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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 791 of 2014

- Kumari Shirkumari Verma, D/o Sahdev Verma, aged about 16 years (Minor represented by her natural guardian father Sahdev Verma, S/o Tirathram Verma), R/o village Koharaboard, P.O./ P.S./ Tah. Khairagarh, Civil / Revenue Distt. Rajnandgaon.

---- Appellant/Claimant

Versus

1. Bhuwan Kumar Maravi, S/o Chamru Maravi, aged about 20 years, R/o Village Belsara, Tahsil Takhatpur, Distt. Bilaspur.
2. Ramcharan Sahu, S/o Ramlal Sahu, aged about 20 years, R/o village Karhaiyapara, Ratanpur, Tahsil Ratanpur, Distt. Bilaspur.
3. Branch Manager, Oriental Insurance Company Ltd., Branch Office- Kamti Line, Rajnandgaon, Distt. Rajnandgaon.

---- Respondents

For Appellant	:	Mr. H.S. Ahluwalia, Advocate
For Respondent No.1 & 2	:	None
For Respondent No.3	:	Mr. Deepak Gupta, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Per Parth Prateem Sahu, J

22/07/2020

1. Claimant-appellant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') seeking enhancement of compensation awarded by the Additional Motor Accident Claims Tribunal, Khairagarh, District

Rajnandgaon (henceforth 'the Claims Tribunal') vide award dated 20.6.2014 passed in Claim Case No.110/11.

2. Facts relevant for disposal of this appeal, in brief, are that on 16.9.2011 claimant/appellant herein was going on her bicycle and when she reached near a pond situated at Pipariya Turning, one vehicle Bolero bearing registration number CG10-C-4549 (for short 'the offending vehicle'), driven in rash and negligent manner by its driver, dashed against her bicycle as a result she fell down and sustained grievous injuries on her head, right hand, right leg.

3. Appellant filed application under Section166 of the Act of 1988 before the Claims Tribunal seeking an amount of Rs.7,25,000/- as compensation mentioning therein that on account of injuries suffered by her in the said accident, she has suffered permanent disability on her right hand to the extent of 30%; there is continuous pain on her right hand and she is unable to do any work from it.

4. Respondent No.2 submitted reply to claim application pleading therein that the offending vehicle has been sold by him to one Faguram and now he is not the owner of it. It was also pleaded that on the date of accident, the offending vehicle was insured with non-applicant No.3/respondent No.3, therefore, respondent No.2 is not liable to make payment of any compensation to the claimant.

5. Non-applicant No.3/respondent No.3 Insurance Company also filed its reply to claim application pleading therein that accident took place due to negligence of claimant/appellant herself. The offending vehicle was plied on road in breach of condition of insurance policy as there was no valid and effective driving license with non-applicant No.1, driver of offending vehicle. Hence, the insurance company is not liable to make payment of compensation.

6. Upon appreciation of pleadings and evidence placed on record by the respective parties, the Claims Tribunal has partly allowed claim application and awarded a total sum of Rs.55,874/- as compensation by recording that the accident occurred due to rash and negligent driving of offending vehicle by its driver in which claimant has suffered permanent disability to the extent of 30% and there was breach of condition of the insurance policy as on the date of accident, non-applicant No.1, driver of offending vehicle, was not having valid & effective driving license to drive offending vehicle.

7. Mr. Ahluwalia, learned counsel appearing on behalf of claimant/ appellant submits that despite holding that the claimant/appellant has suffered permanent disability to the extent of 30%, the Claims Tribunal has not awarded any amount under the head 'permanent disability' and thereby committed mistake. The Claims Tribunal has also not awarded the entire medical expenses incurred by claimant on her

treatment, which comes to Rs.1,00,000/-. He also submits that the Claims Tribunal has awarded meager sum towards non-pecuniary damages ignoring the fact that claimant is a minor girl aged about 16 years. Compensation awarded under the heads 'conveyance' & 'special diet' is also on lower side, in these circumstances, the amount of compensation awarded by the Claims Tribunal needs to be enhanced in light of the fact that in the aforementioned accident, the claimant has suffered permanent disability to the extent of 30%.

