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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 469 of 2014

- Indrapal Singh S/o Bhupendra Singh Demore, aged about (*not mentioned in memo of appeal*) years, R/o Implipara Bus Stand, Bilaspur P.S. Tarbahar, District Bilaspur C.G.

------Appellant

VERSUS

1. Jitendra Kumar Patle S/o Late Bisahu Ram, aged about 40 years, R/o Keontara, Choki- Pachpedi, P.S. and Tahsil Masturi, District Bilaspur C.G. **------Claimant**
2. Sanjay Jaggi S/o late Bhagwant Lal Jaggi, aged about 42 years, R/o House No.P/37, Housing Board Colony, Kanch Ghar, Jabalpur M.P., presently residing at Transport Nagar, Shop No. 04, Parsada, P.S. Chakarbhata, District-Bilaspur C.G. **–---Driver**
3. The Oriental Insurance Co.Ltd., Divisional Office, near Rama Trade Centre, old bus stand, Bilaspur C.G.

----Respondents

For Appellant : None.
For Respondent 3 : Mr. T.K. Tiwari, Advocate.

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

Judgment on Board

Per Parth Prateem Sahu, J.

24/09/2020

1. Appellant-owner of the offending vehicle (Registration No. CG10 C 1189) has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (henceforth "Act of 1988") challenging the impugned award dated 18-10-2013 passed in Claim Case no. 106/2013 whereby learned Claims Tribunal allowed the claim application filed by Respondent 1-claimant and awarded Rs. 91,600/- as compensation towards damage of property of Respondent 1-claimant.

2. Facts relevant for disposal of this appeal are that on 16-07-2011, offending vehicle driven by Respondent 2/ Non-applicant 1 dashed with the house of

Respondent 1/ applicant-claimant, damage his house and two shops. On account of the aforementioned accident, Respondent 1-claimant suffered heavy loss. The accident was reported to concerned police station based upon which crime bearing no. 334/2011 was registered against Respondent 2/ Non-applicant 1. Respondent 1/ claimant filed an application under Section 166 of the Act of 1988 seeking compensation of Rs. 1,00,600/- on different heads mentioning therein that the property owned by him i.e. his residential house and two shops were given by him on rent from which he was earning Rs. 2,000/- per month from each shop and he is suffering loss of Rs. 4,000/- per month, sought compensation of Rs. 86,600/- towards repairing expenses of his property.

3. Respondent 1 did not appear before the Claims Tribunal and proceeded *ex parte*.

4. Non-applicant 2/ appellant submitted reply to the claim application pleading therein that the claimant is not the registered owner of the house and shop nor any shop or business was running in the subject two shops. Driver of the offending vehicle was possessing valid and effective driving licence. Claimant is not entitled for any amount of compensation and if the Tribunal finds that the claimant is entitled for amount of compensation then the liability to satisfy the amount of compensation is upon the Insurance Company.

5. Non-applicant 3/ Respondent 3 submitted reply to the claim application pleading therein that on the date of accident, Non-applicant 1/ Respondent 2-driver of the offending vehicle was not possessing valid and effective driving licence, of which Non-applicant 2/ appellant-owner of the offending vehicle was very much aware. In the documents placed on record, the allegation of charge under Section 113/194(2) of the Act of 1988 was levelled which is for the purpose of carrying more weight in the vehicle than the permissible limit. There was no valid and effective driving licence

and the vehicle was being used in breach of conditions of insurance policy.

6. Learned Claims Tribunal, on appreciation of pleadings and evidence placed on record by the respective parties has held that Non-applicant 1/ Respondent 2, while driving his truck (offending vehicle) rashly and negligently, damaged the house and two shops of Respondent 1/claimant. Claimant suffered damage of Rs. 86,600/-. Breach of conditions of insurance policy was found to be proved and the liability was fastened upon the Appellant/ Non-applicant 2-owner of the offending vehicle.

7. We have heard Mr. T.K. Tiwari, learned counsel for the Respondent 3-Insurance Company, who, while supporting the impugned award passed by Claims Tribunal, submitted that as per the 'limitations as to use', the vehicle insured by the Insurance Company is to be used strictly in accordance with the terms of the permit. He submits that the Claims Tribunal has rightly exonerated the Insurance Company from its liability, taking note of the fact that on the date of accident, the weight carrying capacity of the offending vehicle was only of 17 tonnes (17,000 kg), but on the date of accident, as per the document Ext. D1(c), the offending vehicle was carrying 25 tons of manure. He submits that the difference of weight carried by the vehicle on the date of accident and the weight carrying capacity of the vehicle is not only of a matter of 1 to 3 tonne excessive from the permissible limit, but on the date of accident, it was found that the offending vehicle was carrying 8 tonnes excessive weight than its weight carrying capacity. He submitted that the award passed by the Claims Tribunal with regard to the fastening of the liability to satisfy the amount of compensation does not call for any interference.

