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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 832 of 2014

- Kapil Dev S/o Janki Harijan, aged about 30 years, R/o Shiv Prasad Nagar, Police Chowki, Basdei, Police Station Surajpur, Revenue and Civil District Surguja C.G.

------Appellant/Claimant

VERSUS

1. Kaleshwar Singh S/o Gendi Singh, aged about 38 years, R/o Village Satpata, Police Station, Vishrampur, Tahsil Surajpur, District Surguja, C.G. Now District Surajpur **------Driver**
2. Purushottam Das S/o Shri Pyare Lal Agrawal, aged about 52 years R/o Bramh Road, Ambikapur District Surguja C.G. **------Owner**
3. United India Insurance Company Limited, through Branch Manager, Bramh Road, Ambikapur, District Surguja, C.G. **-------Insurer**

----Respondents

For Appellant : Mr. Pushpendra Patel, Advocate.
For Respondent No. 3 : Mr. Dashrath Gupta, Advocate.

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

Judgment on Board

Per Parth Prateem Sahu, J.

04/08/2020

1. Appellant-claimant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988, challenging the impugned award dated 13-05-2014 passed by First Additional Motor Accident Claims Tribunal, Surajpur, in claim case No. 29/2011, wherein learned Claims Tribunal allowed the claim application in part and awarded Rs. 25,000/- as compensation.

2. Facts relevant for disposal of this appeal are that on 20-10-2010, when the appellant was traveling on motor cycle bearing Registration no. CG 15A 5743 and going to village Shivprasad Nagar from village Satpata, while so, when he reached near village Chandrapur, one Tata 407 vehicle bearing Registration No. CG 15A 3272 (hereinafter referred to as “offending vehicle”) driven by Respondent 1/ Non-applicant 1 rashly and negligently dashed the

motor cycle of appellant. In the aforementioned accident, appellant suffered grievous injuries over his person. The accident was reported to concerned police station based upon which, crime no. 02/2010 for offenses under Sections 279, 367, 337 and 338 was registered against Respondent 1/ Non-applicant 1 driver of the offending vehicle. The appellant/ claimant filed an application under Section 166 of the Motor Vehicles Act, seeking compensation of Rs. 3,84,185/-.

3. Respondent 1/ Non-applicant 1 driver of the offending vehicle denied the pleadings made in the claim application and further pleaded that he was possessing valid and effective driving licence, the offending vehicle was insured with Respondent 3/ Non-applicant 3- Insurance Company and prayed for his exoneration.

4. Respondent 2/ Non-applicant 2 owner of the offending vehicle submitted reply to the claim application pleading therein that owner of the offending vehicle is Ajay Kumar Agrawal of village Changoli, Wadrafnagar, the offending vehicle was transferred to Ajay Kumar Agrawal and, therefore, he be exonerated.

5. Respondent 3/ Non-applicant 3-Insurance Company submitted reply to the claim application pleading therein that on the date of accident, Respondent 1/ Non-applicant 1 driver of the offending vehicle was not possessing valid and effective driving licence. It is pleaded that the licence possessed by him is only of Light Motor Vehicle (LMV) whereas the offending vehicle was Goods Carriage Vehicle and comes within the category of Transport Vehicle, there was breach of conditions of insurance policy and prayed for its exoneration.

6. Learned Claims Tribunal upon appreciation of pleadings and evidence placed on record by the respective parties held that Respondent 1/ Non-applicant 1 caused the accident from his mini truck by driving it rashly and negligently, there was no valid and effective driving licence, contributory negligence could not be proved and awarded Rs. 25,000/- as compensation.

7. Learned counsel for the appellant submits that the learned Claims Tribunal erred in awarding Rs. 25,000/- towards grievous injuries and has not awarded any amount on any other head like medical expenses as incurred by the appellant for his treatment ignoring the documents placed on record. He also pointed out that appellant took treatment from 24-10-2010 to 02-12-2010 and thereafter he could not able to work for about six months but even then the learned Claims Tribunal has not awarded any amount towards loss of income during the period of treatment. He also submits that the claimant/ appellant was also entitled for the amount of compensation over non-pecuniary damages suffered by him, but the learned Tribunal erroneously not awarded any amount on this head as well. He lastly submits that the learned Claims Tribunal erroneously exonerated the Insurance Company considering the vehicle to be a transport vehicle whereas as per the gross vehicle weight shown in the registration certificate of the vehicle as 5700 kg., offending vehicle comes within the category of LMV and the driver of the offending vehicle was possessing the driving licence authorising him to drive LMV, being so, there was no breach of conditions of insurance policy.

8. Per contra, Mr. Dashrath Gupta, learned counsel appearing for Respondent 3/ Insurance Company vehemently opposes the submission made by the learned counsel for the appellant. He submits that the learned Claims Tribunal awarded just and proper amount of compensation. With regard to non-awarding of medical expenses, he submits that the medical expenses can be awarded towards the bills submitted by him which is forming part as Ext. P-90, P-93 to P-96 and P-103 only. Sofar as, the submission made by the learned counsel for the appellant with regard to erroneously exoneration of the Insurance Company from its liability, learned counsel submits that no ground has been raised by the appellant in his memo of appeal and, therefore, he will not be permitted to raise this ground before this Court.