Relying on the decision of Hon'ble Supreme Court in the matter of **Mukund Dewangan vs. Oriental Insurance Company Limited** reported in **(2017) 14 SCC 663**, he submits that a person having license to drive 'light motor vehicles' can drive any class of motor vehicle which falls within the category of 'light motor vehicle' and there is no need to obtain any special endorsement on license for that purpose. The finding of the Claims Tribunal that on the date of accident, the offending vehicle, which comes within the category of 'light goods vehicle' being less than 7,500 kilogram of weight, was plied on road in breach of condition of insurance policy as its driver was not having valid and effective driving license to drive offending vehicle, is not sustainable.

8. On the other hand, Mr. Gupta, learned counsel appearing on behalf of Insurance Company submits that the Claims Tribunal after considering all the aspects of the matter has awarded just

and reasonable amount of compensation which does not call for any enhancement. The Claims Tribunal while exonerating the insurance company has taken note of the fact that non-applicant No.1 failed to establish that a person holding license to drive 'light motor vehicles' is also authorized to drive 'light goods vehicle' also and no special endorsement for this purpose is required on license. The exoneration of the insurance company was proper.

9. We have heard learned counsel for the parties and perused the record of the Claims Tribunal.

10. We shall first deal with the ground urged by learned counsel for claimant/ appellant that the Claims Tribunal erred in exonerating Insurance Company from its liability on the ground that on the date of accident, non-applicant No.1/ respondent No.1, driver of offending vehicle, was not having valid & effective driving license to drive offending vehicle.

11. Copy of license of non-applicant No.1-driver, is brought on record as Article A-2 and from perusal of which it is clear that holder of license i.e. non-applicant No.1/respondent No.1, is authorized to drive 'Light Motor Vehicle (LMV) & Motorcycle With Gear (MCWG)'. This license has been issued on 7.8.2010 and it is valid upto 5.8.2030. Thus, there is no doubt that on the date of accident, non-applicant No.1 / respondent No.1 was

having valid & effective driving license to drive light motor vehicles.

12. A copy of registration certificate of offending vehicle is available on record as Article A-3. In this registration certificate, the 'class of vehicle' is mentioned to be 'light goods vehicle' and gross vehicle weight is mentioned as '2450 kg'. Hence, it is apparent that the offending vehicle, whose gross vehicle weight is less 7500 kilogram, would come within the category of 'light motor vehicle' as defined under Section 2 (21) of the Act of 1988, which reads as under:-

> "(21) a "light motor vehicle" means a transport vehicle or omnibus, the gross vehicle weight of either of which or a motor car or tractor or road roller the unladen weight of any of which, does not exceed 7500 kilograms."

13. In the matter of Mukund Dewangan (supra), Hon'ble Supreme Court while considering the issue as to whether a person having license to drive light motor vehicles is required to obtain endorsement on his license to drive transport vehicle, has held thus:-

> "59.Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of

Form 4 as amended on 28-03-2001. Any other interpretation would be repugnant to the definition of “light motor vehicle” in Section 2(21) and the provisions of Section 10(2)(d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of ‘light motor vehicles’ and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in Section 10(2)(e) of the Act ‘Transport Vehicle’ would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in Section 10(2)(e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed.

60. Thus we answer the questions which are referred to us thus:

> 60.1. ''Light motor vehicle'' as defined in Section 2(21) of the Act would include a transport vehicle as per the weight prescribed in Section 2(21) read with Sections 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54 of 1994.
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> 60.2. A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, ‘unladen weight’ of which does not exceed 7500 kg. and holder of a driving licence to drive class of “light motor vehicle” as provided in Section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the “unladen weight” of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under Section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28-03-2001 in the form.
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> 60.3. The effect of the amendment made by virtue of Act No.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.

60.4. The effect of amendment of Form 4 by insertion of “transport vehicle” is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of “light motor vehicle” continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.”

14. As per above decision of Hon'ble Supreme Court, a person holding license to drive 'light motor vehicles' can drive 'transport vehicles' of the class of 'light motor vehicles' and there is no requirement to obtain separate endorsement to drive such transport vehicles.

