NAFR

HIGH COURT OF CHHATTISGARH BILASPUR

M. A. (C) No. 812 of 2014

(Arising out of award dated 31.01.2014 passed in Claim Case No.143 of 2013 by the First Additional Motor Accident Claims Tribunal, Durg, District Durg, Chhattisgarh)

Smt. Lata wife of Narendra Shrivas, aged about 30 years (Now 32 years) R/o Behind Gajanand Mandir, Vijay Nagar, P.S. Mohannagar, Civil and Revenue District, Durg, Chhattisgarh

---- Appellant

Versus

1. Narendra Sahu, son of Anil Sahu, aged about 21 years
2. Anil Sahu son of Tulsiram Sahu, aged about 42 years
   Both R/o village Semariya, P.S. Bori, Tahsil Dhamdha, Civil and Revenue District Durg, Chhattisgarh
3. The Oriental Insurance Company Limited, 16, R.S.S. Market, Power House, Bhilai, District Durg, Chhattisgarh

---- Respondents

M. A. (C) No. 273 of 2014

1. Narendra Sahu, son of Anil Sahu, aged about 21 years
2. Anil Sahu son of Tulsiram Sahu, aged about 42 years
   Both R/o village Semariya, P.S. Bori, Tahsil Dhamdha, Civil and Revenue District Durg, Chhattisgarh

---- Appellant

Versus

1. Smt. Lata wife of Narendra Shrivas, aged about 30 years R/o Behind of Gajanand Mandir, Vijay Nagar, Police Station Mohan Nagar, Tahsil and District, Durg, Chhattisgarh
2. The Oriental Insurance Company Limited, 16 R.S.S. Market Power House, Bhilai, District Durg, Chhattisgarh

---- Respondents

MAC No.812 of 2014

For Appellant	: Shri Uttam Pandey, Advocate
For Respondents No.1 & 2	: Shri A.D. Kuldeep, Advocate
For Respondent No.3	: Shri Raj Awasthi, Advocate

MAC No.273 of 2014

For Appellants	: Shri A.D. Kuldeep, Advocate
For Respondent No.1	: None
For Respondent No.2	: Shri Raj Awasthi, 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

10/08/2020

1. As both the appeals are arising out of award dated 31.01.2014 passed by the First Additional Motor Accident Claims Tribunal, Durg, District Durg, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.143 of 2013, awarding compensation of Rs.92,000/- to the claimant, therefore, they are being disposed of by this common judgment.

2. Facts relevant for disposal of these appeals, are that, on 04.10.2010, claimant- Smt. Lata along with her son Sourabh Shrivas was travelling on a motorcycle bearing registration No.CG-07/LA/2487, driven by her husband Narendra Shrivas and going to village Bori. When they reached near village Hasda, one motorcycle bearing registration No.CG-07/LJ/2931 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1 rashly and negligently dashed the motorcycle, on which, claimant was travelling. The accident was reported to concerned Police Station, based on which, Crime No.30 of 2011 was registered for the offence punishable under Section 279 and 337 of IPC against non-applicant No.1.

3. Claimant filed an application under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') before

learned Claims Tribunal seeking compensation of Rs. 7,85,000/- mentioning therein that on the date of accident, she was 30 years of age and apart from household work, she has doing the work of tailoring, but on account of permanent disability suffered by her to the extent of 21%, she is unable to perform her work as she was doing prior to the date of accident.

4. Non-applicants No.1 and 2, who are driver and owner of offending vehicle submitted reply to claim application and denied the fact of negligence on the part of non-applicant No.1. They have also denied the permanent disability suffered by claimant and pleaded that, amount of compensation claimed in the application filed under Section 166 of the M.V. Act is highly exaggerated; there was accident between two motor vehicles/head on collision, but the driver, owner and Insurance Company of other vehicle have not been impleaded as party respondents, therefore, claim application is not maintainable on account of non-joinder of necessary party.

5. Non-applicant No.3/Insurance Company also submitted its separate reply and while denying the pleadings made in claim application. pleaded that the amount of compensation claimed is highly exaggerated; offending vehicle was driven in breach of conditions of insurance policy; there was no valid and effective driving licence with non-applicant No.1 on the date of accident, which is apparent from the final report, in which, non-applicant No.1 was also charged for the offence punishable under Section

3/181 of the M.V. Act.

6. Learned Claims Tribunal based on the pleadings of respective parties, formulated as many as seven issues for consideration. On appreciation of pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal held that the accident took place on account of rash and negligent driving of offending vehicle by non-applicant No.1; claimant suffered grievous injuries resulting in permanent disability; offending vehicle was driven in breach of conditions of insurance policy and awarded a total sum of Rs.92,000/- as compensation along with interest at the rate of 6% per annum from the date of filing of claim application till its realization.