9. We have heard learned counsel for the respective parties and perused the

record.

10. The appellant before the learned Claims Tribunal had placed on record the documents of criminal case from Ext. P-1 to P-3, discharge ticket of Holy Cross Hospital showing admission date as 20-11-2010, discharge ticket issued by Modern Medical Institute (MMI), Raipur showing the date of admission as 24-10-2010 to 02-12-2010, showing the fracture of left clavicle. The claimant has placed on record the medical documents, bills of purchase of medicine of MMI Hospital from Ext. P-27 to Ext. P-89, he also placed on record the cash deposit receipts from Ext. P-90 dated 29-10-2010 of the amount Rs. 2,000/-, Ext. P-93 dated 03-11-2010 of amount of Rs. 17,000/-, Ext. P-94 dated 16-11-2010 deposit of Rs. 20,000/-, Ext. P-96 dated 31-10-2010 deposit of amount of Rs. 5,000/-, Ext. P-103 dated 24-10-2010 deposit of amount of Rs. 5,000/- and purchase of medicine and other equipment bills of MMI Hospital which was paid in cash from Ext. P-177 to Ext. P-200. The appellant has placed the supportive documents and the cash receipts of the hospital to prove that he has paid the cash amount for his treatment and, therefore, the appellant is entitle for those amounts as compensation. Appellant further took treatment at Shri Medishine Hospital, Raipur for which he has enclosed medical prescription as Ext. P-9, bills as Ext. P-10, P-11 and P-12 for which also the appellant is entitle. Total of the medical bills and traveling expenses comes to Rs. 1,52,355/- as the appellant placed on record the taxi charges of 25-12-2010 and 24-10-2010 for conveyance expenses as Rs. 7,000/- on each count for which also the appellant will be entitle. Apart from the above amount, looking to the nature of injury and period of treatment, we find it appropriate to award loss of income to the appellant for a period of six months.

11. Looking to the date of accident i.e. of October 2010, we find it appropriate to assess the income of the deceased as Rs. 4,000/- per month on notional basis. Loss of income for a period of six months will come to Rs. 24,000/-,

the appellant will also be entitle for the compensation towards the attendant as from the medical documents, it is apparent that on the date of accident, appellant took treatment for about one and a half month and we find it appropriate to award Rs. 8,000/- towards attendant cost, Rs. 15,000/- towards pain and sufferings, Rs. 5,000/- towards special diet.

12. Sofar as, the submission made by the learned counsel for the appellant with regard to the exoneration of Insurance Company from its liability; perusal of impugned award would show that the learned Claims Tribunal exonerated the Insurance Company holding that Non-applicant 1/ Respondent 1 was not possessing valid and effective driving licence as he was possessing the driving licence only to drive the LMV but he was driving the goods vehicle which comes within the category of Transport Vehicle. Registration particulars of the offending vehicle are available on record, wherein, the Gross Vehicle Weight of the offending vehicle has been shown as 5700 kg which is below 7500 kg. Definition of LMV as provided under Section 2(21), reads as under.

> "**2. Definitions:** (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 [7500] kilograms;

Under the aforementioned definition of LMV, it is mentioned that any vehicle which is below 7500 kg will come under the category of LMV.

13. Copy of licence of Respondent 1 is also available on record wherein there is endorsement of authorising him to drive LMV and the certificate of fitness shows the class of vehicle as Light Goods Vehicle. In view of the aforementioned facts and circumstances of the case, particularly, the class of vehicle as prescribed under registration book and fitness certificate available on record, the offending vehicle comes within the definition of LMV and Non-applicant 1 is authorised under the licence possessed by him to drive the

offending vehicle. The issue with regard to category of vehicle coming under the LMV, but registered as Light Goods Vehicle or Light Passenger Vehicle has been dealt with by the Hon'ble Supreme Court in the case of ***Mukund Dewangan v. Oriental Insurance Company Ltd.*** reported in **(2017) 14 SCC 663** and held 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 section 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act 54 of 1994.
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> 60.3 The effect of the amendment made by virtue of Act 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.
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> 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."

In view of the law laid down by the Hon'ble Supreme Court, Respondent 1/ Non-applicant 1 was possessing valid and effective driving licence to drive the offending vehicle.

14. For the foregoing reasons, the finding recorded by the learned Claims Tribunal that there is breach of conditions of insurance policy is not sustainable and it is hereby set aside. Now, the Insurance Company (Respondent 3) will be liable to satisfy the amount of compensation. The appellant/ claimant will be entitled for total amount of **Rs. 2,04,355/-** [Rs.

1,52,355(medical and travel expenses) + Rs.24,000 (loss of income) + Rs. 8,000(attendant cost) + Rs.15,000(pain and sufferings) + Rs. 5,000(special diet)] as compensation to be satisfied by Respondent 3-Insurance Company. The amount of compensation will carry interest @ 6% from the date of filing of claim application till its realization. Any amount paid to the claimant will be adjusted from the total amount of compensation to be paid to the claimant.

15. Consequently, the appeal is allowed in part and the impugned award is hereby modified to the extent as indicated herein-above.

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

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