NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 614 of 2014

{Arising out of order dated 21.03.2014 passed by learned 1st Additional Motor Accident Claims Tribunal, Durg in Claim Case No. 69 of 2013}

- The United India Insurance Company Limited, through its Branch Manager, Tara Complex, G.E. Road, Power House, Bhilai, Tehsil and District (C.G.)

---- Appellant

Versus

1. Gupta Prasad, S/o Late Kamta Prasad, aged about 32 years, R/o Sriram Nagar Chowk, Chagora Bhata, Tehsil and District – Durg (C.G.)

2. Prem Narayan, S/o Prabhakar Singh, aged about 20 years, R/o Minimaata Para, Station Maroda, P.S. Nevai, Tehsil and District – Durg (C.G.)

---- Respondents

For Appellant	:	Shri H.B. Agrawal, Senior Advocate with Shri Pankaj Agrawal and Ms. Richa Dwivedi, Advocates.
For Respondent No.1	:	None.
For Respondent No.2	:	Shri Deepak Kumar Singh, Advocate.

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

Per Parth Prateem Sahu, Judge

17.03.2021

1. Challenge is in this appeal that to the award dated 21.03.2014 passed by learned 1st Additional Motor Accident Claims Tribunal, Durg (for short, 'Tribunal) in Claim Case No. 69 of 2013, whereby the learned Tribunal

allowed the application for grant of compensation in part and awarded Rs.1,24,800/- as a total compensation. The learned Tribunal fastened the liability upon the Non-applicants No. 1 and 2 jointly and severally for satisfying the amount of compensation.

2. Facts of the case in nutshell are that on 23.04.2012 at about 5.00 pm when the Claimant / Prem Narayan was standing in front of Ranjana Medical Stores, offending vehicle Piaggio Ape Mini bearing registration No. CG-04-JC-3948 driven by Non-applicant No. 1 dashed him. In the said accident, he suffered grievous injuries.

3. The injured filed an application under Section 166 of the Motor Vehicle Act, 1988 seeking compensation of Rs.4,10,000/- from the Non-applicants on the grounds mentioned therein. The Non-applicant No. 1 / driver and owner of the vehicle submit a reply to the claim application denying the fact pleaded therein. It is further pleaded that the accident occurred due to negligence on the part of the Claimant himself. The amount of compensation is highly exaggerated, on the date of accident, the offending vehicle was insured with Non-applicant No. 2 / Insurance Company. As such, the liability to satisfy the amount of compensation will be upon Non-applicant No. 2.

4. The Non-applicant No. 2 / Insurance Company submit the reply to the claim application and pleaded that the amount of compensation is highly exaggerated and there was breach of policy condition. The Insurance Company is not liable to satisfy the amount of compensation.

5. The learned Tribunal upon appreciation of pleadings and evidence brought on record by respective parties held that the Claimant suffered motor accidental injuries on account of rash and negligent driving of the

offending vehicle Piaggio Ape Mini bearing registration No. CG-04-JC-3948 by Non-applicant No. 1. Claimant suffered permanent disability. Breach of policy condition were not found to be proved and awarded total compensation of Rs.1,24,800/- fastened liability upon Non-applicants to jointly and severally to satisfy the compensation.

6. Shri H.B. Agrawal, learned Senior Counsel appearing for Appellant / Insurance Company submits that the Tribunal erred in holding that there was no breach of policy conditions and fastening the liability upon the Appellant / Insurance Company. It is contended that on the date of accident, the Non-applicant No. 1 was possessed with the valid and effective driving licence authorizing him to drive Motor Cycle, whereas the offending vehicle is a goods carriage vehicle. Goods vehicle comes within the category of transport vehicle. He submits that the appeal be allowed and the Insurance Company be exonerated from its liability.

7. Shri Deepak Kumar Singh, the learned counsel appearing for Respondent No. 2 submits that the learned Tribunal upon considering the entire pleadings available on record has rightly passed the impugned award, which does not call for any interference. He submits that Non-applicant No. 1 / driver of the offending vehicle was possessed with valid and effective driving licence to drive motor cycle and light motor vehicle. In view of the ruling rendered by the Supreme Court in ***Mukund Dewangan vs Oriental Insurance Company Limited*** reported in **(2017) 14 SCC 663,** the person having valid licence to drive light motor vehicle, is also authorized to drive the light good vehicle. The offending vehicle involved in the accident is a light goods vehicle with gross vehicle weight of 1100 kg only.

