(2018) 08 CHH CK 0281

Chhattisgarh High Court

Case No: MAC No. 864 Of 2014

M/s Sharad Saurabh	APPELLANT
Vs	
Sheela Painkara And Ors	RESPONDENT

Date of Decision: Aug. 27, 2018

Acts Referred:

- Motor Vehicles Act, 1988 - Section 2(21), 173

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: Sanjay Patel, Mirza Baeg, Shokie Yadav

Final Decision: Allowed

Judgement

Ram Prasanna Sharma, J

1. The appellant has preferred this appeal under Section 173 of the Motor Vehicle Act, 1988 against the award dated 9-4-2014 passed by the

Additional Motor Accident Claims Tribunal, (FTC), Korba (CG) in Claim Case No. 86 of 2013, wherein the said Tribunal awarded compensation of

Rs.4,66,100/- on account of grievous injuries sustained by respondent No.1 Smt. Sheela Painkara in a motor accident occurred on 11-11-2008.

2. As per case of the claimant, on 11-11-2008 respondent No.1/Smt. Sheela Paikara along with her husband Pandey Singh Paikara was going in a

motorcycle bearing registration No. CG-12-4904 driven by her husband towards main road Champa, at the same time the Minibus bearing registration

No. CG-12-9836 dashed the said vehicle as the driver of the said bus who is respondent No.2 was driving the vehicle negligently as a result of which

she sustained grievous injuries resulting in 100% disability.

3. The Claims Tribunal after recording the evidence and after hearing both the parties, decided that the driver of the motor- cycle is also negligent as

per evidence of Pradeep Kumar Agrawal (NAW3) and the vehicle Minibus was driven by respondent No.2 who was not having a driving licence to

drive the transport vehicle, therefore, the Insurance Company is not liable to pay compensation, but the owner of the bus who is appellant herein is

liable to pay compensation. After recording the finding of contributory negligence, the Tribunal calculated 50% negligence on the part of driver of the

motor- cycle and awarded 50% sum of the total assessment i.e., Rs.9,32,200 and awarded a sum of Rs.4,66,100/ against owner/appellant.

4. Learned counsel for the appellant submits that driver of the said offending vehicle who is respondent No.2 was having valid driving licence and it

was valid on the date of incident, therefore, the Insurance Company who is respondent No.3 herein cannot be absolved from its liability.

5. In view of this court, the Tribunal recorded its finding on the basis of the evidence of Pradeep Kumar Agrawal (NAW/3). As per evidence of this

witness, deceased was driving in wrong direction and dashed the said Minibus which is alleged to be offending vehicle. He has clearly stated that he

was travelling in the said minibus and the incident was seen by him directly. Looking to the evidence of this witness, the trial Court opined that the

driver of the motor-cycle has also contributed in accident and assessed his contributory negligence to be 50%. Finding of the Tribunal is based on the

evidence adduced by the parties and it is not rebutted by the evidence of Smt. Sheela Paikara (AW/1), therefore, finding regarding contributory

negligence on the part of the driver of the motor-cycle is based on the evidence of both sides and this court has no reason to interfere with the finding

recorded by the Tribunal. The Tribunal assessed the compensation on the basis of medical bills of Rs.3,43,454, calculated Rs.2,70,000/- on account of

loss of income and again assessed for special diet, pain and suffering and transport and total Rs. 9,32,200 and awarded 50% of the sum i.e.,

Rs.4,66,100/- against owner/appellant.

6. The next point for consideration of this Court is whether the driver of the said Minibus/respondent No.2 was having a valid driving licence to drive

the same or the driving licence was not effective on the date of incident.

7. In the present case, date of incident is 11-11-2008. From the evidence of Santosh Pal (NAW/1), it is established that respondent No.2 was having

driving licence from 15-9-1998 to 13-9-2018 for driving the light motor vehicle. As per evidence of Punit Rathore (NAW/4), who is Law Officer of

respondent No.3 Bajaj Allianz General Insurance Company Limited, respondent No.2 was not having driving licence to drive the transport vehicle. As

per version of Heeralal Dhruw (NAW/5) who is an employee of Regional Transport Office, Bilaspur stated that the Minibus was having permit from

1-11- 2008 to 30-11-2008. From the evidence adduced by the persons of Transport Department, it is established that on the date of incident i.e., 11-11-

2008 respondent No.2 was having licence to drive the light motor vehicle from 15-9-1998 to 13- 9-2018.

8. As per law laid down in the matter of Mukund Dewangan vs. Oriental Insurance Company Ltd., reported in (2017) 14 SCC 663, Hon'ble the Apex

Court held that the ""light motor vehicle"" as defined under Section 2(21) of the Motor Vehicles Act, 1988 Act includes transport vehicle or omnibus, the

gross vehicle weight of either of which does not exceed 7500 kgs and it includes tractor or road roller, unladen weight of, which, does not exceed 7500

kg., and holder of a driving licence to drive class of ""light motor vehicle"" is competent to drive the transport vehicle or omnibus, the gross vehicle

weight of which does not exceed 7500 kg i.e., to say that no separate endorsement on the licence is required to drive the transport vehicle of light

motor vehicle as enumerated above.

9. In the present case, Insurance Company has not proved that unladen weight of the offending vehicle was more than 7500 kg, therefore, respondent

No.2 who was having a valid and effective driving licence for light motor vehicle, was authorised to drive any transport vehicle or omnibus, the gross

vehicle weight of which does not exceed to limit. In absence of any proof by the Insurance Company, the Insurance Company cannot be absolved

from its liability.

10. In view of the pronouncement by Hon'ble the Supreme Court in every case where the driver is having a valid driving licence to drive the light

motor vehicle, the Insurance Company has to prove that unladen weight of the offending vehicle was more than 7500 kg. In absence of any proof

regarding unladen weight of the offending vehicle, person having driving licence to drive the light motor vehicle is authorised to drive such vehicle even

if it is goods vehicle or passenger vehicle.

11. In the present case, Insurance Company did not lead any evidence regarding unladen weight of the offending vehicle. In absence of the evidence

that respondent No.2 was not having effective driving licence to drive the said vehicle, Insurance Company cannot be absolved from its liability.

Therefore, the finding arrived at by the trial Court is liable to be and hereby reversed and it is decided that the respondent No.3/Insurance Company is

liable to pay compensation to the claimant.

12. Accordingly, the appeal is allowed and award is modified as under.

I) Respondent No.3 Insurance Company shall pay Rs. 4,66,100/- to the claimant/respondent No.1within 60 days from the date of passing of the order,

failing which 9% interest shall be charged.

ii) Remaining part of the award of the claims Tribunal remains as it is.