NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 256 of 2015

- National Insurance Company Limited Branch Manager Branch Office No. 1 Naveen Bazar Phool Chouk G.E. Road Raipur Tahsil & District Raipur C.G. through Authorised Signatory national Insurance Company Limited, Divisional Office: B-1 Taha Complex, Ring Road II, Priyadarshani Nagar, Bilaspur Chhattisgarh

------Appellant/ Non-applicant 2

VERSUS

1. Salik Ram Dhiwar aged 35 years S/o Khubchand Dhiwar, Occupation Driver R/o Village at Post Gullu P.S. 1 Tahsil Aarang District Raipur Chhattisgarh
2. Ramkrishna Devangan S/o late Bala Ram Devangan, R/o Village Near Laxmi Cooperative Bank Gudihari Raipur Tahsil & District Raipur Chhattisgarh **------Owner**

-------Respondents

For Appellant	:	Mr. Priyanshu Gupta, Advocate on behalf of Mr.B.N. Nande, Advocate
For Respondent 1	:	None.
For Respondent 2	:	Mr. Akhilesh Mishra, Advocate

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

Order on Board

Per Parth Prateem Sahu, J.

21/01/2021

1. Appellant/ Non-applicant 2 /Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short “ Act of 1988”) challenging the impugned award dated 28.11.2014 passed by learned First Additional Motor Accident Claims Tribunal, Raipur C.G. (for short “the Claims Tribunal”) in claim case no. 17/2011, whereby learned Claims Tribunal allowed the application for grant of compensation in part, awarded Rs. 93,000/- as total compensation in an injury case.

2. Facts of the case in nutshell are that, on 08.09.2010, Respondent 1/ claimant by name Salik Ram was travelling on motor cycle bearing registration no. CG04CF9587 along with his wife and going to village

Lalpur, Raipur. While so, when he reached near village Chhatona, Mandirhasod, one another motor cycle (offending vehicle) coming from opposite direction dashed the motor cycle of claimant and caused accident. In the said accident, claimant Salikram suffered grievous injuries. Accident was reported to concerned police station. Injured Salikram was immediately taken to hospital at Raipur. After taking treatment from hospital, Salikram filed an application under Section 163-A of the Act of 1988, pleading therein that on account of motor accidental injuries suffered by him, he took treatment at different hospitals. He suffered fracture over his left leg, underwent operation, became permanently disabled due to motor accidental injuries suffered by him and claimed Rs. 12,50,000/- as total compensation.

3. Non-applicant 1/ Respondent 2 did not appear before the Claims Tribunal and he was proceeded *ex parte*.

4. Appellant/ non-applicant 2/ Insurance Company submitted reply to claim application pleading therein that the accident was between two motor cycles; driver, owner and insurer of the another vehicle (offending vehicle) have not been made party to the claim application. Claim is based on false and fabricated grounds. Amount of compensation claimed is highly exaggerated. Non-applicant 1/ Respondent 2 was well aware that the claimant (Respondent 1) was not possessed with valid and effective driving licence, even then, he permitted the claimant to drive the motor cycle. There was breach of policy conditions, as such non-applicant 2 is not liable for payment of any compensation.

5. Learned Claims Tribunal, on appreciation of pleading and evidence brought on record by the respective parties, allowed the application in part. Initially, learned Claims Tribunal awarded Rs. 88,000/- as total compensation *vide* award dated 18.06.2012. The said award was put to challenge by appellant-Insurance Company before the High Court in MAC

No. 868/2012. Upon hearing learned counsel for the respective parties therein, appeal came to be allowed in part, considering the dictum of Hon'ble Supreme Court in case of ***Ningamma and another v. United India Insurance Company Limited*** reported in **(2009) 13 SCC 710**, set aside the award and remitted back the case to the concerned Claims Tribunal for its decision afresh. After remand of the case, learned Claims Tribunal, upon considering the additional evidence brought on record by the respective parties, allowed the claim application in part and awarded Rs. 88,000/- as total compensation, fastened liability upon owner of offending vehicle and appellant-insurance company jointly and severally to satisfy the amount of compensation.

