NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 377 of 2015

Amar Das Manikpuri S/o Rewadas Manikpuri Aged About 38 Years R/o Village- Kanjipani (Lotanpara) Police Station and Tahsil -Pali, Post Chaitma, District : (Revenue and Civil) Korba Chhattisgarh.

---- Appellant/claimant

Versus

1. Pradip Kumar Patel S/o Anand Ram Patel Aged About 26 Years, R/o Pacharighat, Juna Bilaspur, Police Station -City Kotwali Tahsil and District : (Revenue & Civil) Bilaspur, Chhattisgarh. (Driver).

2. Divisional Manager Shri Ram General Insurance Company Limited, Branch Office 10003 E-08, R.I.I.C.O. Industrial Area, Sitapur, Jaipur Rajsthan At Post Through Shri Ram Finence Company Limited Office- Rama Trade Center, Near Rajiv Plaza Bus Stand Bilaspur, District (Revenue and Civil) Bilaspur, Chhattisgarh.

--- Respondents

For Appellant	:	Mr. Anand Kesharwani, Advocate.
For Respondent No.1	:	None.
For Respondent No.2.	:	Mr. Utsav Mahiswar, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

02/11/2020

1. Appellant/claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') seeking enhancement of compensation awarded by learned 1st Additional Motor Accident Claims Tribunal, Bilaspur, (for short, 'the Tribunal) vide award dated 29.01.2015 passed in Claim Case No.157/2011, whereby Tribunal partly allowed application filed under Section 166 of the Act of 1988 and awarded compensation of Rs.25,478/- in injury case.

2. Facts relevant for disposal of this appeal are that on 30.02.2011, Amardas Manikpuri (claimant) was going to Pali from Lotanpara (Kanjipani) on motorcycle bearing Registration No.CG12/AL/8051 alongwith Samay Lal Yadav. On the way near Karranala (Chatwabhawan), one Pick-up Vehicle bearing Registration No.CG13-A-6677, (for short, 'offending vehicle'),

driven by Non-applicant No.1 rashly and negligently, dashed the motorcycle. In the aforesaid accident, Amardas Manikpuri suffered grievous injuries, on account of which he become permanently disabled. Accident was reported to Police Station -Pali, Distt. Korba based upon which crime was registered against non-applicant No.1.

3. Appellant/claimant has filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.6,30,000/- on the ground that on the date of accident, he was running a grocery shop (Kirana Shop) and earning Rs.5,000/- per month, but on account of motor-accidental injuries suffered by him on both his legs, he became permanently disabled and unable to earn his livelihood.

4. Non-applicant No.1/driver of offending vehicle, did not appear before the Tribunal, therefore, he was proceeded ex-parte.

5. Non-applicant No.2/Insurance Company submitted its reply to application, while denying the pleadings made therein contended that accident took place on account of negligence of claimant himself. It was further pleaded that accident was from unknown vehicle, Non-applicant No.1 was falsely implicated in accident. Amount of compensation claimed is highly exaggerated. On the date of accident, non-applicant No.1 was not possessed with valid and effective driving license, as there was breach of policy condition, Insurance Company is not liable to indemnify the insured.

6. Upon appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that non-applicant No.1 while driving his vehicle rashly and negligently dashed the motorcycle of claimant, caused accident, in which claimant suffered grievous injuries. Contributory

negligence on the part of claimant and permanently disability was not found to be proved. Breach of policy condition was also found to be proved. Tribunal allowed application under Section 166 of the Act of 1988 in part, awarded compensation of Rs.25,478/- along with interest @ 6% p.a, while exonerating Insurance Company fastened liability upon Non-applicant No.1 to satisfy the amount of compensation.

7. Learned counsel for the appellant/claimant submits that the Tribunal erred in awarding meager amount of compensation, not awarding any amount of compensation towards transportation, attendant & grievous injuries; whereas very meager amount of compensation has been awarded towards pains and suffering & loss of income, overlooking the medical documents placed on record by claimant wherein it is specifically mentioned that claimant suffered fracture injuries on both his leg and became permanently disabled. He further submits that the Tribunal erred in exonerating the Insurance Company from its liability on the ground that non-applicant No.1 was not possessed with valid and effective driving license, overlooking the fact that non-applicant No.1 was possessed with license authorizing him to drive 'Light Motor Vehicles'. Offending vehicle is a pick-up Jeep which comes within the category of 'Light Goods Vehicles'. As per law laid down by Hon'ble supreme Court in case of **Mukund Dewangan v. Oriental Insurance Company Limited**[1], persons having license to drive 'Light Motor Vehicle' are authorized to drive 'Light Goods Vehicle' & 'Light Passenger Vehicle' also.