15. In case at hand, indisputably non-applicant No.1/respondent No.1 herein-driver of offending vehicle, was having a valid & effective driving license to drive 'light motor vehicles' on the date of accident and that the offending vehicle comes under the category of 'light motor vehicles', as defined under Section 2 (21) of the Act of 1988. In such a situation, we are of the considered view that the Claims Tribunal erred in holding that

on the date of accident non-applicant No.1 was not having valid and effective driving license to drive the offending vehicle. Finding of the Claims Tribunal exonerating the insurance company from its liability on the ground of breach of condition of insurance policy is not sustainable in law and the same is hereby set aside. We hold that respondent No.3-Insurance Company is liable to indemnify the insured.

16. Coming to next submission made by learned counsel for claimant/appellant with regard to quantum of compensation.

17. In support of her claim, the appellant, who was aged about 16 years on the date of accident, has filed MLC report (Ex.P-8) & Discharge Card (Ex.P-4). In the discharge card (Ex.P-4) of Gayatri Hospital, Supela, Bhilai, it is mentioned that appellant was admitted in the hospital on '20.9.2011' and discharged on '30.9.2011'. Against the column "Diagnosis', it is mentioned in the discharge card that "fracture of shaft humerus, right M/3rd displaced". Appellant has also filed disability certificate (Ex.P-2) issued by the District Medical Board, Rajnandgaon certifying that appellant has suffered 30% permanent disability. To prove this certificate (Ex.P-2) the appellant has examined AW-2 Dr. Prakash Bhalerao, one of the members of the Medical Board, and this witness has stated in his statement that disability suffered by the appellant is permanent in nature, as per norms of the NIOH, and it is with respect to the affected organ and not for the whole body. This witness was cross-examined by the

counsel representing the Insurance Company before the Claims Tribunal, but no question was put to him to the effect that percentage of disability suffered by claimant/appellant is with respect to affected part of body or whole body.

18. In view of above, the Claims Tribunal is justified in accepting the permanent disability as mentioned in the certificate and statement of the doctor (AW-2), but it is unfortunate that even the Claims Tribunal has also not asked any question to the doctor (AW-2) as to whether percentage of disability suffered by claimant/appellant is with respect to her whole body or disability is in respect of particular limb of the body which was affected due to injuries sustained by claimant in the accident in question. A duty is cast on the Claims Tribunal to conduct an inquiry to ascertain the truth in terms of the provisions of the Act of 1988 and the Rules framed thereunder.

19. For the purpose of awarding compensation under the head ‘permanent disability’, there must be evidence and proof that percentage of disability suffered by claimant is in respect of his/her whole body or limited to the affected organ only. In case at hand, the appellant had failed to prove the aforesaid fact by bringing into evidence of the doctor (AW-2) examined by her, but one thing is clear that the doctor in very categorical term has stated that percentage of disability mentioned in the disability certificate is with respect to the affected organ of the body i.e. right hand only.

20. In the above circumstances, for awarding just amount of compensation, the percentage of disability i.e. 30%, as mentioned in the certificate and stated by the doctor (AW-2), cannot be taken to be percentage of disability affecting whole body of the appellant. But, when once permanent disability has been proved to be 30% that too on right hand of claimant/appellant, which is working part of the body, in the opinion of this Court, the permanent disability for the whole body cannot be less than 15%.

21. In the case of Master **Mallikarjun vs. National Insurance Company Ltd.** reported in **(2014) 14 SCC 396** Hon’ble Supreme Court while considering the issue of award of compensation in case of permanent disability suffered by a minor child has held thus:

> “12.Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick.”

22. In light of above decision of Hon'ble Supreme Court and considering that appellant is a minor girl who had suffered permanent disability not less than 15% to the whole body, we deem it appropriate to award a lump sum amount of Rs.3,00,000/- as compensation to appellant.

23. In view of the above, the appeal is allowed in part. Impugned award is modified to the extent as indicated above. Now appellant is entitled for a total sum of Rs.3,00,000/- as compensation, which includes medical expenditure & compensation under other heads. Respondent No.3-Insurance Company is held liable to make payment of compensation to claimant/appellant. The amount of compensation shall carry interest @ 6% per annum from the date of filing of claim application till its realization.

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

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-