8. We have heard Mr. T.K. Tiwari, learned counsel for Respondent-Insurance Company and also perused the record.

9. Perusal of memo of appeal filed by the Non-applicant 2-owner of the offending vehicle would show that the grounds taken by the appellant-owner is, that under the Motor Vehicles Act, overload is not punishable and is now covered only under the traffic rules. On the date of accident, the offending vehicle was having the effective insurance policy and merely on the ground of overloading, the Insurance Company cannot be exonerated from its liability. It is also pleaded that the report/ certificate, on the basis of which, the amount of compensation is awarded towards repairing of the damaged property is contrary to the material and evidence available on record.

10. To appreciate the pleadings made in the memo of appeal, we have gone through the documents available in Claim Case. The claimant, in support of his claim, has filed the documents of criminal case from Ext. P-1 to P-12. Ext. P-1 is the final report; Ext. P-3 and P-4 are the F.I.R. In the F.I.R., it is specifically mentioned that the truck has not been properly turned on the road and while turning, the driver damaged the wall on road side and also damaged the beam causing damage to property. Along with the documents, claimants have also filed Ext. P-5 which is the crime detail in which spot map is prepared. We have perused the spot map, in which, it is shown that the offending vehicle damaged the property situated on the side of the road. Claimant has also filed vehicle inspection report in which all the important parts of the vehicle have been found to be in order. Claimant has filed valuation report as Ext. P-13 prepared by Mr. R.K. Jain, Civil Engineer, Bilaspur. Claimant himself was examined as AW-1. Shrikant AW-2 and R.K. Jain examined as AW-3 to prove the case of Respondent 1/claimant.

11. Respondent 3/Non-applicant 3-Insurance Company examined Mr. Ramesh Dubey, Senior Assistant of Chhattisgarh State Corporative Distribution Federation as NAW-1; Suresh as NAW-2, go-down incharge, Shiv Singh

Dhruv, NAW-3, Assistant Gr.III of the Transport office, Bilaspur, Sanjeev as NAW-4 who is working as Clerk in the office of Oriental Insurance Company.

12. Coming to the fastening of liability upon the Insurance Company with regard to the payment of amount of compensation towards property damage. Witness of Insurance company has stated that though the vehicle was insured on the date of accident, but it was carrying more weight than the weight carrying capacity of the vehicle. There is excessive load on the vehicle, there is no liability of Insurance Company to satisfy the amount of compensation and has denied the suggestion given by the learned counsel for the respondent that only on the ground of overloading of offending vehicle conditions of insurance policy was not breached. We have perused the policy Ext. D-4. Under the insurance policy, "limits as to use", is mentioned in which it is specifically mentioned that the policy covers use only under the permit. From the very specific words use in the policy under the head of <u>limitation as to use</u>, the offending vehicle has been used in breach of the permit conditions where the load capacity has been shown to be 17,000/- kg (17 tonnes) only but, on the date of accident, offending vehicle was carrying 25,000/- kg (25 tonnes).

13. For the foregoing reasons, the ground with regard to fastening of the liability on the ground of breach of conditions of insurance policy to be erroneous as taken by the appellant is not sustainable and it is hereby repelled.

14. Sofar as, the quantum of the compensation awarded by the Claims Tribunal, the claimant has placed the documents of the criminal case showing the manner in which the truck dashed with the residential house and shop of the appellant. It is also evident from the spot map prepared by the police during the course of investigation. Damage of the property of

the appellant cannot be disputed in the facts of the case. In evidence, Mr. R.K. Jain, AW-3 has stated that he visited village-Kevtara and assessed the damages. He also proved the documents i.e. the valuation report and submitted that he has issued the valuation report, but has denied the suggestion given by the learned counsel for Non-applicant that the amount calculated in the valuation report is highly exaggerated. This witness remained unshaken. We do not find any reason to disbelieve the witness AW-3.

15. In view of the aforementioned facts and evidence available on record, particularly, looking to the fact that the accident took place, Respondent 1-claimant suffered the damages to his property and for repairing of such damage, Claims Tribunal has awarded Rs. 91,600/-. In the opinion of this Court, the finding arrived by the learned Claims Tribunal with regard to the exoneration of the Insurance Company is in accordance with the law and the award of quantum of compensation (Rs. 1,00,600/-), in the facts of the case, cannot be said to be on higher side. None of the grounds raised by the appellant is sustainable and it is hereby repelled.

16. In the result, the appeal fails and it is hereby dismissed accordingly.

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

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