NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 82 of 2014

- Santosh Kumar Duseja S/o Shri Mohan Das Duseja, aged about 28 years, R/o Sunder Nagar Raipur Police Station Purai Basti Raipur Civil and Revenue District Raipur C.G.

------Appellant/Claimant

VERSUS

1. Anil Duseja S/o Mohan Das Duseja aged about 31 years, R/o Sunder Nagar, Raipur, Police Station Purani Basti Raipur, Civil and Revenue District Raipur C.G.
2. Iffco Tokiyo General Insurance Company Limited Branch Manager 3rd Floor Lal Ganga Shopping Mall G.E. Road, Raipur District Raipur C.G.
3. Digeshwari Bai W/o Shiv Kumar Sahu, aged about 23 years, R/o Village Rinwa, police station Mandir Hasoud, District Raipur C.G.
4. United India Insurance Company Limited, Krishna Complex near Shastri Chowk Raipur, District Raipur C.G.

----Respondents

For Appellant	:	Mr. S.P. Sahu, Advocate.
For Respondent No. 4	:	Mrs. Chitra Shrivastava, 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.

19/08/2020

1. This is claimant's appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the impugned award dated 31-10-2012 passed by 5th Additional Motor Accident Claims Tribunal, Raipur in claim case No. 27/2012 wherein learned Claims Tribunal allowed the claim application in part and awarded a sum of Rs. 15,500/- as compensation in an injury case after deducting 50% of the amount of compensation towards contributory negligence of the appellant-claimant.

2. Facts relevant for disposal of this appeal are that on 30-11-2008, appellant-claimant was driving his motor cycle bearing Registration No. CG 04CZ 6093 and going to Raipur from Mahasamund at about 3:30 p.m., while so, one

another motor cycle bearing Registration No. CG 04DE 6734 (hereinafter referred to as “offending vehicle”) dashed the motor cycle of the appellant in front of Karma Hospital, Raipur. In the said accident, appellant-claimant suffered injuries, he was taken to Ramkrishna Hospital, Raipur. The accident was reported to concerned police station based on which, crime bearing no. 553/2008 was registered. Claimant filed an application under Section 163 of the Motor Vehicles Act, seeking compensation of Rs. 11,00,000/- mentioning therein that prior to the date of accident, he was doing the work of plumber and earning Rs. 100/- per day and due to injuries suffered by him in the accident, he suffered permanent disability.

3. Respondent 1/ Non-applicant 1 who is owner of the vehicle driven by appellant-claimant pleaded that the claimant was driving the motor cycle cautiously but it is the driver (deceased) of the offending vehicle who drove the offending vehicle rashly and negligently and caused the accident, his vehicle was insured with Respondent 2/ Non-applicant 2-Insurance Company.

4. Respondent 2/ Non-applicant 2 is the Insurance Company of motor cycle owned by Respondent 1 and driven by appellant-claimant submitted reply to the claim application pleading therein that there was no coverage of risk for the driver of the motor cycle, as such, Insurance Company is not liable to satisfy any amount of compensation, there was breach of conditions of insurance policy.

5. Respondent 3/ Non-applicant 3 submitted reply to the claim application and denied all the adverse pleadings made therein. It was pleaded that it is the claimant himself who drove his motor cycle rashly and negligently and caused the accident in which her husband died. There was no proof of nature of engagement and the income of the appellant-claimant, the compensation claimed is highly exaggerated, the offending vehicle was insured with Respondent 4/ Non-applicant 4-Insurance Company and at the time of accident, deceased was possessing valid and effective driving licence. The

liability, if any, would be upon Respondent 4/ Non-applicant 4-United India Insurance Company Ltd (Insurance Company of offending vehicle).

6. Respondent 4/ Non-applicant 4-Insurance company of the offending vehicle submitted reply to the claim application and denied the pleading made in the claim application. It was further pleaded that on the date of accident, there was breach of conditions of insurance policy as the driver of offending vehicle was not possessing valid and effective driving licence.

7. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties held that the claimant suffered injuries on account of head-on-collision between two motor vehicles i.e. motor cycle driven by appellant-claimant and the offending vehicle driven by deceased, there was contributory negligence on the part of driver of both the motor cycles i.e. deceased and appellant-claimant. Claimant was possessing valid and effective driving licence and awarded Rs. 15,500/- after deducting 50% of calculated amount of compensation towards contributory negligence.

8. Learned counsel for the appellant-claimant submits that the learned Claims Tribunal erred in not awarding the entire amount of medical expenses even after taking into consideration in paragraph 33 of the award medical expenses as Rs. 1,69,671/-. He further argued that the learned Claims Tribunal erred in awarding meagre amount on other heads including the loss of income. He submits that a direction be issued to Respondent 4-Insurance Company to first pay the amount of compensation and thereafter to recover the same from the owner (Respondent 3) of the offending vehicle as the exoneration of the Insurance Company from its liability is only on the ground of not possessing the valid and effective driving licence by deceased as recorded by the Claims Tribunal in paragraph 22 of the impugned award.

