

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 603 of 2014**

(Arising out of Award dated 05.04.2014 passed by the Motor Accident Claims Tribunal, Kabirdham (Kawardha) in Claim Case No.22/2012)

- Pradeep Agrawal, S/o Madan Agrawal, aged about 40 years, R/o Bemetara, Than Khamhariya, District – Durg (C.G.)

---- Appellant

Versus

1. Neelchand Kaushik S/o Dukalha Kaushik, aged about 45 years, R/o Nawapara, Bamhani, Tahsil – Kawardha, District – Kabirdham (C.G.)
2. Purushottam Patel, S/o Shri Nohar Patel, aged about 22 years, Occupation – Driver, R/o Than Khamhariya, Post – Than Khamhariya, District – Durg (C.G.)
3. Branch Manager, National Insurance Company Limited, Divisional Office Akash Ganga Campus, Supela, Bhilai, District – Durg (C.G.)

---- Respondents

For Appellant	:	Shri Anant Bajpai, Advocate
For Respondent No.1/Claimant	:	Shri P.R. Patankar, Advocate
For Respondent No.2/Driver	:	None present
For Respondent No.3/Insurer	:	Shri Raj Awasthi, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per, P. R. Ramachandra Menon, Chief Justice

17.08.2020

1. Fixation of a total sum of Rs. 95,600/- as the compensation payable by the Owner and Driver of the Motorcycle involved in a road traffic accident in respect of the injuries sustained by a Cyclist is put to challenge at the instance of the Owner of the offending vehicle in this appeal.
2. The accident took place on 10.10.2011. The Claimant was proceeding on his bicycle, when he was knocked down by the Motorcycle bearing No. CG-07 AB 7068, owned by the Appellant, driven by the 2nd

Respondent and insured by the 3rd Respondent, causing serious injuries, which was sought to be compensated by filing a Claim Petition before the Tribunal. The Claim Petition was resisted from the part of the rider and owner of the Motorcycle mainly contending that the Motorcycle was being ridden with proper care and caution and that there was no rashness or negligence on the part of the Rider; at the same time, attributing negligence solely on the part of the Cyclist. The 3rd Respondent-Insurance Company contented that the Motorcycle was being ridden by the 2nd Respondent, without possessing a valid and effective driving license at the relevant time and hence there was violation of the statutory / policy conditions, by virtue of which the Insurer was not liable to satisfy the claim.

3. On culmination of the trial, the Tribunal, on the basis of the pleadings and evidence adduced, arrived at a finding that the accident had occurred only because of the negligence on the part of the 2nd Respondent / Rider of the Motorcycle. With regard to the quantum of compensation payable, the Tribunal awarded a sum of Rs.45,600/- towards the treatment charges, a lump-sum compensation of Rs.25,000/- towards injuries sustained, a sum of Rs.20,000/- towards the pain and suffering and further a sum of Rs.5,000/- towards the special diet, thus, granting a total sum of Rs.95,600/-; which was directed to be satisfied with interest @ 7.5% per annum from the date of filing of the claim petition till its realization, if deposited within two months, or else to pay interest at the rate of '9%' per annum.

Observing that there was clear violation of the statutory / policy condition that it was caused to be ridden without any valid and effective driving license, the Respondent-Insurance Company was exonerated from the liability and the amount due under the Award was directed to be satisfied by the 2nd Respondent / Rider and the Appellant – Owner of the Motorcycle. This is under challenge in this appeal at the instance of the Owner of the Motorcycle.

4. The learned counsel for Appellant submits that there is absolutely no basis for granting the compensation, which is stated also as quite excessive. It is pointed out that the accident had not resulted in any permanent disability and as such, the amounts awarded by the Tribunal under the relevant heads are liable to be scaled down. It is also pointed out that the Tribunal was not right in exonerating the Insurance Company and that the 2nd Respondent / Rider was having a valid and effective driving license at the relevant time.
5. To a pointed question raised by this Court as to production of the valid and effective driving license, the learned counsel for the Appellant / Owner of the Motorcycle concedes that no copy of the driving license of the 2nd Respondent was produced before the Tribunal. This Court asked whether copy of the same has been produced in the appeal, invoking the power and jurisdiction under Order 41 Rule 27 of the CPC, which was categorically conceded in 'Negative'. Despite the pendency of the matter for more than 'six' years, the Appellant could not produce the driving license of the 2nd Respondent / Rider, if he was actually

having any valid and effective driving license and in the said circumstance, we cannot but hold that the opportunity given to the parties to substantiate the position as to alleged possession of valid and effective driving license was never utilized properly. This being the position, the finding of the Tribunal that, the vehicle was being ridden without valid and effective driving license at the relevant time is not liable to be interdicted under any circumstances.

6. With regard to the quantum of compensation awarded, it is to be noted that the injuries sustained are quite serious and there is a hospitalization of more than '20' days as well. Considering the specific pleadings and materials brought in evidence, this Court is of the view that the amounts awarded by the Tribunal are never excessive in any manner.
7. The learned counsel for the Appellant submits that, even in the case of violation of the policy conditions for not possessing valid and effective driving license, the settled Rule is that of 'Pay and Recover' by the Insurer. There cannot be any dispute in this regard. But, it is to be noted that the present appeal is not preferred at the instance of the Claimant, but by the Insured / Owner of the vehicle. Directing the Insurance Company to satisfy the amount towards the Claimant with liberty to have it recovered from the Owner and Rider, will not make any difference in so far as the rights and interest of the Appellant / Owner of the vehicle are concerned. Even if there can be a direction to the Insurer to satisfy the claim of the Claimant (if the Claimant had any

such case), it can be recovered from the Appellant-Owner. Hence, it does not matter much, whether the proceedings are taken for recovery from the Appellant at the instance of the Claimants or the Insurer. This being the position, the said proposition made by the learned counsel for the Appellant does not deserve any attention. We are of the view that the Award passed by the Tribunal is not one which requires interference at the hands of this Court.

The appeal fails. It is dismissed accordingly.

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

Sd/-
(Parth Prateem Sahu)
Judge