7. Shri Uttam Pandey, learned counsel for the claimant submits that learned Claims Tribunal though recorded a finding that claimant suffered permanent disability based on the disability certificate placed on record as Ex.P/74, but has awarded meager sum of Rs.25,000/- only, which is required to be suitably enhanced by calculating the amount of income and using the appropriate multiplier. He contended that learned Claims Tribunal has not awarded any amount towards loss of income during the period of treatment because the nature of injuries and medical documents would show that claimant took treatment for about 16 days at District Hospital, Durg and looking to grievousness of her injuries and shown to be not recoverable, she took further treatment from Mangalam Hospital, Polsaipara, Durg for about 11 days at first

admission and for about 9 days on her second admission. It is further contended that learned Claims Tribunal erred in awarding very meager amount on other heads. He lastly argued that exoneration of Insurance Company from its liability to pay the amount of compensation is only on account of that the driver of offending vehicle was not possessing valid and effective driving licence, therefore, a direction to 'pay and recover' may be issued against the Insurance Company as the claimant being a third party.

8. Per contra, Shri A.D. Kuldeep, learned counsel for driver and owner of offending vehicle submits that learned Claims Tribunal awarded the amount of compensation on higher side; claimant has not impleaded the driver, owner and insurer of other vehicle involved in the accident because other motorcycle was being driven by husband of the claimant, on which, she was travelling and in the accident, she suffered grievous injuries. It is pointed out that there is no evidence to show that the injuries suffered by the claimant will cause loss to her earning capacity. It is further contended that the disability certificate was not obtained from the Medical Board, but the disability certificate which is placed on record as Ex.P/74 was issued by Orthopedic Surgeon of the District Hospital, Durg. He submits that certificate issued with regard to the disability can be considered when it is issued by the treating doctor or Medical Board, therefore, disability certificate placed on record by the claimant before learned Claims Tribunal

cannot be considered for awarding amount of compensation as the said document is not reliable. He also submits that driver and owner of the offending vehicle i.e. non-applicant No.1 and 2 have filed separate appeal challenging the impugned award to be on higher side and not considering the fact of contributory negligence. It is pointed out that said appeal filed by the driver and owner of offending vehicle being MAC No.273 of 2014 is also listed today.

9. Shri Raj Awasthi, learned counsel for Insurance Company submits that learned Claims Tribunal has awarded just and proper amount of compensation and exonerated the Insurance Company from its liability to pay the amount of compensation because on the date of accident, driver of other motorcycle was not possessing valid and effective driving licence as it is not placed on record before learned Claims Tribunal, therefore, learned Claims Tribunal has rightly exonerated the Insurance Company, which does not call for any interference.

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

11. Looking to the nature of dispute raised by driver and owner of the offending vehicle in MAC No.273 of 2014 challenging the finding of learned Claims Tribunal with regard to permanent disability suffered by the claimant based on the disability certificate issued by the doctor of District Hospital, Durg as not being a treating

doctor; ground of contributory negligence and not making the driver, owner and insurer of motorcycle bearing No.CG-07/LA/2487, on which, claimant was travelling as party respondents, we are taking up MAC No.273 of 2014 first for consideration, which is filed by driver and owner of the offending vehicle.

12. So far as the ground raised by learned counsel for the driver and owner of offending vehicle with regard to contributory negligence is concerned, there is specific pleading and evidence on record that the claimant was travelling as pillion rider on motorcycle; there is no case of the driver and owner of offending vehicle that the claimant herself was driving the vehicle. This being the position, the claim application which is subject matter of these appeals was filed by the pillion rider of motorcycle. As per settled law, she can file application claiming compensation against driver, owner and Insurance Company of both the vehicles or either of them. Here, claimant has chosen to seek compensation against driver, owner and insurer of the offending vehicle as it is a case of composite negligence held by Hon'ble Surpeme Court in case of **T. O. Anthony v. Karvarnan and others**[1].

13. So far as the other ground raised by learned counsel for the driver and owner of offending vehicle with regard to permanent disability suffered by the claimant to be not proved as disability certificate (Ex.P/74) was not issued by the treating doctor or Medical Board

1 **(2008) 3 SCC 748**

is concerned, perusal of disability certificate (Ex.P/74) would show that it was issued by Dr. Akhilesh Yadav (AW-3), who in his evidence stated that he is working as Medical Officer at District Hospital, Durg. In his evidence, he has not stated that he is Orthopedic Surgeon but not Specialist, but perusal of deposition sheet, wherein description of witness has been recorded only mentions about Medical Officer. Normally, disability certificate required to be issued by Orthopedic Specialist. The disability certificate is to be given after assessing the nature of injuries, restriction on the movements on the part of body by Orthopedic Surgeon himself/herself. In cross-examination, he admitted that in his Hospital, Dr. Deshmukh is proceeded as Orthopedic Specialist, but he is not aware as to why he has not given the disability certificate even when he was treated the claimant at District Hospital, Durg.

