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HIGH COURT OF CHHATTISGARH, BILASPUR

(Proceedings through Video Conferencing)

MAC No. 439 of 2015

- Bajaj Allianz General Insurance Company Limited, Through- Branch Manager, Shiv Mohan Bhawan, Vidhan Sabha Road, Pandri, Police Station-Pandri, Distt. Raipur Chhattisgarh.

----Appellant

Versus

1. Purshottam Sahu, S/o Parmeshwar Sahu, aged about 19 Years, R/o Village- Beltukri, Post- Beltukri, Police Station- Rajim, District Raipur, now Gariyaband, Chhattisgarh.

2. Khushbu Sharma, D/o Krishna Kumar, R/o Pili Building, Tanya Sadan, Fafadih, Police Station- Ganj, District Raipur, Chhattisgarh.

3. Parikshit Sharma, S/o Krishna Kumar Sharma, R/o Pili Building, Tanya Sadan, Fafadih, Police Station- Ganj, District Raipur, Chhattisgarh.

---- Respondents

For Appellant	Shri Abhishek Sinha with Shri D.L. Dewangan, Advocates.
For Respondent No.1	Shri A.L. Singroul, Advocate.
For Respondent Nos. 2 & 3	None.

MAC No. 471 of 2015

- Purushottam Sahu, S/o Permeshwar Sahu, aged about 19 Years, R/o Village Beltukari Post Beltukari Thana Rajim, Distt. Raipur, Chhattisgarh.

----Appellant

Versus

1. Khushabu Sharma, S/o Krishan Kumar, Occupation- Owner of the Vehicle, R/o Village Pili Bilding, Tanya Sadan Fafadih

Tahsil and Distt. Raipur, Chhattisgarh.

2. Bajaj Alliance General Insurance Company Limited, Shiv Mohan Bhavan, Vidhan Shabha Road Pandari Raipur, Chhattisgarh.

3. Parikshit Sharma, S/o Krishan Kumar, Occupation- Driver of the Vehicle, R/o Village Pili Bilding Tanya Sadan Fafadih Tahsil and Distt. Raipur, Chhattisgarh.

---- Respondents

For Appellant	Shri A.L. Singroul, Advocate.
For Respondent Nos. 1 & 3	None.
For Respondent No.2	Shri Abhishek Sinha with Shri D.L. Dewangan, Advocates.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice

Hon'ble Shri Gautam Chourdiya, Judge

Judgment on Board

Per Gautam Chourdiya, J.

07/05/2021

1. As both these appeals arise out of the award dated 05.02.2015 passed by the 7th Additional Motor Accident Claims Tribunal, Raipur, C.G. in Claim Case No.75/2012, they are being disposed of by this common judgment.

2. As per the averments made in the claim petition, on 28.10.2011 Purushottam Sahu (claimant), aged about 19 years, was going along with his friend Rajeev Lochan on motorcycle bearing No.CG-04-DD-2703 as a pillion rider to his village Beltukari from the village Bhainstara, on the way at about 6:30 pm non-applicant No.3 - Parikshit Sharma, driver of the vehicle Minidoor Taxi bearing No.CG04-T-8318 (hereinafter referred to as "offending vehicle"), driving the said vehicle rashly and negligently, came from the opposite side and dashed the said motorcycle, as a result of which Purushottam Sahu (claimant) suffered grievous injuries on his hands, legs and other parts of the body and his right leg was amputated during treatment. At the relevant time, the offending vehicle was owned by Khushabu Sharma/non-applicant No.1 and insured with Bajaj Alliance General Insurance Company Limited/non-applicant No.2. At the time of accident, claimant Purushottam Sahu was aged about 19 years, earning Rs.6,000/- per month by running a mobile shop.

3. On claim petition being filed by the claimant under Section 166 of the Motor Vehicles Act claiming compensation of Rs.13,50,000/- under various heads, the Tribunal considering the evidence led by the parties, awarded a compensation of Rs.4,15,347/- with interest @ 6% per annum from the date of application till realization, fastening the liability on the Insurance Company/non-applicant no.2 along with non-applicant nos. 1 & 3 jointly and severally. It is pertinent to mention here that non-applicants No. 1 & 3 remained *ex parte* before the Tribunal.

4. **MAC No.439 of 2015**:- Learned counsel for the Insurance

Company submits that though he has raised various grounds in the memo of appeal, however, he is not pressing all those grounds and is assailing the award only on the two grounds:-

(i) that the Tribunal was not justified in fastening the liability on the insurance company because at the time of accident, the Driver of the offending vehicle was not having a valid and effective licence since the vehicle was a passenger carrying commercial (transport) vehicle whereas the driver was holding LMV for non-transport vehicle and there was no endorsement on the licence authorizing the driver to drive the transport passenger carrying vehicle.