8. Per contra, learned counsel for respondent No.2/Insurance Company opposes the submissions made by learned counsel for the claimant. He submits that accident took place in the year 2011 and the decision in case

1 (2017) 14 SCC 663

of **Mukund Dewangan** (supra) was pronounced in the year 2017, hence, it will not apply to the facts of present case. Though the Tribunal has recorded a finding with regard to license only for exoneration of Insurance Company, but in Para No.11 of impugned award while considering evidence of NAW-2 Punit Rathore, who stated in his evidence that on the date of accident, apart from valid and effective driving license, there was no valid permit with offending vehicle, which was not taken into consideration. He further contended that the Tribunal based on the medical documents available on record has correctly considered the injuries suffered by claimant, awarded just amount of compensation, which does not call for any interference.

9. I have heard learned counsel for the respective parties and perused the record of claim case.

10. So far as submission with regard to quantum of compensation is concerned, claimant in support of his claim application has placed on record documents ie Ex.P-3 MLC report & Ex.P-4 card of Dr. Surjeet Singh Hospital, Korba. In Ex.P-3 there is specific mention of fracture of right femur, swelling and deformity. In Ex.P-4 it is mentioned that claimant suffered fracture on right femur. Though claimant has not examined the treating doctor before Tribunal, but from above documents it is clear that he suffered fracture injury over his right femur. Besides plain printed receipt dated 12.12.2011 showing payment of Rs.20,670, claimant has not placed any other proper receipt. There is no document to show the period of treatment of claimant in hospital. In absence of any acceptable document with regard to expenditure incurred by claimant for his treatment, apart from medical bill dated 12.12.211, I do not find any error

in the finding recorded by Tribunal with regard to award of amount of Rs.21,478/- towards medical expenses.

11. From the documents placed on record, fracture injury suffered by claimant on his right femur is also not in dispute, the Tribunal has awarded only Rs.2,000/- towards pain and sufferings which in the opinion of the Court is very less, I deem it fit and proper to award to Rs.15,000/- towards pain and sufferings.

12. Looking to the nature of injuries and part of the body where fracture injuries suffered by claimant, I find it appropriate to award Rs.20,000/- towards grievous injuries, Rs.12,000/- towards loss of income during the period of treatment for three months, upon assessing income of claimant on notional basis as Rs.4,000/- per month. Claimant is also entitled for a sum of Rs.2,000/- towards special diet, as awarded by the Tribunal. Claimant met with accident at Paali and thereafter referred to Dr. Surjeet Singh Hospital, Korba for better treatment. Taking into consideration the place of residence of appellant and place of treatment, I find it appropriate to award Rs.5,000/- towards transportation.

13. Now claimant is entitled for a total sum of **Rs.75,478/-** (Rs.21,478 + Rs. 15,000 + Rs.20,000 + Rs.12,000 + Rs.2,000 + Rs.5,000) instead of **Rs.25,478/-** as awarded by the Tribunal. This amount of compensation shall carry interest @ 6% p.a. from the date of application till its realization. Rest of the conditions of impugned award shall remain intact.

14. So far as submission with regard to exoneration of Insurance Company is concerned, Insurance Company has placed on record Ex.D-1(c), which is extract of license verified from License Authority. In this document, it is very specifically mentioned that license of non-applicant No.1 was issued

for 'LMV' only, which was also proved by Insurance Company. Copy of registration certificate is placed on record as Ex.P-5. In the said document, gross vehicle weight of offending vehicle is mentioned as 2820 kg. Definition of 'LMV' is given in Section **2(21) o**f the Act of 1988, in which it is mentioned that Motor vehicle not exceeding 7500 kg will be 'LMV' including 'Transport vehicle' or 'Omini Bus'. Indisputably, offending vehicle is 'Light Goods Vehicle' and Insurance Policy is issued for 'Goods Carrying Vehicle - Public Carrier' in which make and model of offending vehicle is mentioned as 'Mahindra Max Pick-up'.