14. The disability certificate (Ex.P/74) is not issued by the Medical Board and upon going through the evidence of Dr. Akhilesh Yadav (AW-3), in cross-examination, he admits that there is no mention in the disability certificate about the nature of disability to be permanent in nature, but he stated that the disability is permanent. One thing which is apparent from the record, which cannot be lost sight of the fact that the doctor who issued disability certificate (Ex.P/74) is a Government doctor and posted in the same Hospital, where the claimant took treatment, therefore, the disability suffered by claimant cannot be ignored in its entirety.

Taking into consideration the nature of injury as appeared from the medical documents placed on record by the claimant as Ex.P/2 to Ex.P/4 and especially Ex.P/66 and Ex.P69, which are discharge card issued by Mangalam Hospital, Polsaipara, Durg, wherein it is mentioned the fracture of left femur shaft M/3 right and in Ex.P/69, it is mentioned that the delayed union fracture femur shaft M/3 bone.

15. In view of above, we are of the view that learned Claims Tribunal has not committed any error in recording that the claimant has suffered permanent disability and awarded the amount towards permanent disability suffered by the claimant.

16. For the foregoing reasons, we do not find any merit in the appeal (MAC No.273 of 2014) filed by driver and owner of the offending vehicle, which is required to be and is hereby dismissed.

17. Now, we take up the appeal filed by the claimant being MAC No.812 of 2014 seeking enhancement of impugned award.

18. The submission made by learned counsel for the claimant that appropriate amount of compensation has not been awarded towards permanent disability suffered by the claimant is concerned, learned Claims Tribunal has taken note of the fact that though the claimant suffered 21% permanent disability, but that will not necessarily affect the functional disability of the claimant affecting her income in the same ratio. Admittedly, there is no evidence of the work of tailoring in the record except the pleading

and oral statement of the claimant that she was also doing the work of tailoring, we find it difficult to accept the submission made by learned counsel for the claimant that the claimant was having source of income from tailoring work and after the accidental injuries suffered by her, she is unable to perform tailoring work. The submission made by learned counsel for the claimant that claimant has lost her income from the tailoring work is not sustainable and is hereby repelled.

19. The claimant is a married lady and having the responsibility to maintain her house by doing all the household work, particularly, looking to the fact that claimant belongs to lower status of society as in the claim application, it is pleaded that her husband is a Barber and running a Salon at Bhilai. The documents Ex.P/66 and Ex.P/69 would show that when the injured/claimant approached the doctor at Mangalam Hospital, Polsaipara, Durg on 04.06.2011, her fracture injury over the femur was not unite and bone grafting was advised. Subsequently, she again visited to Mangalam Hospital, Durg where due to delayed non-union of femur, bone grafting on the injured site was done and thereafter, the claimant got disability certificate prepared from the doctor of District Hospital, Durg, who is a Government doctor on 28.01.2013.

20. Learned Claims Tribunal has awarded Rs.25,000/- as compensation towards permanent disability. In absence of any proof of the loss of income, it will not be proper to award the amount of compensation by assessing the income and applying

the multiplier. But, at the same time, it is to be kept in mind that just amount of compensation is required to be awarded, taking into overall consideration like nature of injury, part of the body and its affect on the day to day activities of a person. The part of the body over which, the claimant suffered permanent disability on her left femur shaft M/3 right; she is house wife and has to do all the household work, which is required to be done by breading, sitting, standing etc. Though there is no direct loss of income to the claimant, but as discussed above, she may require help from others by engaging on wages etc. for some of her work, which is required to be done by her for herself and for the benefit of her family members. In view of above, we find it appropriate to enhance the amount of compensation awarded by learned Claims Tribunal towards loss of income from Rs.25,000/- to Rs.40,000/-.

21. Learned Claims Tribunal awarded only Rs. 10,000/- towards mental pain and agony. Looking to the nature of injury and treatment taken by the claimant, we find it appropriate to award Rs.15,000/- towards mental pain and agony.

22. Learned Claims Tribunal has awarded only Rs.10,000/- towards loss of amenities and enjoyment in life. On the date of accident, claimant was only 30 years of age, she has to live her whole life with permanent disability suffered by her and looking to the period which she has to live with disability, her age and affecting the joy in her life, we are of the view that claimant is entitled to Rs.20,000/- towards loss of amenities and enjoyment in life.

