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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) No. 820 of 2011

APPELLANTS

1. Pradeep Kumar Kosariya, S/o Radheshyam Kosariya, aged about 24 years, R/o Village Asmdi, Tahsil and District Dhamtari (C.G.) (Driver)
2. Mahendra Kumar Kosariya, S/o Ramnath Kosariya, aged about 36 years, R/o Village Asmdi, Tahsil and District Dhamtari (C.G.) (Owner)

Versus

RESPONDENTS

1. Shyambai, W/O Vishram Hirwani, Aged About 65 Years, R/O Rambagh Chowk, Dhamtari, Tahsil and District Dhamtari (C.G.)
2. Shyam Kartik, S/o Late Vishram Hirwai, aged about 47 years, R/o Rambagh Chowk, Dhamtari, Tahsil and District Dhamtari (C.G.)
3. The New India Insurance Company Limited, through Branch Manager, Paras Bhawan, Station Road, Durg, Dist. Durg (C.,G.)

SB:- Hon. Shri N.K. Agarwal, J

PRESENT :-

Shri Rewa Shankar Patel, counsel for the appellants.
Shri Sunil Sahu, counsel for respondents No.1 & 2.
Shri Akhilesh Kumar appears on behalf of Shri Deepak Gupta, counsel for respondent No.3.

ORAL AWARD
(Passed on 31.07.2012)

1. This is driver and owner's appeal against the award dated 06.05.2011 passed by the Additional Motor Accidents Claims Tribunal, Dhamtari in Claim Case No. 09 of 2011

2. As against the compensation of Rs.17,70,000/- claimed by the legal representatives of deceased – Deepak Hirwani by filing claim application under Section 166 of the Motor Vehicles Act (for short 'the Act') for his death on 06.04.2010 due to motor accident on 29.09.2009, the Tribunal awarded a total sum of Rs.1,88,000/- along with interest at the rate of 7% per annum and if the amount of compensation is not paid within a period of one month, then interest @ 9% per annum from the date of claim application till its actual payment.

3. The Tribunal, on a close scrutiny of the evidence led, held: the accident had occurred due to rash and negligent driving of Auto-rickshaw bearing registration No.C.G.10/T/0250 by its driver appellant No.1; Deepak Hirwani died on account of injuries sustained by him in the said accident; respondent No.3/the new India Insurance Company Limited not liable for payment of compensation as the driver of Auto-rickshaw was not possessing a valid and effective driving licence; assessed and awarded the aforesaid sum as compensation against the appellants. Hence, this appeal.

4. Shri Rewa Shankar Patel, learned counsel appearing for the appellant, would submit: appellant No.1 was holding licence to drive L.M.V. at the time of accident. As per the unladen weight, Auto-rickshaw comes within the definition of light motor vehicle, and therefore, the Tribunal has fallen in error in exonerating the insurance company on the ground that appellant No.1 was not possessing valid and effective driving licence. It was further argued that the rate of interest awarded on the amount of compensation is on higher side.

5. On the other hand, Shri Sunil Şahu and Shri Akhilesh Kumar, learned counsel for the respondents supported the award impugned.

6. I have heard learned counsel for the parties and perused the award impugned including the record of the Tribunal.

7. The Apex Curt in case of ***Oriental Insurance Company Ltd. -v- Angad Kol and Ors***, reported in (2009 (11) SCC 356 has noticed Sections 2(10), (11), (12), (13), (14), (21) and Sections 3, 9, 10, 14 of the Act and Rules 14 and 16 of Central Motor Vehicle Rules, 1989 along with Forms 4 and 6, and after noticing its earlier judgments in the cases of ***National Insurance Co. Ltd. V. Annappa Irappa Nesaria***,

[JT 2008 (1) SC 617; 2008 (3) SCC 464], *New India Assurance Co. Ltd. V. Prabhu Lal*, [JT 2007(13)SC 246; 2008 (1) SCC 696], *New India Assurance Company Ltd. v. Prabhu Lal*, 2008 (1) SCC 696 and *Ashok Gangadhar Maratha v. Oriental Insurance*, [JT 1999 (6) SC 423 ; 1999 (6) SCC 620], has held: "a transport vehicle may be a light motor vehicle but for the purpose of driving the same, a different licence is required to be obtained."

8. In the instant case, indisputably, the respondent No.1 i.e. driver was holding driving licence to drive light motor vehicle at the time of accident whereas the offending vehicle is transport vehicle and there is no endorsement which would entitle him to ply the offending vehicle. By applying the ratio of law laid down by the Supreme Court in the above referred cases, it is crystal clear that driving licence to drive light motor vehicle held by respondent No.1 at the time of accident was not valid and effective driving licence to drive Auto-rickshaw, i.e., a transport vehicle and the insurance company has rightly been exonerated from its liability to pay compensation.

9. Coming to the next point raised by Shri Patel, the Tribunal has certainly fallen in error in awarding interest @ 7% instead of 6% per annum in the facts and circumstances

of the case. The Tribunal has further erred in awarding penal interest @ 9% per annum if the amount of compensation is not paid within one month from the date of award, in view of decision of Supreme Court in case of **National Insurance Co. Ltd. v. Keshav Bahadur and other** reported in **2004 (2) SCC 370** wherein the Supreme Court has held in para – 13 as under:

“13. Though Section 110-CC of the Act (corresponding to Section 171 of the New Act) confers a discretion on the Tribunal to award interest, the same is meant to be exercised in cases where the claimant can claim the same as a matter of right. In the above background, it is to be judged whether a stipulation for higher rate of interest in case of default can be imposed by the Tribunal. Once the discretion has been exercised by the Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is no scope for retrospective enhancement for default in payment of compensation. No express or implied power in this regard can be culled out from Section 110-CC of the Act or Section 171 of the new Act. Such a direction in the award for retrospective enhancement of interest for default in payment of the compensation together with interest payable thereon virtually amounts to imposition of penalty which is not statutorily envisaged and prescribed. It is, therefore directed that the rate of interest as awarded by the High Court shall alone be applicable till payment, without the stipulation for higher rate of interest being enforced, in the manner directed by the Tribunal.”

10. For the foregoing, the appeal is allowed in part. The part of the award whereby the appellants have been held liable for payment of compensation is upheld and the interest part of the award is modified to the extent that now the appellants are liable for payment of awarded amount with interest at the flat rate of 6% per annum from the date of application till its actual payment. Rest of the conditions of the award shall remain intact.

12. No order as to costs.

Sd/-
N.K. Agarwal
Judge