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HIGH COURT OF CHHATTISGARH BILASPUR

M. A. (C) No. 981 of 2014

(Arising out of award dated 19/06/2014 passed in Claim Case No.111 of 2011 by the Additional Motor Accident Claims Tribunal, Khairagarh, District Rajnandgaon, Chhattisgarh)

The Oriental Insurance Company Limited Branch Office Kamthi Line, Rajnandgaon, District Rajnandgaon (C.G.).

---- Appellant

Versus

1. Manoj Kumar S/o Shri Ramkishun Sharma, aged about 30 years, R/o village Bhulatola, Police Station Chhuikhadan, Tahsil Khairagarh, District Rajnandgaon (C.G.).
2. Santosh Kumar S/o Shri Baldau Ram Mohile, aged about 32 years, R/o Ward No.1, Pipariya, Police Station and Tahsil Khairagarh, District Rajnandgaon (C.G.).

---- Respondents

M. A. (C) No. 988 of 2014

Manoj Kumar S/o Shri Ramkishun Sharma, aged about 30 years, R/o village Bhulatola Police Station Chhuikhadan, Tahsil Khairagarh, Civil & Revenue District Rajnandgaon (C.G.).

---- Appellant

Versus

1. Santosh Kumar S/o Shri Baldau Ram Mohile, aged about 32 years, R/o Ward No.1, Pipariya, Police Station Khairagarh, Tahsil Khairagarh, District Rajnandgaon (C.G.).
2. The Oriental Insurance Company Limited, Branch Office Kamthi Line, Rajnandgaon, Distict Rajnandgaon (C.G.).

---- Respondents

MAC No.981 of 2014

For Appellant : Shri Pankaj Agrawal, Advocate
For Respondent No.1 : Shri Abhishek Sharma, Advocate
For Respondent No.2 : Shri Rakesh Pandey, Advocate

MAC No.988 of 2014

For Appellant : Shri Abhishek Sharma, Advocate
For Respondent No.1 : Shri Rakesh Pandey, Advocate
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

07/08/2020

1. As both the appeals are arising out of award dated 19/06/2014 passed by the Additional Motor Accident Claims Tribunal, Khairagarh, District Ranjnandgaon, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.111 of 2011, therefore, they are being disposed of by this common judgment.

2. MAC No.981 of 2014 is filed by non-applicant No.2/Insurance Company/appellant challenging the impugned award on the ground that learned Claims Tribunal erred in not holding that there was breach of conditions of insurance policy as on the date of accident, driver of Tata Magic bearing registration No. CG-08/T/0359 (hereinafter referred to as 'offending vehicle') was not possessing valid and effective driving licence, but for licence to drive 'Light Motor Vehicle', whereas MAC No.988 of 2014 is filed by the claimant seeking enhancement of amount of compensation on the ground that learned Claims Tribunal neither awarded just amount of compensation nor awarded any amount towards permanent disability even after placing evidence and proof on record that the claimant has suffered permanent disability to the extent of 40%.

3. Facts relevant for disposal of these appeals, are that, on

10/09/2011, when claimant was travelling on motorcycle bearing registration No.CG-04/CY/4082 and going to his house at village Bhulatola from Khairagarh, on the way, when he reached near school at Bhulatola, non-applicant No.1/driver of offending vehicle, drove his vehicle rashly and negligently and dashed the motorcycle of the claimant from front side. In the said accident, claimant suffered grievous injuries over his right leg and left knee. He was taken to hospital, where during the course of treatment, he undergone operation, but injuries could not be cured fully and thereby, he suffered permanent disablement on his right leg.

4. Injured 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. 13,15,000/- mentioning therein that he took treatment at Chandulal Chandrakar Memorial Hospital, Bhilai from 10/09/2011 to 30/09/2011 and thereafter, he was again admitted on 17/10/2011 to 31/10/2011. He suffered grievous injuries over his right foot and flesh of heel pad came out. After taking skin and flesh from thigh, his treatment was done at Chandulal Chandrakar Memorial Hospital, Bhilai and thereby, he suffered 40% permanent disability in the accident. It was further pleaded that prior to the date of accident, he was working as driver, but due to injuries suffered by him, he is unable to drive any motor vehicle.

