisgarh Motor Vehicles Rule, 1994.

14. In view of the aforementioned facts and circumstances of the case where the copy of driving licence is already available on record of the Claims Tribunal but the Claims Tribunal has not considered the same and further the copy of licence placed on record along with this appeal has been verified by the Insurance Company to be a valid and effective driving licence authorising the appellant to drive Motor Cycle with Gear and Light Motor Vehicle, we set aside the finding recorded by the Claims Tribunal that there was breach of conditions of insurance policy on the ground of not having valid and effective driving licence. The appeal filed by the driver-cum-owner of the offending vehicle is allowed and now the liability to satisfy the amount of compensation shall be upon Respondent 2/ Insurance company.

15. Though, no one appeared on behalf of Respondent 1/ claimant but upon going through the record, we found that one cross-objection under Order 41 Rule 22 CPC has been filed by Respondent 1 on 03-10-2020; the office note shows that the appeal is barred by 1974 days. Respondent 1-claimant has not filed

any application for condonation of delay along with cross-objection. Respondent 1 appeared through advocate in this appeal on 20-06-2015. When the case was listed for consideration on 01-07-2015, learned counsel representing Respondent 1 had appeared but Respondent 1 has not filed any cross-objection challenging the impugned award. Appeal was listed for hearing on 02-09-2020 and after hearing learned counsel for the respective parties at length, considering the grounds raised by the learned counsel for the appellant and the copy of licence placed on record, we have directed the learned counsel for the Insurance company only for verification of the licence placed on record in this appeal. Till 02-09-2020, there was no cross-objection filed on behalf of Respondent 1 from which it can be presumed that the Respondent 1 was not aggrieved by the impugned award passed by the Claims Tribunal in any manner. Further there is no application for condonation of delay of 1974 days. In these circumstances, cross-objection cannot be entertained which is liable to be and it is hereby dismissed.

16. In view of the above, the appeal is allowed. Impugned award, so far as, relates to fastening the liability upon the appellant (owner of the offending vehicle) is set aside. Now the liability to satisfy the amount of compensation is upon the Respondent 2-Insurance Company. Appellant will be entitled to recover the amount so deposited by him after depositing the entire amount by the Respondent 2-Insurance Company.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Pawan