15. Issue with regard to person possessing license to drive 'LMV' and found driving 'Light Goods Vehicle' or 'Light Passengers Vehicle' has been considered by the Hon'ble Supreme Court in case of **Mukund Dewangan** (supra) and held as under :-

> "**60.1** "Light motor vehicle" as defined in section 2(21) of the Act would include a transport vehicle as per the10 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 54 of 1994.
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> **60.3** The effect of the amendment made by virtue of Act 54 of 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."

16. In view of aforementioned law laid down by the Supreme Court and considering the facts and circumstances of this case that the vehicle involved in the accident is a "Light Goods Vehicle' and non-applicant No.1 was possessing license to drive 'LMV', hence, in the considered opinion of this Court non-applicant No.1 was possessing valid and effective

driving license on the date of accident to drive offending vehicle. The finding recorded by the Tribunal that non-applicant No.1 was not possessed of valid and effective driving license is not sustainable and it is hereby set aside.

17. So for as submission made by learned counsel for respondent No.2/ Insurance Company with regard to not having valid permit with offending vehicle on the date of accident. Perusal of pleadings made by Insurance Company in its reply would show that in Para No.7 it is specifically pleaded that in absence of verification of RC Books, driving license, permit & fitness certificate, Insurance Company is not liable to pay any amount of compensation.

18. Perusal of evidence of Puneet Rathore would show that this witness in his affidavit under Order 18 Rule 4 of CPC has very clearly stated that there was no permit and fitness certificate with offending vehicle. Apart from the aforementioned evidence led by Insurance Company, perusal of Ex.P-6 property seizure memo dated 05.02.2011 from the possession of non-applicant NO.1 would show that non-applicant NO.1 has submitted copy of RC Book, Copy of Insurance policy and copy of License. Non-applicant No.1 has not produced copy of permit or fitness certificate of offending vehicle which shows that on the date of accident or on the date of seizure of offending vehicle and the documents by the Police, permit or fitness certificate of offending vehicle was not produced.

19. The requirements of permit is envisaged in Section 66 of the Act of 1988, which reads as under :-

> "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.

(2). The holder of a goods carriage permit may use the vehicle, for the drawing of any trailer or semi-trailer not owned by him, subject to such conditions as may be prescribed:

> [Provided that the holder of a permit of any articulated vehicle may use the prime-mover of that articulated vehicle for any other semi-trailor.]”

20. Above provision makes it mandatory that use of vehicle as a transport vehicle in public place to be in accordance with the condition of permit granted or counter signed by Regional or State Transport Authority. Admittedly, from the document available on record, it is apparent that non-applicant No.1 has not produced copy of permit at the time of seizure of vehicle or its documents and from other documents of the vehicle it can only be inferred that on the date of accident, there was no permit. Copy of insurance policy placed on record as Ex. D-2. It is the initial burden of the owner of offending vehicle to place on record all the necessary documents and then the burden will shift upon non-applicant to prove that there was breach of policy condition. In absence of any documents adverse inference against owner is to be drawn.

21. In view of above facts of the case what is apparent is that offending vehicle is a goods carriage vehicle, Mahindra Pick up, having its gross vehicle weight of 2820 kg as mentioned in Ex.P-5 ie certificate of registration. Now, question arises that whether the class of vehicle involved in accident 'permit' is essential in terms of Section 66 (1) of the Act of 1988 is a question to be answered. Section 66 (3) prescribes the class of vehicle for which provisions of Section 66(1) is not applicable. Under Section 66 (3) (i) it is goods vehicle of which gross vehicle weight does not exceed 3000 kg is mentioned. In view of very specific provisions of Section 66 (3) (i) offending vehicle is excluded from mandatory requirement of Section 66(1). For the foregoing reasons, submission made by learned counsel for respondent No.2/Insurance Company that there was breach of policy condition in absence of permit is not sustainable.

22. For the foregoing reasons, I am of the considered view that the Tribunal erred in exonerating Insurance Company from its liability, said finding is not sustainable and is hereby set aside. Now, the liability to satisfy the amount of compensation will be upon respondent No.2/Insurance Company. If any amount in pursuance to the award is deposited by respondent No.1 then he will be entitled to recover the same from respondent No.2- Insurance Company in accordance, with law.

23. In the result, appeal is allowed in part and impugned award stands modified to the extent as indicated herein-above.

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-