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HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 424 of 2014

Branch Manager, The Oriental Insurance Company Limited, Branch Office- Rama Trade Center First Floor, In Front of Rajeev Plaza, Bus Stand, Bilaspur, Tahsil and District Bilaspur C.G.

---- Appellant

Versus

1. Sudhir Kumar S/o Jamuna Prasad, Aged About 19 Years R/o village Tikari, Thana and Tahsil Masturi, District Bilaspur C.G.
2. Degun Kumar Patle S/o Chhedlal Patle, Aged About 26 Years, R/o Tikari, Thana and Tahsil Masturi, District Bilaspur C.G.
3. Ashok Kumar Rajwal S/o Bholenath Rajwal, Aged About 37 Years, R/o Jatiyapara, Jarhabhatha, Thana- Civil Line, Tahsil and District Bilaspur C.G.

---- Respondents

For Appellant	:	Shri Sudhir Agrawal, Advocate
For Respondent No.1	:	Shri Ritesh Verma, Advocate
For Respondents 2 & 3	:	None

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

Judgment On Board

Per Parth Prateem Sahu, Judge

23/09/2020

1. Appellant/Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the impugned award dated 06/01/2014 passed by the 6th Additional Motor Accident Claims Tribunal, Bilaspur,

Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.115 of 2013 whereby learned Claims Tribunal allowed the claim application in part and awarded a sum of Rs.1,00,000/- as compensation in an injury case and fastened the liability upon non-applicants therein jointly and severally.

2. Facts relevant for disposal of this appeal, are that, on 04/07/2012, claimant was returning along with his friend form Masturi to his village Tikari on Tata Magic bearing registration No.CG-10/T/2693 (hereinafter referred to as 'offending vehicle'), when they reached in between village Parsada and Tikari, the offending vehicle met with an accident and turned turtle. In the aforementioned accident, claimant and other passengers suffered grievous injuries.

3. Respondent No.1 filed an application under Section 166 of the M.V. Act seeking compensation of Rs.6,50,000/- pleading therein that in the aforementioned accident, claimant suffered fracture injury over his left wrist and grievous injury over his left shoulder. After taking primary treatment at Primary Health Center, Masturi, he was referred for better treatment to Bilaspur. Claimant was admitted to CIMS Hospital, Bilaspur and looking to non-availability of adequate treatment, he was admitted in the hospital of Doctor Khanduja. During the course of treatment, respondent No.1/claimant suffered with anemia and looking to his serious condition, he was referred to Life Care Hospital and Emergency Care Unit, Bilaspur, where he took treatment as inpatient for about 10 days. Prior to the date of accident,

he was working as Loader and earning Rs.200/- per day, but after the accident, he is unable to do his earlier wok of Loader.

4. Non-applicant No.1/driver of the offending vehicle did not choose to appear before learned Claims Tribunal and was proceeded *ex parte*.

5. Non-applicant No.2/owner of the offending vehicle submitted reply to claim application and denied the fact of accident. It was pleaded that non-applicant No.1 was engaged as driver after perusal of the licence of non-application No.1. After 04/07/2012 i.e. date of accident, non-applicant No.1 has left the job of driver and went away. It was further pleaded that offending vehicle was insured with non-applicant No.3/Insurance Company for a period from 31/12/2011 to 30/12/2012. The treatment taken, income of the injured and loss of income due to permanent disability was denied.

6. Non-applicant No.3/Insurance Company submitted reply to claim application and denied all the adverse pleadings made therein. It was further pleaded that on the date of accident, there was no valid and effective driving licence with non-applicant No.1, there was no valid permit, fitness and registration and thereby there was breach of conditions of insurance policy, hence, the Insurance Company is not liable to indemnity the injured.

7. The learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties allowed the claim application in part and held that accident took place on account

of rash and negligent driving of offending vehicle by non-applicant No.1, permanent disability as pleaded by claimant was not found to be proved, breach of conditions of insurance policy was not found to be proved and awarded a sum of Rs.1,00,000/- as compensation.

