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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 901 of 2014

1. Irshad S/o Nabib Baksh aged about 40 years, R/o Village Dabripara, Post, Police Station and Tahsil Baikunthpur District Korea, C.G.

------Appellant

VERSUS

1. Smt. Kalawati W/o Shivkumar Harijan, aged about 22 years, R/o village Gadbadi, Police Station and Tahsil Baikunthpur, District Korea, C.G. **-----Claimant**
2. The Oriental Insurance Company Limited, through Branch Manager, Branch Office, Near Ambedkar Chowk, Ambikapur, District Surguja, C.G. **-----Insurer**

-------Respondents

For Appellant	:	Mr. Samir Singh, Advocate
For Respondent No. 1	:	Mr. Sanjeev Kumar Verma, Advocate.
For Respondent No. 2	:	Mr. Sandeep Shrivastava, and Mr. Sudhir Agrawal, Advocate

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

Judgment on Board

Per Parth Prateem Sahu, J.

17/07/2020

1. The appellant claiming him to be a paid driver of the offending vehicle (CG 16-ZD 0114) has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the impugned award dated 01-05-2014 passed in Claim Case No. 67/2011 by Motor Accident Claims Tribunal, Baikunthpur, C.G. wherein the Claims Tribunal allowed the claim application in part and awarded a sum of Rs. 3,94,880/- in an injury case and fastened the liability upon the appellant/ non-applicant 2 for satisfying the amount of compensation.

2. Facts relevant for disposal of this appeal are that on 18-09-2008 when Respondent 1/claimant was traveling on the offending vehicle bearing Registration no. CG 16ZD 0114 and going to his house at village Gadbadi from Baikunthpur, on the way, offending vehicle met with an accident on account of rash and negligent driving by its driver (appellant), in the aforementioned accident, Respondent 1 suffered grievous injuries over her person and she

became permanent disabled with her left leg, the accident was reported to concerned police station based on which, criminal case was registered against the appellant. Respondent 1 filed claim application under Section 166 of the Motor Vehicles Act, seeking compensation of Rs. 25,89,000/- against non-applicants therein.

3. The appellant submitted reply to the claim application and pleaded that he has been engaged as driver by Non-applicant 1 on salary basis of Rs. 3,000/- per month and he was driving the vehicle under the direction and instructions of Non-applicant 1. It is further pleaded that under the instruction of Non-applicant 1, he was taking Respondent 1/ Claimant on the offending vehicle to drop her to destination place.

4. Respondent 2/ Non-applicant 3-Insurance Company submitted reply to the claim application and denied the pleadings made with regard to income and further pleaded that the injury suffered by the claimant was on account of her own negligence. It was further pleaded that on the date of accident, driver of the offending vehicle was not possessing valid and effective driving licence and further that there was no valid permit of the offending vehicle, the offending vehicle was registered as private vehicle but it has been used as Taxi and driver of the offending vehicle was possessing driving licence as Light Motor Vehicle (LMV) and not the Transport Vehicle.

5. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record held that the accident was on account of rash and negligent driving by appellant/ non-applicant 2 due to which claimant/ respondent 1 suffered grievous injuries and became permanent disabled and further that there was breach of conditions of insurance policy and awarded Rs. 3,94,880/- as compensation.

6. Learned counsel for the appellant submits that the Claims Tribunal committed error in deleting the name of owner of offending vehicle from the cause title of the claim application on account of his death without impleading his legal representative(s). He being the paid driver only, engaged by registered owner

who was non-applicant 1 therein, cannot be held liable to satisfy the amount of compensation when he is not the owner of offending vehicle. He further contended that as during the pendency of the claim application, the owner of the offending vehicle died and his legal representative(s) was not brought on record, therefore, the claim application itself is not maintainable. He further argued that on the date of accident, the appellant was possessing a valid and effective driving licence to drive the LMV and the offending vehicle also comes within the category of LMV, but the Tribunal erroneously exonerated the Insurance Company from its liability to pay the amount of compensation.

7. Mr. Sanjeev Kumar Verma, learned counsel appearing for Respondent 1/ claimant submits that after the death of registered owner of the offending vehicle, application for deletion of name of Non-applicant 1 was filed by the learned counsel for the claimant appearing therein in which it has been clearly and specifically pleaded that the offending vehicle was sold to the appellant then he became the owner of the offending vehicle and further pleaded that there was no legal representative available of Non-applicant 1 and prayed for continuance of the proceedings of the claim case after deletion the name of Non-applicant 1 to protect the interest of claimant. Copy of the application was served upon the learned counsel appearing for Appellant/ Non-applicant 2, after hearing the parties, permission to delete the name was granted. The appellant cannot raise this ground before this Court in this appeal.

