NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 569 of 2014

1. Sanat Dhurve, S/o Parsadiram Dhurve Aged About 25 Years, Occupation-Driver of Tractor No.CG 09 C 7043, R/o Village Barbhanwar, P.S. Kawardha, Distt. Kabirdham, Chhattisgarh (Driver)
2. Sanwal Sahu S/o Hasdev Sahu Aged About 50 Years Occupation-Owner of Tractor No.CG 09 C 7043, R/o Barbhanwar, P.S. Kawardha, Distt. Kabirdham, Chhattisgarh (Owner)

---- Appellants

Versus

1. Lekhram Sahu, S/o Tirith Ram Sahu Aged About 27 Years, Occupation-Agriculture and DJ Operator, R/o Chimra, P.S. Kawardha, Distt. Kabirdham, Chhattisgarh (Claimant)
2. Royal Sunderam Alliance Insu.Co. Branch Raipur, District : Raipur, Chhattisgarh

-----Respondents

For Appellants	:	Shri Devesh Chandra Verma, Advocate
For Respondent-1	:	Shri Malay Shrivastava, Advocate
For Respondent- 2	:	Shri Bhaskar Pyashi, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
04.09.2020

1. This appeal has been filed by driver and owner of offending vehicle under Section 173 of Motor Vehicles Act, 1988, challenging the impugned award dated 06.02.2014 passed in Claim Case-94 of 2012 by Motor Accident Claims Tribunal, Kabirdham, District Kawardha (for short, 'Claims Tribunal'), whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.1,04,000/- as compensation.

2. Facts relevant for disposal of this appeal are that on 23.05.2012 respondent-1/Claimant- Lekhram Sahu was travelling along with other labourers on a Tractor, loaded with *murum*, which was owned by

Dhuniram Sahu. On the way, the said Tractor suffered some mechanical problem, its right wheel was separated from the Tractor and it was parked on the roadside. While the claimant was stepping down from the Tractor, another Tractor bearing No.CG 09 C 7043 (hereafter, referred to as 'offending vehicle') driven by NA1/appellant-1 herein and owned by NA2/appellant-2, dashed the claimant, on account of which, he suffered grievous injuries on his both legs. The accident was reported to concerned Police Station based on which, Crime was registered against the driver of offending vehicle.

3. Claimant after taking medical treatment, filed an application under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.4,10,000/- towards the motor accidental injuries suffered by him.

4. NA1 and NA2, appellants herein submitted reply to the claim application pleading therein that the offending vehicle was driven by NA1 after taking all precautions; he was having valid and effective driving license and the offending vehicle was insured with NA3/Insurance Company. Therefore, liability, if any, to pay compensation would be upon the Insurance Company.

5. Insurance Company/NA3 submitted reply to claim application pleading therein that the offending vehicle owned by NA2 and driven by NA1 was not involved in the accident. As the accident was not informed to the Insurance Company, the claim application is liable to be dismissed. Apart from the aforementioned pleadings, Insurance Company also pleaded that the driver of offending vehicle was not possessing valid and

effective driving license, thereby there is breach of conditions of Insurance Policy.

6. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record, allowed the claim application in part and awarded Rs.1,04,500/- as compensation and fastened liability to pay the amount of compensation upon NA1 and NA2, driver and owner of offending vehicle, recording a finding that there was breach of conditions of Insurance policy as the driver who was driving the offending vehicle was not possessing a valid and effective driving license on the date of accident.

7. Shri Devesh Chandra Verma, learned counsel for the appellants/driver and owenr of offending vehicle submits that learned Claims Tribunal erred in not issuing a direction of pay and recover, even after recording a finding that there was a Policy and breach of conditions of Insurance Policy on account of the driver of offending vehicle not possessing valid and effective driving license. The Policy was not disputed and there was no such finding recorded by learned Claims Tribunal. He further submits that there was contributory negligence on the part of claimant also, as the offending vehicle met with accident with another vehicle. Learned counsel lastly submits that treating doctor was not examined by the claimant and learned Claims Tribunal awarded excessive amount of compensation in the facts and circumstances, where the claimant suffered only fracture injury on his legs.

8. Per contra, Shri Bhaskar Payashi, learned counsel representing the Insurance Company submits that learned Claims Tribunal has clearly

recorded a finding that there was no licence with NA1, driver of offending vehicle on the date of accident. Copy of license was not produced before the learned Claims Tribunal. The fastening of liability upon the driver and owner of offending vehicle is in accordance with law, which does not call for any interference. He further contended that the submission of learned counsel for the appellants with regard to seeking a direction of pay and recover is not sustainable as the present case is not filed by the claimant/victim of the accident. Learned Claims Tribunal after considering the facts and circumstances of the case, fastened liability upon the driver and owner of offending vehicle and in the appeal filed by the driver and owner of offending vehicle, direction to pay and recover not to be issued, more so, when the claimant has not approached this Court against the award passed by learned Claims Tribunal.