8. Shri Sudhir Agrawal, learned counsel for the appellant/Insurance Company submits that learned Claims Tribunal while deciding the issue with regard to breach of conditions of insurance policy has only taken into consideration the driving licence of non-applicant No.1 and decided the issue. He further submits that learned Claims Tribunal has not considered the ground of permit raised by appellant/Insurance Company specifically, though recorded in paragraph-10 of impugned award. Not considered the statement made by Bharat Bhushan, Senior Manager as NAW-3(1), witness of the Insurance Company, who stated that requirement of the permit is essential and absence of permit, is breach of conditions of insurance policy. He also argued that to prove the injuries, claimant has not examined any doctor and hence, the amount of compensation awarded under the head of medical expenditure could not have been awarded. To support his argument, he places his reliance upon the judgments passed by Hon'ble Supreme Court in case of **National Insurance Co. Ltd. v. Challa Bharathamma and others**[1] **and Amrit Paul Singh and another v. Tata AIG General Insurance Company Limited and others**[2]**.**

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1 **(2004) 8 SCC 517**
2 **(2018) 7 SCC 558**

9. Per contra, Shri Ritesh Verma, learned counsel for respondent No.1 while supporting the impugned award passed by learned Claims Tribunal, submits that learned Claims Tribunal after taking into consideration the entire pleading and evidence placed on record, has passed just and proper award, which does not call for any interference.

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

11. Perusal of the seizure memo (Ex. A/3) would show that during the course of investigation, Police has seized documents of offending vehicle from non-applicant No.1/driver of the offending vehicle including the copy of policy and driving licence, but has not seized the copy of permit. The owner of the offending vehicle though filed reply to claim application, but not entered into witness box to prove the pleading nor placed on record copy of permit.

12. Insurance Company has examined one Bharat Bhushan, Senior Manager as NAW-3(1), who in his statement, admitted that insurance policy (Ex.D/1) was issued for the offending vehicle and the vehicle was insured as 'Passenger Carrying Commercial Vehicle', for which, permit is necessary.

13. Section 66 (1) of the M.V. Act provides for necessity for permits, which reads as under for easy reference :

> “**66. Necessity for permits.-**(1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used:
>
> Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage:
>
> Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods carriage either when carrying passengers or not:
>
> Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.”

14. From perusal of aforementioned provisions of Section 166 of the M.V. Act, the requirement of permit has been made mandatory for use of vehicle as 'Transport Vehicle' in any public place for carrying

passengers or goods. The issue with regard to the permit has also been considered by Hon'ble Supreme Court in **Challa Bharathamma** (supra) and recently **Amrit Paul Singh** (supra).

15. In view of aforementioned provision and the law laid down by Hon'ble Supreme Court in aforementioned judgments, we are of the considered view that learned Claims Tribunal erred in not considering that non-applicants No.1 and 2 i.e. driver and owner of the offending vehicle failed to produce permit of the offending vehicle and in absence of it, there will be breach of conditions of insurance policy. We hold that there was breach of conditions of insurance policy.

16. In view of above, appellant/Insurance Company is exonerated from its liability to satisfy the amount of compensation and the liability to satisfy the amount of compensation shall be upon non-applicants No.1 and 2 i.e. driver and owner of the offending vehicle.

17. As the insurance of the vehicle is not denied, it is insured as 'Passenger Carrying Vehicle', taking support of the law laid down by Hon'ble Supreme Court in case of **Amrit Paul Singh** (supra), we direct the Insurance Company to first deposit the entire amount of compensation awarded by learned Claims Tribunal before the Claims Tribunal, thereafter to recover the same from non-applicants No. 1 and 2 i.e. driver and owner of the offending vehicle in the very same proceeding by filing application for execution.

18. The second submission made by learned counsel for the appellant with regard to non-examination of the doctor is not sustainable because the claimant has produced the documents issued from the Hospital with regard to treatment, discharge ticket, X-ray reports, from which, nature of injury suffered by the claimant and the treatment taken by him can be ascertained.

19. For the foregoing reasons, appeal is allowed in part and impugned award passed by learned Claims Tribunal is modified accordingly to the extent indicated herein-above.

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

Yogesh