6. Learned counsel for appellant-insurance Company submits that the claimant/ Respondent 1 himself was driving the vehicle insured by appellant-Company. Respondent 2 is owner of the offending vehicle. There is no coverage of risk of Respondent 1, because the policy issued by appellant-Company is 'liability only policy' which is evident from Ext. D-1. After remand of the case, to prove the insurance policy, Madhusudan Kesharwani was examined on behalf of appellant as NAW-2-1, who is Administrative Officer of appellant-Insurance Company. He further pointed out that though Respondent 2/ owner of offending vehicle, has not filed reply to claim application but after remand of the case, he examined himself as applicant's witness no. 2. In his evidence, he has stated that he is registered owner of motor cycle (CG04-CG-9587) which was driven by claimant at the time of accident. Claimant was working as driver with him, he handed over the motor cycle to the claimant for his own work. Evidence of owner of motor cycle clearly shows that claimant/ Respondent 1 was driving the motor cycle in the capacity of borrower. Under the policy Ext. D/1, as per premium schedule, premium is paid for third party and compulsory PA to owner-cum-driver. There is no coverage of any other risk under the policy issued for motor cycle. PA coverage is only when the

owner himself will drive the vehicle insured. Learned Claims Tribunal has not considered the point whether the risk of Respondent 1 is covered under the policy or not, for which the appellant can be held liable.

7. Mr. Akhilesh Mishra, learned counsel for Respondent 2 submits that the motor cycle driven by Respondent 1 was insured by appellant-Company for a period from 1.7.2020 to 30.6.2011. Accident took place on 8.9.2010, within the period of policy issued by appellant-Company. Respondent 1 was engaged by him as driver of road-roller and on the date of accident, Respondent 2 handed over the motor cycle for his own work. Premium is paid under the head of 'Personal accident coverage' to owner-driver. Respondent 1 being driver of offending vehicle met with an accident. Claims Tribunal has rightly fastened the liability jointly and severally upon owner (insured) and insurer of offending vehicle. He further contended that the award passed by Tribunal is just and proper which does not call for any interference.

8. We have heard learned counsel for respective parties and also perused the record of claim case.

9. The main argument raised by the learned counsel for appellant-Company is that Respondent 1/ Claimant being borrower of vehicle met with an accident is not entitled to get any compensation and second that Respondent 2/ insured has not paid any amount of premium for covering the risk of person like Respondent 1, hence, appellant-Company cannot be held liable to satisfy the amount of compensation. Sofar as, the first submission made by the learned counsel for appellant, perusal of record would show that Respondent 1/ claimant, in support of his claim application, has placed on record Ext. P-1 (Final report) submitted under Section 173 of CrPC by investigating agency and copy of F.I.R. as Ext. P-2. F.I.R. is registered against Dilip Kumar Nishad, driver of other motor cycle involved in the accident bearing registration no. CG04CS5478. After

conclusion of investigation, final report was submitted against Dilip Kumar Nishad for offences punishable under Sections 279, 337 and 338 of IPC along with Sections 3/ 181/ 146/ 196 of Motor Vehicles Act.

10. From the aforementioned documents available on record, it is apparent that there is involvement of another motor vehicle in the accident and it is not a case of self-accident. Now, the question arises is whether in the facts of the case, appellant-Company can be held liable to satisfy the amount of compensation in a claim raised by the driver of motor cycle insured by it. Copy of insurance policy is placed on record as Ext. D-1 which is a "liability only policy". As per premium schedule, premium has been paid for third party basic premium and compulsory PA to owner-cum-driver. In the insurance policy, it is clearly mentioned that the risk of owner-cum-driver is covered under the compulsory PA coverage. Owner-cum-driver means that the owner of the offending vehicle while driving suffers any injury then limited compensation is to be paid as per the agreement. Along with the insurance policy, standard form for two wheeler package policy is also available wherein under Section III, there is specific mention of personal accident cover for owner-driver. Section III under the Policy is reproduced below for ready reference.

