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**(2010) 12 RAJ CK 0018**

**In the Rajasthan High Court**

**Case No :** Civil Miscellaneous Appeal No. 1025 of 2010

ICICI Lombard General Insurance Co. Ltd.

APPELLANT

Vs

Dhulji and Others

RESPONDENT

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**Date of Decision :** 02-12-2010

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 149, 173  
Penal Code, 1860 (IPC) — Section 279, 337, 338

**Citation :** (2011) 4 RLW 3000

**Hon'ble Judges :** Gopal Krishan Vyas, J

**Bench :** Single Bench

**Advocate :** Jagdish Vyas, for the Appellant;

**Final Decision :** Dismissed

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## **Judgement**

Gopal Krishan Vyas, J.—Instant appeal has been filed u/s 173, Motor Vehicles Act, 1988 by appellant insurance company against judgment/award dated 29.07.2010 passed by Motor Accident Claims Tribunal (Fast Track), Banswara in MAC Case No. 41/08, whereby, compensation in the sum of Rs. 1,20,410/- along with interest @ 6% p.a. Has been awarded in favour of the claimant-respondent No. 1. The facts upon which the claim was filed indicate that on 25.02.2008, claimant-respondent Dhulji, who pursued business of milk and agriculture, was going on his motor-cycle near Mayur Mills, Mordi, then, at that time, near the gate of the Mill, one Rakesh Joshi, respondent No. 2 came from behind on motor-cycle No. RJ-03/SC/3557 and while driving the motor-cycle rashly and negligently hit claimant-respondent Dhulji. Due to the said accident, Dhulji sustained injuries upon thigh, right hand and fracture of right side hip bone besides several other injuries. Upon the said incident, FIR No. 37/2008, Police Station Sadar, Banswara was registered for offences u/s 279, 337 and 338, I.P.C. In the said FIR, after usual investigation, challan was filed before the competent Court. Claimant-respondent filed claim petition claiming compensation to the tune of Rs. 12,00,000/- against appellant insurance company as well as driver of

the offending motor-cycle Rakesh Joshi and owner Narayan Lal Joshi.

2. In the claim petition filed by the claimant, notices were issued and respondent put in appearance before the learned Tribunal and filed their reply. Respondent No. 3 raised a preliminary objection before the Tribunal that driver of the motor-cycle No. RJ-03/SC-3557 was not possessing legal and effective licence in his favour, therefore, as per terms and conditions of the insurance policy, the insurance company cannot be held liable for any compensation. The appellant insurance company admits that the vehicle in question was insured with the appellant insurance company.

3. Learned Tribunal, after considering the reply, framed four issues and after adjudicating all the issues in favour of the claimant held that claimant-respondent is entitled for compensation of Rs. 1,20,410/-.

4. Learned counsel for the appellant while challenging the said award vehemently argued that the appellant insurance company cannot be held liable for any compensation because in the case of Rashtriya Beema Company vs. Srawan Singh, 2004 A.C.T.C. (SC) 321 held that if any student is having licence to drive small vehicle, then, it cannot be presumed that he was having any valid licence and, as per terms and conditions of the insurance policy, the student having licence in his favour driving a vehicle, then, such act is in violation of Section 149 of the Motor Vehicles Act. In this view of the matter, insurance company is not liable to pay any compensation.

5. Learned Tribunal while deciding issues No. 2 and 3 observed that insurance company has not adduced any evidence that vehicle No. RJ-03/SC/3557 was driven by its driver Rakesh Joshi in violation of student-vehicle licence. Further, it is held that at the time of accident, Rakesh Joshi, driver of the offending motor-cycle was possessing licence in his favour and due to his rash and negligent driving the claimant received total four injuries, out of which, injuries No. 1 and 2 mentioned in Ex.-4 were simple in nature and injuries No. 3 and 4 were grievous in nature and those grievous injuries were on right hip of the claimant. Further, it is observed that as per X-ray report, Ex.-31, there was fracture of femur bone of right leg and as per Ex.-30, certificate of permanent disability, the claimant received 20 - 30 per cent permanent disability. Learned counsel for the appellant vehemently argued that aforesaid finding is totally baseless, more so, contrary to the evidence on record. Upon perusal of the finding of the Tribunal, I disagree with the argument advanced by learned counsel for the appellant because no evidence whatsoever was produced by the appellant insurance company to prove that licence which was possessed by Rakesh Joshi was not valid. Therefore, in the absence of any evidence there was no option for the Tribunal save than to arrive at the finding that insurance company is liable to pay the compensation.

6. I have also perused the judgment in the case of Rashtriya Beema Company vs. Srawan Singh, 2004 A.C.T.C. (SC) 321, cited by learned counsel for the appellant. The facts of that case do not apply to the facts of the present case.

Here, in this case, the accident is not disputed, driver of the vehicle is not disputed, injuries are not disputed, permanent disability is not in dispute, therefore, in these facts and circumstances, the judgment relied upon by learned counsel for the appellant will not apply.

7. I have also scanned the assessment of evidence made by the Tribunal for awarding compensation. Admittedly, claimant-respondent has been able to make out case that he was earning while doing business of selling milk and agriculture work and, although he claimed that he was earning Rs. 10,000/- per month, but the learned Tribunal assessed his income as Rs. 3,000/- and looking to the age of the claimant which is 42 years, applied multiplier of 15, by which, it comes to Rs. 5,40,000/- and because the appellant suffered permanent disability of 20 - 25 per cent, therefore, learned Tribunal granted 20% of Rs. 5,40,000/- as compensation which is Rs. 1,08,000/- for the injuries sustained by the claimant-respondent. Similarly, under the head of medical expenses, as per bills produced by the claimant, Tribunal awarded Rs. 7,410/- and for physical pain assessed compensation of Rs. 5,000/-; and, in all, granted Rs. 1,20,410 along with 6% interest from the date of filing the claim petition. In my opinion, the assessment so made by the Tribunal is in consonance with the principles laid down under law. In this view of the matter, there is no force in this appeal.

This appeal is accordingly dismissed.