(ii) that on the date of accident the offending vehicle which was a passenger carrying commercial vehicle was being plied without obtaining a valid permit under Section 66 of the Motor Vehicles Act. No valid permit was produced by owner of the offending vehicle either during investigation or before the Tribunal. As per the statement of non-applicant witness No.1 Puneet Rathore, no permit was seized by the Police Officer and not produced before the Tribunal by the owner. Though the Insurance Company tried its level best to obtain the permit from the owner of the vehicle by sending notice to her vide Ex.D-7 which was duly served on her vide Ex.D-11 but the owner of the vehicle neither submitted the permit and other relevant documents to the Insurance Company nor produced before the Tribunal. The police has also not seized any such permit from the owner or the driver. Further, the owner and driver remained ex-parte before the Tribunal and did not come forward to examine themselves for proving that the vehicle in question was being driven with a valid permit on the fateful day. Hence, there being breach of policy conditions, the Insurance Company is not liable to pay compensation.

5. On the other hand, learned counsel for the claimant supports the impugned award insofar as it relates to fastening of liability on the Insurance Company. However, the claimant has also challenged the award on the point of quantum and has filed a separate appeal i.e. MAC No.471 of 2015 for enhancement of compensation.

6. **MAC No.471 of 2015**:- Learned counsel for the claimant submits as under:-

(i) that the claimant was earning Rs.6,000/- per month by running a mobile shop but learned Tribunal wrongly considered his income Rs.3,000/- as per minimum wages.

(ii) that the Tribunal was not justified in assessing 50% loss of income of the claimant due to permanent disability because as per disability certificate Ex.P-23, the claimant suffered 60% permanent disability, on account of which his daily work as well as movement was restricted. Further, the Tribunal has awarded only Rs.50,000/- towards non-pecuniary damages which needs to be enhanced suitably.

(iii) that no amount towards future prospect has been granted to the claimant.

(iv) that multiplier of 16 has wrongly been applied and considering the age of the claimant i.e. 19 years, it should have been 18.

(v) that the amount awarded by the Tribunal under the other heads such as medical treatment, special diet, travelling, attendant is also on the lower side and needs to be enhanced suitably. No amount for artificial limb has been awarded to the claimant.

In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121*** & ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***

7. On the other hand, learned counsel for the Insurance Company supports the impugned award in relation to the quantum of compensation and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation to the claimant.

8. Heard learned counsel for the parties and perused the material available on record.

9. **MAC No.439 of 2015:-** As regards the competence of the driver to drive the vehicle in question, the issue raised by the Insurance Company has already been settled by the Hon'ble Supreme Court in the matter of ***Mukund Dewangan Vs. Oriental Insurance Company Limited*** reported in ***(2017) 14 SCC 663*** that a person holding LMV (non-transport) is competent to drive the transport vehicle even without there being any endorsement to this effect in the driving licence if the unladen weight of the vehicle does not exceed 7,500 Kg. The relevant part of the aforesaid decision is being reproduced as under:-

> "Held, the effect of amendment of Form 4 by insertion of "transport vehicle" related only to 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 – There was 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 – Further held, even otherwise the Form could not control the substantive provisions carved out in Ss. 10(2)(d) and

10(2)(e) and the interpretation of the Form has also to be in tune with the Statement of Objects & Reasons and the provisions of the Act inserted by virtue of the amendment – Interpretation of Statutes – Basic Rules – Harmonious Construction –Subordinate/Delegated Legislation/Rules Under the Act –Central Motor Vehicles Rules, 1989, Form 4 and R.14 (before and after 28.03.2001)"

10. In view of above, this Court finds no substance in the argument of the Insurance company that the driver/non-applicant No.3 was not having a valid and effective driving licence to drive the vehicle in question on the date of accident as the offending vehicle was admittedly a passenger carrying commercial vehicle having gross unladen weight of 610 Kg and capacity of 6 + 1 passenger and as such, it falls in the category of LMV and that the driver was having a valid and effective licence to drive LMV.

11. Now this Court has to see whether on the date of accident the offending vehicle was being driven without a valid permit or not.

12. It is true that notices (Exs.D-6 and D-7) were served on the owner and driver of the offending vehicle vide Exs. D-8 & D-9 to submit all the relevant documents of the vehicle i.e. insurance policy, driving licence, permit, fitness etc. but no document was submitted by the owner and driver of the offending vehicle before the Tribunal nor supplied to the Insurance Company. Non-applicant Nos. 1 & 3 owner and driver of the offending vehicle remained ex-parte before the Tribunal and did not adduce any evidence to prove that the owner of the offending vehicle was having valid and effective permit on the date of accident. As per Ex.D-4 i.e. Certificate issued by the Transport Authority, the offending vehicle was a Motor Cab Taxi Jeep having sitting capacity of 7 persons and as per Ex.D-12 i.e. Insurance Policy issued in favour of owner of the vehicle (Ms. Khushabu Sharma), it is a commercial vehicle-package policy. Looking to both the documents i.e. Exs.D-4 & D-12, it is clear that on the date of accident offending vehicle insured by the Insurance Company was a passenger carrying commercial vehicle for which permit is required as per Section 66 of the Motor Vehicles Act. However, no evidence has been adduced by the owner that on the date of accident the offending vehicle was being plied with a valid permit.