5. Non-applicant No.1/driver of offending vehicle submitted reply to claim application and denied the fact of negligence on his part. It was pleaded that it is the claimant himself, who drove his vehicle rashly and negligently under the influence of liquor.

6. Non-applicant No.2/Insurance Company also submitted its separate reply and denied the pleadings made in the claim application as also his occupation of driver. It was pleaded that claimant entered into collusion with driver and owner of the offending vehicle; there was no valid and effective driving licence with non-applicant No.1 to drive the offending vehicle and there was breach of the conditions of insurance policy.

7. Learned Claims Tribunal based on the pleadings of respective parties, formulated as many as five issues for consideration. On appreciation of pleadings, evidence and material placed on record by the respective parties, allowed the claim application in part and awarded a sum of Rs.1,74,753/- as compensation including Rs.1,39,753/- towards medical expenses.

8. Shri Pankaj Agrawal, Advocate for the appellant/Insurance Company in MAC No.981 of 2014 submits that on the date of accident, driver of offending vehicle was not possessing valid and effective driving licence as the licence which was produced, only bears an authorization to drive 'Light Motor Vehicle', whereas on the date of accident, non-applicant No.1 was driving 'Transport Vehicle' and there was no endorsement on licence Ex. D-2 authorizing non-applicant No.1 to drive the Transport Vehicle. He further submits that being so, on the date of accident, offending vehicle was driven by non-applicant No.1 in breach of conditions of insurance policy. He places reliance on the judgment passed by Hon'ble Supreme Court in case of **New India Insurance Company Limited v. Prabhu Lal**[1].

9. Shri Abhishek Sharma and Shri Rakesh Pandey, learned counsel appearing for the respective respondents in MAC No.981 of 2014 submit that the contentions raised by learned counsel for the appellant/Insurance Company is not sustainable in view of law laid down by the Hon'ble Supreme Court in case of **Mukund Dewangan v. Oriental Insurance Company Limited**[2], wherein Hon'ble Supreme Court has held that the person holding driving licence authorizing him to drive 'Light Motor Vehicle' is also authorized to drive any class of vehicle coming under the preview of Light Motor Vehicle. The Claims Tribunal rightly fastened the liability upon the Insurance Company.

10. Shri Abhishek Sharma, learned counsel for the appellant/claimant in MAC No.988 of 2014 submits that learned Claims Tribunal erred in awarding meager amount of compensation looking to the nature of injuries suffered by the claimant, who was in occupation of driver of four-wheeler and suffered 100% loss of income. He further contended that functional disability affecting the loss of income of the claimant is to be considered based on the nature of

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1 **(2008) ACJ 627**
2 **(2017) 14 SCC 663**

employment and not only percentage of disability as assessed by the doctor. He also submits that learned Claims Tribunal has not awarded appropriate amount of compensation on other non-pecuniary damages and prays for suitable enhancement of the amount of compensation.

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

12. So far as the ground raised by learned counsel appearing for the appellant/Insurance Company in MAC No.981 of 2014 that non-applicant No.1 was not possessing valid and effective driving licence to drive the offending vehicle is concerned, we have perused the record of Claims Tribunal, wherein the documents of offending vehicle have been placed on record as Ex. D-1 (vehicle particulars), Ex. D-2 extract of driving licence and Ex. D-3 copy of insurance policy. Perusal of copy of vehicle particulars (Ex. D-1) would show that the class of vehicle has been shown as 'Motor Cab/Taxi', type of Body as 'Jeep', unladen weight as '1000 Kgs' and gross vehicle weight as '1600 Kgs'. Looking to the unladen weight/laden gross vehicle weight, it is apparent that weight of offending vehicle is less 7500Kg and comes under the category of 'Light Motor Vehicle' as defined under Section 2(21) of the M.V. Act, which reads as under :

> “**2. Definitions.-**In this Act, unless the context otherwise requires,-
>
> x x xx xx

> (21) “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 [7,500] kilograms;”

13. Perusal of copy of driving licence (Ex. D-2) would show that non-applicant No.1- Santosh Kumar was possessing driving licence having its validity from 25/06/2011 to 23/02/2023. It also shows that authorization of the licence holder is to drive 'motorcycle with Gear and Light Motor Vehicle (Non-Transport)'.