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

9. Learned counsel for the Appellant has raised sole ground for consideration that there was breach of policy condition because Non-applicant No. 1 was not possessed with valid and effective driving licence to drive offending vehicle. To appreciate the submission of learned counsel for Appellant, we have perused the copy of extract of licence Ex.D-3 and copy of certificate of insurance Ex.D-1.

10. Undisputedly, the Non-applicant No. 1 was having valid and effective licence for a period from 30.01.2009 to 29.01.2029 authorizing him to drive motor cycle with gear only. Though there is mention of 'NT', but that does not mean that the licence was for 'Light Motor Vehicle'. The Tribunal decided the issue on wrong presumption that the driving licence of Non-applicant No. 1 is for 'Light Motor Vehicle' also. The finding recorded by the Tribunal with regard to breach of policy condition is perverse to the documentary evidence available on record.

11. The extract of driving licence placed on record as Ex.D-3 clearly shows that Gupta Prasad *i.e.* Non-applicant No. 1 was possessed with licence authorizing him to drive only motor cycle with gear for a period from 30.01.2009 to 29.01.2029. The Non-applicant No. 1 / owner of the offending vehicle has submitted reply and also filed the affidavit under Order 18 Rule 4 of CPC. The Non-applicant No. 1 in paragraph 10 of his cross-examination has clearly stated that he is not possessed with driving licence now and the driving licence was issued from Regional Transport Office, Raipur bearing No. 04/209/0002561, the validity period of the said licence was from 28.01.2009 to 29.01.2029 mentioning 'Non transport' and 'MCWG'. He further admitted that the Ex.D-3 is the

certified copy of the particulars of driving licence. In view of the aforementioned evidence of the Non-applicant No. 1, once he had admitted that the Ex.D-3 is the copy of the original particular issued by RTO, where the class of vehicle mentioned is as MCWG only, the Tribunal erred in not appreciating the entire contents of the document Ex.D-3 and arriving at a finding that the Non-applicant No. 1 was possessed with the licence to drive 'Light Motor Vehicle' also. There is no such entry in the extract of the licence Ex.D-3 permitting the Non-applicant No. 1 to drive 'Light Motor Vehicle' (LMV).

12. We have hold that on the date of accident, the Non-applicant No. 1 was not having licence to drive light motor vehicle. He was driving the 'Light Goods Vehicle', hence, there was clear breach of policy conditions. For the forgoing reasons, we set aside the finding with respect to Issue Nos. 3 and 4 recorded by the Tribunal. Consequence to the aforementioned discussions and setting aside the finding with regard to the Issue Nos. 3 and 4, the Appellant / Insurance Company is exonerated from the liability to satisfy the compensation. Now the liability to satisfy the amount of compensation shall be upon the Non-applicant No. 1 / Respondent No. 1.

13. With regard to the submission made by learned counsel for the 2nd Respondent / Claimant that the insurance policy for the offending vehicle is not in dispute and the deceased was a third party, therefore, the interest of the claimant may be protected by issuing the direction to the Appellant / Insurance Company to first deposit the entire amount of compensation with interest and thereafter to recover the same from the Respondent No. 1 / owner of the offending vehicle.

14. The issue with regard to the issuance of the direction to the Insurance Company to first pay the entire amount of compensation with interest and

thereafter to recover the amount so deposited from the owner and driver of the offending vehicle, particularly, in case of breach of policy conditions for want of valid and effective driving licence with the driver of the offending has been considered by Hon'ble Supreme Court in ***Shamanna & Another vs. Divisional Manager, Oriental Insurance Company Limited & Others*** reported in **(2018) 9 SCC 650** and held thus in paragraph 13:

> "13. Since the reference to the larger Bench in **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 **National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297** followed in **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 **Swaran 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 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."

15. In view of the facts of the case at hand that, breach of policy conditions of insurance policy was on the ground that Non-applicant No. 1 / driver-cum-owner of the offending vehicle was not possessed with valid and effective driving licence and taking support of the aforementioned ruling of the Hon'ble Supreme Court, we direct the Appellant / Insurance Company to first deposit the entire amount of compensation with interest with the Tribunal and thereafter to recover the amount so deposited from

the owner-cum-driver of the offending vehicle *i.e.* Non-applicant No. 1 in accordance with law.

16. For the forgoing reason, appeal is allowed and the impugned award is modified to the extent as discussed above.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Brijmohan