9. Per contra, Mrs. Chitra Shrivastava, learned counsel appearing on behalf of Respondent 4/ Insurance Company submits that the claim application was

filed under section 163A of the Motor Vehicles Act and the Claims Tribunal has passed the award in accordance with the amount prescribed on the heads under second Schedule formulated under Section 163A. She further argued that as there is exoneration of the Insurance Company from its liability to satisfy the amount of compensation on the ground of breach of conditions of insurance policy, a direction to pay and recover be not issued in the facts and circumstances of the case.

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

11. Admittedly, the claimant has filed application under Section 163-A of the Motor Vehicles Act and the said Section envisages for payment of compensation on structured formula basis. Clause 4 of second Schedule provides for award of general damages in the case of injuries and disability. Under Clause 4(ii), it is specifically mentioned that award of medical expenses to be the maximum of Rs. 15,000/-, Clause 5 prescribes for the amount of compensation to be awarded on other heads like loss of income for actual period of disablement but cannot exceed to 52 weeks. In view of the specific fixation of amount of medical expenses in second Schedule, the submission of the learned counsel for the appellant that the Claims Tribunal erred in not awarding entire medical bill but for awarding only Rs. 15,000/- towards medical expenses is not sustainable.

12. Learned Claims Tribunal was absolutely justified in considering the 2nd Schedule as formulated under Section 163A of the Motor Vehicles Act, and awarded maximum amount of medical expenditure provided therein. Learned Claims Tribunal has also awarded the amount towards the loss of income during the period of treatment as Rs. 15,000/- and Rs. 1,000/- towards the non-grievous injuries.

13. Perusal of record would show that the claimant has filed discharge summary

of Ramkrishana Hospital as Ext. P-10 wherein it is mentioned that the appellant undergone operation on 28-02-2009 and recorded operative findings as *“BONY & CARTILAGENOWDEV CONECTED & PANK KEPT FOR 24 Hr.”* Another discharge summary placed on record as Ext. P-13 shows the final diagnosis as “*old o/c of comm. Fracture S/C femur (L) with stiff knee (L)”.* From the aforementioned documents Ext. P-10 and Ext. P-13 it appears that the claimant suffered grievous injury but the Claims Tribunal awarded only Rs. 1,000/- towards pain and sufferings in place of Rs. 5,000/- as prescribed under Clause 4 of the 2nd Schedule under the head of pain and sufferings for grievous injuries, hence we award Rs. 5,000/- accordingly instead of Rs. 1,000/-.

14. In view of above, the claimant will be entitled for Rs. 15,000/- towards medical expenditure, Rs. 5,000/- towards pain and sufferings, Rs. 15,000/- towards loss of income during the treatment period which equals to total amount of Rs. 35,000/- instead of Rs. 31,000/- as awarded by the Claims Tribunal. As there was head-on-collision between two vehicles and the claimant held to be 50% contributory negligence, claimant is entitled only for 50% of the compensation amount. After deducting 50% of the total amount of compensation, appellant-claimant will be entitled for sum of **Rs. 17,500** as total compensation. The aforesaid amount of compensation will carry interest @ 6% p.a. from the date of filing of claim application till its realization.

15. On the date of accident, the offending vehicle was insured with Respondent 4/ Non-applicant 4-Insurance Company but the exoneration of Insurance Company was on account of 'no licence', on the date of accident, with the driver of vehicle insured by it. The Hon'ble Supreme Court in cases where the exoneration on account of breach of conditions of insurance policy for not having valid and effective driving licence has issued direction to 'pay and recover' in case of ***Shamanna v. Oriental Insurance Co. Ltd.*** reported in **(2018) 9 SCC 650**, the principle of pay and recover can be ordered to

direct the insurance company to pay the claimant first, and then recover the same from the owner of the offending vehicle and further held as under:

> "13. Since the reference to the larger Bench in *Parvathneni case (National Insurance Co. Ltd. v. Parvathneni, (2009) 8 SCC 785)* has been disposed of by keeping the questions of law open to be decided in an appropriate case, presently the decision in *Swarn Singh case (National Insurance Co. Ltd. v. Swarn Singh, (2004) 3 SCC 297)* followed in *Laxmi Narain Dhut (National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700* and other cases hold the field. The award passed by the Tribunal directing the insurance company to pay the compensation amount awarded to the claimants and thereafter, recover the same from the owner of the vehicle in question, is in accordance with the judgment passed by this Court in *Swarn Singh (supra)* and *Laxmi Narain Dhut (supra)* cases. While so, in our view, the High Court ought not to have interfered with the award passed by the Tribunal directing the first respondent to pay and recover from the owner of the vehicle. The impugned judgment (Shamanna v. Laxman, 2016 SCC OnLine Kar 6928) of the High Court exonerating the insurance company from its liability and directing the claimants to recover the compensation from the owner of the vehicle is set aside and the award passed by the Tribunal is restored."

16. In view of the above law laid down by the Hon'ble Supreme Court, it is directed that the Insurance Company will first deposit the entire amount of compensation, if not deposited, by Respondent 3/ Non-applicant 3 and thereafter to recover the same from the owner of the motor cycle bearing Registration no. CG 04DE 6734 (offending vehicle) in accordance with law.

17. In the result, 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

Pawan