> "**SECTION III- PERSONAL ACCIDENT COVER FOR OWNER-DRIVER**
>
> The Company undertakes to pay compensation as per the following scale for bodily injury/death sustained by the owner-driver or the vehicle, in direct connection with the vehicle insured or whilst driving or mounting into/dismounting from the vehicle insured or whilst traveling in it as a co-driver, caused by violent accidental external and visible means which independent of any other cause shall within six calendar months of such injury result in:
>
> x x x x x x
>
> x x x x x x
>
> 2) This cover is subject to
> (a) this owner-driver is the registered owner of the vehicle insured herein;

> (b) the owner-driver is the insured named in this policy;
> (c) the owner-driver holds an affective driving license, in accordance with the provisions of Rule 3 of the Central Motor Vehicle Rule 1989, at the time of accident."

11. Under clause (2), as above, it is mentioned that the coverage under the personal accident cover would mean the owner and driver to be the registered owner of the vehicle insured. Owner-driver is the insured name in the policy and the owner-driver shall possessed with driving licence.

12. Witness NAW-2-1, examined by appellant-Company, in his evidence has proved terms and conditions of insurance policy under which the policy has been issued that driver should be the registered owner of offending vehicle. In view of aforementioned specific evidence available on record that under the PA coverage, it is only the driver who is also the registered owner of vehicle is covered. Claimant is not the owner but driving the vehicle. Claims Tribunal has not considered whether risk of claimant is covered under the policy or not, but had misdirected himself that there is no specific pleading made by appellant-Company after the remand that claimant was a borrower of the vehicle. Even if appellant-Company has not very specifically pleaded status of claimant but claimant himself has examined owner of offending vehicle as AW-2 by name Ramkrishan Dewangan, who in his evidence has admitted that he is the registered owner and he had handed over the motor cycle to claimant on the date of accident. There is already evidence and material available on record and that too the evidence brought by claimant himself that motorcycle is owned by Respondent 2 and he was driving the vehicle in the capacity of borrower besides the document Ext. D-1. In the considered opinion of this Court, liability of the Insurance Company is only with regard to the risk covered under the policy based on the premium paid. Insurance company is having only the contractual liability under the policy if there is contract for covering certain risk, then only Insurance Company can be held liable

to satisfy the amount of compensation. Learned Claims Tribunal has not considered the issue whether risk of claimant is covered under the Insurance policy or not and misdirected himself that as insurance policy of motorcycle is active on the date of accident, application is filed under Section 163-A of the Act of 1988, held Insurance Company to be liable to pay the amount of compensation. Claimant, driver cannot be a 'third party'.

13. Hon'ble Supreme Court in case of **Oriental Insurance Company Limited Vs Jhuma Saha (Smt) and others**, (2007) 9 SCC 263, has considered this issue and held thus:

> "11.Liability of the insurer Company is to the extent of indemnification of the insured against the respondent or an injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of the Motor Vehicles Act, the question of the insurer being liable to indemnify the insured, therefore, does not arise."

14. In absence of any term under the premium for covering the risk of claimant/injured, no liability can be fastened upon appellant in the facts and circumstances of the case. The liability to satisfy the compensation fastened upon the appellant by Claims Tribunal is not sustainable and it is hereby set aside. Appellant-Insurance Company is exonerated from its liability to pay the amount of compensation. Now, liability to satisfy the amount of compensation is fastened upon owner of offending vehicle. Insurance Company will be at liberty to recover the amount so deposited by it in pursuance of impugned award from owner, in accordance with law.

15. In view of above, appeal is allowed and the impugned award stands modified to the extent as indicated herein-above.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Pawan