13. In the matter of ***Amrit Paul Singh and another Vs. Tata AIG General Insurance Co. Ltd. and others, (2018) 7 SCC 558***, while dealing with identical issue, the Hon'ble Supreme Court considering the provisions of Section 66(1) of the Act which prescribes that no owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or counter signed by a Regional or State Transport Authority or any prescribed authority, held that use of a vehicle as a transport vehicle in public place without a permit is a fundamental statutory infraction. Though Section 66(3) of the Act carves out certain exceptions to Section 66(1), in order to invoke those exceptions, the same must be pleaded and proved, the said exceptions cannot be taken aid of in the course of argument to seek absolution from liability.

14. In the present case, as observed above, the offending vehicle was being plied without any permit and as such, there was a fundamental breach of policy conditions on the part of the owner of the offending vehicle. Therefore, in view of the fact that the offending vehicle was being plied without any permit in contravention of provisions of Section 66 of the Act, the Tribunal was not justified in fastening liability on the Insurance Company.

15. **MAC No.471 of 2015:-** So far as the income of the claimant is concerned, the claimant has pleaded that he was earning Rs.6,000/- per month by running a mobile shop. But no evidence has been adduced by the claimant to substantiate the said plea. In such circumstances, considering the nature of job of the claimant and the minimum wages at the relevant time, his monthly income can safely be taken as Rs.4,000/- i.e. Rs. 48,000/- per annum. Considering the disability certificate of claimant Ex.P-23 issued by the Medical Board District- Hospital, Gariyaband which shows that the claimant suffered 60% physical disablement, the evidence of AW-3 Dr. Deenanath Verma, who has stated that 60% disability in the right leg of the claimant was permanent in nature and his right leg above knee was amputated, and the evidence of claimant that after the accident he is not able to do the work, which has not been challenged in his cross-examination by the non-applicants, this Court is of the opinion that the Tribunal was not justified in not granting sufficient amount towards loss of income due to permanent disability. Having regard to the facts and circumstances of the case, the nature and quality of evidence adduced by the parties as well as the nature of job of the claimant and the permanent disability sustained by the claimant, this Court is of the opinion that due to the injuries suffered by the claimant, his working and earning capacity reduced to the extent of 60%.

16. The claimant has pleaded that he was 19 years of age at the time of accident. As per the charge sheet, the MLC of the claimant (Ex.P-3) and the claim application, it stands proved that the claimant was 19 years of age at the relevant time. As such, the Tribunal should have applied multiplier of 18 instead of 16. The Tribunal was also not justified in ignoring the future prospect of the claimant which should have been 40% in the present case as the injured/claimant was 19 years of age and a self-employed person. However, considering the nature of injury suffered by the claimant, the medical bills produced and the evidence adduced by the claimant in this behalf, the amount of Rs.67,347/- awarded by the Tribunal towards medical expenses as also the amount of Rs.10,000/- awarded towards special diet, attendant and travelling appear to be just and proper and needs no interference by this Court.

Thus, considering the age of the claimant i.e. 19 years, the nature of his job, the fact that no amount whatsoever has been awarded by the Tribunal towards loss of marital prospect, for artificial limb and loss of other amenities, in view of the decisions of the Hon'ble Supreme Court in matters of ***Sarla Verma*** & ***Pranay Sethi*** (supra), the claimant is held entitled for compensation in the following manner:-

S.No.	**Head**	**Calculation**
1.	Notional Income of the claimant i.e. Rs.4,000/- per month.	Rs.4,000/- x 12 = Rs.48,000/- per annum.
2.	Future prospect 40%	Rs.19,200/- Rs.48,000/- + Rs.19,200/- = Rs.67,200/-
3.	Loss of earning capacity @ 60%	Rs.40,320/-

4.	Multiplier of 18 applied	Rs.7,25,760/-
5.	Medical Expenses	Rs.67,347/- (as assessed by the Tribunal)
6.	Special diet, attendant and travelling	Rs.10,000/- (as assessed by the Tribunal)
7.	For pain, suffering and trauma as a consequence of injury	Rs.50,000/-
8.	For Artificial limb and other incidental expenses	Rs.50,000/-
9.	Towards loss of marital prospect, expectancy of life, loss of comfort in life etc.	Rs.1,00,000/-
	Total	**Rs.10,03,107/-**

Since, the Tribunal has already awarded Rs.4,15,347/-, after deducting the same from the above amount, the claimant is held entitled for an additional compensation of Rs.5,87,760/-. This additional amount shall carry interest at the rate of 7% per annum from the date of claim application till its realization.

17. Considering the facts and circumstances of the case, the fact that on the date of accident the offending vehicle was duly insured with non-applicant No.2/Insurance Company and the claimant was the third party, keeping in view the decision of Hon'ble Supreme Court in ***Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796***, it is directed that the non-applicant No.2/Insurance Company shall first pay the entire amount of compensation to the claimant and then recover the same from the owner and driver in accordance with law. The Insurance Company shall deposit the amount due before the Tribunal, with a notice to the claimant, within a period of two months.

18. In the result, both the appeals (**MAC No.439 of 2015 & MAC No.471 of 2015)** are allowed in part with modification in the impugned award to the above extent.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	**(Gautam Chourdiya)**
Chief Justice	Judge

Akhilesh