8. Mr. Sandeep Shrivastava and Mr. Sudhir Agrawal learned counsel for Respondent 2-Insurance Company submits that the Claims Tribunal has clearly recorded a finding to issue no. 4, in paragraphs 20 to 24 of the award and held that there was breach of conditions of insurance policy. They argued that the Claims Tribunal has considered the evidence of claimant that she boarded the offending vehicle at bus stand Baikunthpur as Taxi and along with her about 10-12 passengers were also traveling, she paid Rs. 15 as taxi fare to driver of the offending vehicle, the vehicle was insured as private vehicle but was being used

as Taxi, as there was breach of conditions of insurance policy. They admit that the person holding the driving licence authorising him to drive LMV can driver the light commercial vehicle also but they have argued that the vehicle registered and insured as private vehicle cannot be used as commercial vehicle and there is clear breach of conditions of insurance policy and the finding recorded by the learned Claims Tribunal is based on material and evidence available on record which does not call for any interference.

9. We have heard learned counsel for the appellant as well as learned counsel appearing for Respondents and also perused the record.

10. The core contention of the learned counsel for the appellant is that in absence of the registered owner, the claim application itself is not maintainable and he was engaged only as driver by the original owner (non-applicant 1) of the offending vehicle. Perusal of record would show that the claimant had made Sarabjeet Singh S/o Gurbaksh Singh as Non-applicant 1, but in cause title of claim application, his name is shown to be deleted in pursuance to the order passed by the Claims Tribunal on 18-06-2012. Going through the record, we find that the claimant has moved an application for deleting the name of Non-applicant 1 by name Sarabjeet Singh on 20-03-2012 and copy of the said application was served upon the learned counsel on opposite side and copy of the application available on record shows receipt of signature of two persons/ advocates. Perusal of the said application would also show that in paragraph 3 of the application, it has been clearly mentioned that the offending vehicle has been sold to appellant/ non-applicant 2 driver of the offending vehicle, there was no legal representative of the deceased and prayed for deletion of name of Non-applicant 1. On 18-06-2012, learned counsel for non-applicant 2/ appellant before the Claims Tribunal appeared and the order has been passed for deletion the name of Non-applicant 1 in presence of the advocate of the non-applicant 2. The order for deleting the name was passed in presence of advocate of Non-applicant 2 (appellant), he did not raise any objection nor challenged the order of deleting the

name from 18-06-2012 to the date of passing of the impugned award before higher Court.

11. In view of the aforementioned facts and material available on record, the submission made by the learned counsel for the appellant that the Claims Tribunal erred in not impleading the legal representative(s) of Non-applicant 1 as non-applicants and also he is only a paid driver, is not sustainable particularly when he has not raised any objection to the pleadings made in the application for deleting the name of non-applicant 1, wherein it has been mentioned that the vehicle has been sold to the appellant. In view of the aforementioned facts, it appears that the appellant was using the vehicle as its owner and not the driver.

12. True it is that under the provisions of Motor Vehicles Act, definition of the owner of a motor vehicle has been provided under Section 2(30) in which it is mentioned that "<u>the person in whose name the vehicle is registered</u>". But looking to the facts and circumstances of the case at hand and also looking to the object of the Act, the appellant who is the possessor/ owner of the offending vehicle, by virtue of purchase of the vehicle but has not initiated the proceedings for transfer of the name, the Claims Tribunal has not committed any error in fastening the liability upon the appellant/ non-applicant 2; the appellant cannot be permitted to play hide and seek with the Court only to escape from his liability of satisfying the amount of compensation passed by the learned Claims Tribunal under the beneficial piece of legislation i.e. the Motor Vehicles Act, 1988.

13. Sofar as, the ground raised by the learned counsel for the appellant that the learned Claims Tribunal erroneously exonerated the Insurance Company is concerned. Copy of the policy available on record as Ext. D-3, wherein it is mentioned that “Liability only Policy for Zone B Private Car”. Admittedly, in the case at hand, the injured/ claimant was traveling as passenger and occupant of the vehicle, there is no premium paid for any of the occupant and the policy obtained only a liability only policy and that too for a private car, the evidence which is placed on record by the claimant/ respondent 1, in very specific terms in

her cross examination had stated that at the time of accident about 10-12 persons were traveling, they have boarded the vehicle as taxi from bus stand Baikunthpur and she has paid Rs. 15 as fare.

14. From the aforementioned evidence of AW-1, it is apparent that the claimant/ respondent 1 was traveling on vehicle as fare paid passenger and occupant of the offending vehicle, whereas, the insurance policy shows that it was issued for a private car and not for the taxi. In view of the facts and evidence available on record, we do not find any error in the finding recorded by the Claims Tribunal that there was breach of conditions of insurance policy and exonerated the Insurance Company from its liability.

15. For the foregoing reasons, we do not find any tenable grounds to interfere with the finding recorded by the learned Claims Tribunal. 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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