14. Perusal of copy of insurance policy (Ex. D-3) would show that it has been issued with respect to offending vehicle as four-wheeler carrying six passengers and Package Policy-Zone B. The make of offending vehicle has been mentioned as 'Tata Magic' and the policy has been shown to be 'Commercial Package Policy'. Looking to the documents/particulars of offending vehicle and definition of 'Light Motor Vehicle' as provided under M.V. Act, there is no dispute that offending vehicle comes within the category of 'Light Motor Vehicle' and looking to its use as well as issuance of insurance policy, it comes within the category of 'Light Commercial Vehicle'.

15. The submission made by learned counsel for the appellant/Insurance Company that though non-applicant No.1 is holding a licence to drive 'Light Motor Vehicle', but it does not bear the endorsement permitting him to drive 'Light Commercial

Vehicle'. He submits that 'Light Commercial Vehicle' comes under 'Light Transport Vehicle', therefore, there is requirement of endorsement on licence of non-applicant No.1 permitting him to drive 'Light Transport Vehicle'. We are not convinced with the submission made by learned counsel for the appellant before us that their is requirement of endorsement of licence of non-applicant No.1 to make the licence valid for droving Light Commercial Vehicle.

16. The issue with respect to persons having a licence authorizing to drive Light Motor Vehicle, but on the date of accident found driving the commercial vehicle, but of the same category, has been considered by the Hon'ble Supreme Court in case of **Mukund Dewangan** (supra) and held as under :

> “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.

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.

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.”

17. In the light of law laid down by Hon'ble Supreme Court in the aforementioned case as well as considering the fact of the case that non-applicant No.1 was possessing licence to drive 'Light Motor Vehicle', which was not disputed by learned counsel for the appellant/Insurance Company and was driving Light Commercial Vehicle, the appeal filed by appellant/ Insurance Company being MAC No.981 of 2014 is devoid of any substance which is liable to be and is dismissed.

18. So far as the appeal filed by claimant for enhancement of award being MAC No.988 of 2014 is concerned, claimant in his support has filed copy of his driving licence as Ex. P-1C, copy of final report as Ex. P-2, copy of First Information Report as Ex. P-3, copy of MLC as Ex. P-7, copy of prescription of District Hospital, Rajnandgaon as Ex. P-8, copy of disability certificate Ex. P-9, discharge summary of Chandulal Chandrakar Memorial Hospital, Bhilai as Ex. P-10 and medical bills/pharmacy bills of Chandulal Chandrakar Memorial Hospital from Ex. P-11 to Ex. P-90.

19. To prove his case, claimant has examined himself as AW-1 and Dr. Prakash Bhalerao as AW-2. The claimant Manoj Kumar Sharma (AW-1) has stated in his evidence that he suffered injuries over his right leg and his knee bone got fractured; he suffered grievous injuries over his right foot and avulsion injury on right foot heel pad, he took treatment at Chandulal Chandrakar Memorial Hospital, Bhilai for a period of 20 days and thereafter, he has visited the hospital on number of occasions for getting treatment after discharge from the hospital. He has further stated that he suffered permanent disability to the extent of 40%, for which, disability certificate (Ex. P-9) was issued by doctors of District Medical Board, Rajnandgaon.

20. To prove disability certificate (Ex. P-9), the claimant has examined Dr. Prakash Bhalerao (Orthopedic Specialist) of Government Hospital, Rajnandgaon as AW-2, who in his evidence stated that claimant himself appeared before District Medical Board, Rajnandgaon for examining himself and after examining the claimant as also considering the documents and X-ray, they have found that there was fracture injury of medial condyle and femur with abulsion injury on right foot. They also found stiffness in right knee and found 40% permanent disablement. The claimant has proved the injuries suffered by him by placing discharge summary of Chandulal Chandrakar Memorial Hospital, Bhilai as Ex.P-10, wherein it has been mentioned that the injury over right foot avulsed heel pad with chip fracture medial condyle of femur right. Discharge summary also shows that the claimant was admitted in the hospital from 10/09/2011 to 30/09/2011 for a period of 20 days.