23. Apart from above, claimant will be further entitled to Rs.40,000/- towards medical expenses, Rs.3,000/- towards conveyance expenses, Rs. 2,000/- towards attendant and Rs.2,000/- towards special diet.

24. Now, the appellant/claimant will be entitled for a total sum of Rs. 1,22,000/- (40,000 + 15,000 + 20,000 + 40,000 + 3,000 + 2,000 + 2,000) instead of Rs.92,000/- as awarded by learned Claims Tribunal. The aforementioned amount of compensation will carry interest at the rate of 6% from the date of filing of application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.

25. So far as the submission made by learned counsel for the claimant for issuing a direction to Insurance Company to first pay the entire amount of compensation and thereafter to recover the same from the driver and owner of offending vehicle is concerned, perusal of the award would show that learned Claims Tribunal has exonerated the Insurance Company only on the ground that on the date of accident, driver of offending vehicle was not possessing valid and effective driving licence. The doctrine of pay and recover in cases of no valid licence has been considered by Hon'ble Supreme Court in the matter of **Shamanna and Another v. Divisional Manager, Oriental Insurance Company Limited and Others**[2] has held thus :

"2. ….......Since the driver of the jeep had no

2 **(2018) 9 SCC 650**

valid driving licence at the time of the accident and since there was violation of the terms of the insurance policy, the Tribunal directed the insurance company to pay the compensation to the claimants and granted liberty to the insurance company to recover the same from the owner of the offending vehicle.

13. Since the reference to the larger bench in *National Insurance Co. Ltd. v. Parvathneni, (2009) 8 SCC 785* has been disposed of by keeping the questions of law open to be decided in an appropriate case, presently the decision in *National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297* followed in *National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700* and other cases hold the field. The award passed by the Tribunal directing the insurance company to pay the compensation amount awarded to the claimants and thereafter, recover the same from the owner of the vehicle in question, is in accordance with the judgment passed by this Court in *Swaran Singh (supra)* and *Laxmi Narain Dhut (supra)* cases. While so, in our view, the High Court ought not to have interfered with the award passed by the Tribunal directing the first respondent to pay and recover from the owner of the vehicle. The impugned judgment of the High Court exonerating the insurance company from its liability and directing the claimants to recover the compensation from the owner of the

vehicle is set aside and the award passed by the Tribunal is restored."

26. Recently, in the matter of **Amrit Paul Singh and another v. Tata AIG General Insurance Company Limited and others**[3]**,** Hon'ble Supreme Court while dealing with the similar issue has held thus :

> "24..........We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in *National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 and Lakhmi Chand v. Reliance General Insurance, (2016) 3 SCC 100* in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the "Tripitaka", that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the tribunal as well as the High Court had directed the insurer was required to pay the compensation amount to the claimants with interest with the stipulation

3 **(2018) 7 SCC 558**

> that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh (supra) and other cases pertaining to pay and recover principle."

27. The Hon'ble Supreme Court in the matter of **Amrit Paul Singh** (supra) has very specifically held that in case of breach of conditions of insurance policy, direction for pay and recover can be issued and the same will be in consonance with the judgment passed by Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. v. Swaran Singh and others**[4]**.**

28. In view of law laid down by Hon'ble Supreme Court in the aforementioned judgments and in the facts and circumstances of the case, we find it appropriate to direct the Insurance Company in MAC No.812 of 2014 to first deposit the entire amount of compensation before learned Claims Tribunal and thereafter, to recover the amount so deposited by it from respondents No.1 and 2 i.e. driver and owner of the offending vehicle. It is made clear that for recovery of amount of compensation so deposited by the Insurance Company, there will be no need to file any separate proceeding, but the Insurance Company will be at liberty to file an application for execution in the very same proceeding for recovery of amount from respondents No.1 and 2 i.e. driver and owner of the offending vehicle.

4 **(2004) 3 SCC 297**

29. In the result :

(i) MAC No.812 of 2014 filed by the claimant is allowed in part. Now, claimant is entitled for a total compensation of Rs.1,22,000/-. The amount of compensation will carry interest at the rate of 6% per annum from the date of filing of claim application till its realization. The liability to satisfy the amount of compensation will be on respondents No.1 and 2. The Insurance Company is directed to first deposit the entire amount of compensation with interest and then to recover the amount so deposited by it from respondents No.1 and 2 in the same proceedings. Impugned award is modified accordingly to the above extent.

(ii) MAC No.273 of 2014 filed by driver and owner of the offending vehicle is hereby dismissed.

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

Yogesh