9. Shri Malay Shrivastava, learned counsel for the claimant/respondent-1 submits that learned Claims Tribunal after taking into consideration the nature of injuries suffered by the claimant and further taking into consideration the medical documents and bills placed on record, awarded just and reasonable amount of compensation, which cannot be said to be on higher side. The learned Claims Tribunal while awarding amount of compensation, has awarded Rs.54,500/- towards the medical expenditure. He further submits that claimant suffered fracture injury over his saft Tibia left and lacerated wound on right leg. He underwent operation and took treatment as inpatient from 23.05.2012 to 28.05.2012. He submits that the impugned award does not call for any interference.

10. We have heard learned counsel for the respective parties and also perused the record. So far as the submission made by learned counsel for the appellants that the learned Claims Tribunal has not considered contributory negligence when there is involvement of two motor vehicles in the accident and also did not deduct the amount of claimant share. This submission of learned counsel for the appellant cannot be accepted because the claimant/respondent-1 is not the driver of offending vehicle. The claimant was stepping down from the stationary Tractor when the offending vehicle driven by its driver rashly and negligently, dashed the claimant. Therefore, the submission with regard to contributory negligence raised by learned counsel for the appellants in the facts and circumstances of the case, is not sustainable and it is hereby repelled.

11. The second ground raised by learned counsel for the appellants with regard to non-examination of treating doctor and awarding excessive amount of compensation, we have perused the records. Doctor was not examined but the claimant has filed all the medical documents of injury and treatment undergone by him. In the report of claimant, it has been specifically mentioned that lacerated wound on right leg and bleeding, swelling and tenderness of left leg. Document Ex.A5 is dated 23.05.2012 and on the same date, claimant looking to the grievous injuries suffered by him was admitted to Radiance Hospital and Research Centre, Kawardha, which is apparent from Ex.A6, Indoor Admission Sheet which clearly mentions injuries and the part of body and after diagnosis, it is mentioned as fracture saft Tibia left and lacerated wound on right leg. From the aforementioned documents Ex.A5 and A6, the nature of injuries suffered

by respondent-1/claimant has been proved. Claimant in support of his medical expenditure incurred by him, has placed on record medical bill of the Hospital of Rs.51,600/- as Ex.A7 and also placed some medical prescriptions of purchase of medicines from the Chemist Shop. The learned Claims Tribunal taking into consideration all the medical bills, has awarded Rs.54,500/- on the head of medical expenses. Taking into account the manner of accident, nature of injuries and the period of treatment, the amount awarded by learned Claims Tribunal towards pecuniary and non-pecuniary damages cannot be said to be on higher side. More so, when award of Rs.25,000/- towards grievous injuries suffered by the claimant, Rs.20,000/- towards pain and suffering and Rs.5,000/- towards special diet. The Claims Tribunal has not considered to award any sum towards loss of income during the period of treatment.

12. Taking into consideration the facts and circumstances of the case, nature of injury and non-award of any amount towards the loss of income during the period of treatment, we do not find any infirmity in awarding Rs.1,04,500/- as total compensation to the claimant.

13. For the fore going discussion, the submission made by learned counsel for the appellants that the amount of compensation awarded is on higher side is not sustainable and it is hereby repelled.

14. Learned counsel for the appellants argued that learned Claims Tribunal erred in not issuing a direction of pay and recover. He places reliance of judgment of Hon'ble Supreme Court in case of **Shamanna Vs Oriental Insurance Company Limited** reported in (2018) 9 SCC 650 in

which Hon'ble Supreme Court has considered the issue of 'pay and recover' in case of breach of conditions of Insurance Policy on account of the driver not having valid and effective driving license and not having valid permit. Learned Claims Tribunal while passing the impugned award has not issued any such direction for pay and recover and non-issuance of direction of pay and recover if at all, is against the interest of the claimant.

15. In this case, claimant has not chosen to approach this Court for seeking a direction of pay and recover by way of filing an appeal, more so, he has accepted the award passed by learned Claims Tribunal. The directions to pay and recover is only to protect the interest of the claimants and not to benefit the owner or driver, who are wrong doers as they drove the vehicle in breach of conditions of the Insurance Policy.

16. For the foregoing reasons, we do not find any merit in this appeal, it is liable to be and it is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

padma