21. Learned Claims Tribunal awarded Rs.1,39,753/- towards medical expenses, Rs.3,000/- towards conveyance expenses, Rs.20,000/- towards loss of future income, Rs.2,000/- towards special diet and Rs.10,000/- towards pain and suffering only. Looking to the nature of injuries suffered by claimant as also disability certificate issued by District Medical Board, Rajnandgaon by Dr. Prakash Bhalerao (AW-2), in our considered view, award passed by learned Claims Tribunal appears to be on the lower side.

22. Learned Claims Tribunal has not awarded any amount towards permanent disability suffered by the claimant and proved by him by placing cogent and reliable piece of evidence before the learned Claims Tribunal though learned Claims Tribunal has considered and accepted the occupation of the claimant as driver, but even then, only Rs.20,000/- towards loss of future income has been awarded.

23. Perusal of evidence of Dr. Prakash Bhalerao (AW-2) would show that no specific question has been put to him whether with the permanent disability suffered by the claimant, he may or may not able to drive four-wheeler. This witness was examined on behalf of the claimant to prove his disability from the evidence available on record, it is proved that the claimant has suffered permanent disablement due to accidental injuries suffered by him.

24. In view of above facts and circumstances of the case, we find it appropriate to take support of the ruling rendered by Hon'ble

Supreme Court in case of **Mallikarjun v. Divisional Manager, National Insurance Company Limited and another**[3], in which, Hon'ble Supreme Court had considered the award of compensation taking into consideration the percentage of disability suffered by claimant and prepared the slab of amount of compensation to be awarded in such cases and 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."

25. Taking into consideration that the claimant suffered permanent disablement to the extent of 40%, over the part of the body, in which, permanent disability occurred as well as nature of employment as driver as pleaded and proved by placing copy of driving licence (Ex. P-1C), in which, it is seen that the claimant is authorized to drive 'Motorcycle with Gear', 'Light Motor Vehicle',

3 **(2014) 14 SCC 396**

'Light Transport Vehicle' and 'Heavy Goods Vehicle', therefore, it cannot be disputed that the claimant was working as driver on the date of accident.

26. In view of aforementioned discussions, particularly, disability certificate (Ex. P-9) and evidence of Dr. Prakash Bhalerao (AW-2) member of the Medical Board, it cannot be said that the disability mentioned in the disability certificate to the extent of 40% for whole body as also admitted by the doctor, but is with respect to right leg only, where the claimant suffered injury. In the facts and circumstances of the case, where the claimant suffered avulsed heel pad injury on right foot with chip fracture of medial condyle of femur right, the permanent disability for whole body cannot be less than 20% as the disability will affect the movement and all the activities of claimant as the injury suffered by him on right heel pad and will definitely affect his occupation.

27. In view of above, as the disability suffered by the claimant as assessed by this Court is 20% will come within the permanent disablement upto 30% for whole body as held by Hon'ble Supreme Court in case of **Mallikarjun** (supra), the claimant is entitled for a consolidated sum of Rs.3,00,000/- towards permanent disability suffered by him. Apart from above, claimant will be entitled for medical expenses incurred by him to the tune of Rs.1,39,753/-, Rs.3,000/- towards conveyance expenses, Rs.2,000/- towards special diet as awarded by learned Claims

Tribunal, claimant will also be entitled for Rs.3,000/- towards attendant.

28. Now, the claimant will be entitled for a total sum of Rs.4,47,753/- (3,00,000 + 1,39,753 + 3,000 + 2,000 + 3,000) instead of Rs.1,74,753/- awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of claim application till its realization.

29. In the result :-

(i) MAC No.981 of 2014 filed by the Insurance Company is dismissed.

(ii) MAC No.988 of 2014 filed by the claimant is allowed in part and the impugned award is modified to the extent indicated herein above. Other conditions imposed by learned Claims Tribunal shall remain intact.

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

Yogesh