(2019) 03 CHH CK 0254

In the Chhattisgarh High Court

Case No : M. A. (C) No. 110 Of 2014

Harishchandra Barmate @ Rajwa Barmate And Ors — APPELLANT

Vs

Branch Manager, Iffico Tokiyo General Insurance Co. Limited And Ors — RESPONDENT

Date of Decision : 29-03-2019

Acts Referred:
Indian Penal Code, 1860 — Section 279, 337, 338
Motor Vehicles Act, 1988 — Section 134, 166

Citation : (2019) 03 CHH CK 0254

Hon'ble Judges : Parth Prateem Sahu, J

Bench : Single Bench

Advocate : K. Rohan, Amrito Das

Final Decision : Dismissed

Judgement

Parth Prateem Sahu, J

1. The appellants who are driver and owner of the motorcycle bearing registration No.CG 10/EG/4623 (hereinafter referred to as 'offending vehicle') have challenged the legality, validity and propriety of the impugned award dated 05/08/2013 passed by Chief Motor Accident Claims Tribunal, Bilaspur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.137/2010 whereby learned Claims Tribunal while exonerating Insurance Company from its liability, awarded a sum of Rs.66,280/- as compensation in an injury case.

2. Brief facts for disposal of this appeal, are that, on 02/06/2010, at about 7.00 pm, one Umashankar Bhaghel was returning from Kirana shop, at that relevant time, on road at village Mudhiya, offending vehicle bearing No.CG 10/EG/4623 driven by appellant No.1 dashed Umashankar Bhaghel, due to which, he sustained fracture injury over his right knee. The matter was reported to concerned police station and Crime No.53/2010 was registered against appellant No.1 for offence punishable under Sections 279, 337 and 338 of the Indian Penal

Code. Subsequently, charge-sheet was also filed before the competent Court at Mungeli.

3. Respondent No.2/claimant filed a claim application under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') before the competent Claims Tribunal claiming Rs.3,38,000/- as compensation stating therein that on account of injury caused to him in an accident, he suffered permanent disability.

4. Appellant No.1/driver of offending vehicle filed his reply to claim application, in which, he denied the fact of accident. He pleaded that he was having valid and effective driving licence to drive vehicle, which was kept with appellant No.2.

5. Appellant No.2/owner of offending vehicle submitted her separate reply, in which, she also denied the fact of accident. She pleaded that on the date of accident, offending vehicle was insured with Insurance Company, therefore, she is not liable for payment of any amount of compensation.

6. Insurance Company submitted its reply and pleaded that on the date of accident, driver of offending vehicle was not having valid and effective driving licence, therefore, there is violation of conditions of insurance policy.

7. Learned Claims Tribunal while appreciating pleadings and evidence led by respective parties arrived at a finding that on the date of accident, appellant No.1/driver of offending vehicle did not produce driving licence before Claims Tribunal. Learned Claims Tribunal held that the appellants have not submitted reply to the application filed by Insurance Company before the Claims Tribunal under Section 134 of the M.V. Act for production of driving licence and even appellants herein did not enter into witness box to prove their pleadings. Learned Claims Tribunal also held that on the date of accident, driver of offending vehicle was not possessing valid and effective driving licence, which is violation of conditions of insurance policy, therefore, exonerated Insurance Company from its liability.

8. Learned counsel appearing for appellants only argued that as per pleadings made in reply to claim application, appellants have very specifically pleaded that appellant No.1 was having valid and effective driving licence but proper opportunity was not given to them to produce licence. He further argued that First Information Report was lodged after 8-10 days from the date of accident, therefore, learned Claims Tribunal committed an error in passing impugned award against them.

9. Per contra, learned counsel appearing for respondent No.1/Insurance Company argued that in reply to claim application filed by Insurance Company, there is specific averment that appellant No.1/driver of offending vehicle was not possessing valid and effective driving licence and even copy of licence has not been placed on record. He further argued that the Insurance Company has also moved an application under Section 134 of the M.V. Act, which was not replied by

appellants and they have chosen not to enter into witness box to prove their pleadings. In view of the above arguments, he supported impugned award passed by learned Claims Tribunal.

10. I have heard learned counsel appearing for parties and perused records carefully.

11. Appellants in reply to claim application have only pleaded that appellant No.1/ driver of offending vehicle is having valid and effective driving licence with him, but has not filed any document to this effect nor had entered into witness box to prove pleadings. Even appellant No.2 who is owner of the offending vehicle did not enter into witness box except denial of fact of accident in his pleading.

12. From perusal of the record, it is apparent that the appellants have not submitted any document before the learned Claims Tribunal showing that on the date of accident, driver of offending vehicle was possessing valid and effective driving licence. Even after filing of application by the Insurance Company under Section 134 of the M.V. Act, copy of licence was not produced before the learned Claims Tribunal and further the appellants did not enter into witness box to prove their pleadings.

13. It is settled position of law that pleading of fact in application/reply requires to be proved by placing cogent and reliable piece of evidence in support. In the instant case, appellants did not place any evidence in support of their reply either oral or documentary before the Tribunal.

14. In view of above discussions, in the considered opinion of this Court, learned Claims Tribunal has not committed any error in holding that on the date of accident, appellant No.1/driver of offending vehicle was not possessing valid and effective driving licence to drive offending vehicle and thereby violated the conditions of insurance policy.

15. So far as other ground raised by appellants with regard to their false implication in the instant case is concerned, claimant has filed a copy of First Information Report (Ex. P-2) before learned Claims Tribunal, in which number of motorcycle as also name of driver of motorcycle has been specifically mentioned. The cause of delay of 7 days has also been mentioned that the First Information Report has been registered on receipt of memo of doctor after examination of injured. The Police after investigating into First Information Report has also filed Final Report against appellant No.1 before the competent Court.

16. Claimant-Umashanker Baghel in support of his contention and pleadings has examined himself as AW-1 and Vinay Shrivas as NAW-1, who in his evidence has categorically stated with regard to the accident met by him. Though this witness was cross-examined by appellants' counsel, but he stuck to his version given in the examination-in-chief.

17. For the foregoing reasons and discussions, the appeal being devoid of merit, is liable to be and is hereby dismissed.