(2012) 04 CHH CK 0003

In the Chhattisgarh High Court

Case No : Misc. Appeal No. 764 of 2011

United India Insurance Company Limited — APPELLANT

Vs

Ghera Bai and another — RESPONDENT

Date of Decision : 18-04-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 10, 10(2), 166, 18, 2

Citation : (2013) 1 ACC 811 : (2012) 2 CG.L.R.W. 329

Hon'ble Judges : Nawal Kishore Agarwal, J

Bench : Division Bench

Advocate : Dashrath Gupta, for the Appellant; Pushpendra Kumar Patel, for the respondent no. 2, for the Respondent

Judgement

Nawal Kishore Agarwal, J.—This is insurer''s appeal against the award dated 29-6-2010 passed by Additional Motor Accident Claims Tribunal, Katghora (for short ''the Tribunal'') in claim case No. 156/2008. As against the compensation of Rs. 19,38,000/- claimed by respondent No. 1/claimant by filing claim petition u/s 166 of the Motor Vehicles Act, 1988 (for short ''the Act'') for the injuries sustained by her in the motor accident on 16-2-2008; the Tribunal awarded a total sum of Rs. 1,39,000 alongwith interest @ 6% per annum from the date of filing of claim petition till its actual payment and in case of default in paying the amount of compensation within a period of 45 days, then the amount of compensation shall carry interest @ 9% per annum.

2. The Tribunal, on a close scrutiny of the evidence led, held: the accident had occurred due to rash and negligent driving of motorcycle bearing registration No. CG 12 ZE 9161 by its driver i.e. respondent No. 2-Bisahuram; Gherabai sustained multiple serious injuries in the said accident; appellant/Insurance Company liable for payment of compensation as it could not establish the violation of policy conditions; assessed and awarded aforementioned amount of compensation to the claimant.

3. Shri Dashrath Gupta, learned counsel appearing for the appellant would

submit: the driver of offending vehicle was not possessing valid and effective driving licence, inasmuch as, the vehicle being driven by him at the time of accident was motorcycle whereas he was possessing licence to drive light motor vehicle, and therefore, the Tribunal has erred in fastening the liability of payment of compensation upon the appellant insurance company.

4. On the other hand, Shri Pushpendra Kumar Patel, learned counsel appearing for the respondent No. 2, supported the award impugned and submitted, in the facts and circumstances of the case, the Tribunal has rightly held that the appellant/Insurance Company liable for payment of compensation which does not call for any interference.

5. I have heard learned counsel for the parties and perused the material available on record including award impugned.

6. Appellant/Insurance Company by leading cogent and clinching evidence and also by examining the RTO person has proved, respondent No. 2/ owner driver was possessing licence to drive light motor vehicle and was not possessing licence to drive motorcycle.

7. In order to appreciate rival contentions of the learned counsel for the parties, the legal question that needs to be considered by me is, whether the appellant/ Insurance Company could be held liable to pay the amount of compensation for the default of the motorcyclist who was not holding licence for driving two wheeler motorcycle but had driving licence of different class of vehicles in terms of Section 10 of the Act?

8. For the purpose of determination of the above said issue, it would be appropriate to refer relevant provisions of the Act. Section 2 of the Act deals with definitions. Sub-section (10) of Section 2 defines ''driving licence'' to mean--the licence issued by a competent authority under Chapter II authorizing the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description.

Section 3 in Chapter II of the Act prescribes necessity for driving licence which reads as under:--

(1) No person shall drive a motor vehicle in any public place unless holds an effective licence issued to him authorizing him to drive the vehicle; and no person shall so drive a transport vehicle [other than a motor cab or motorcycle hired for his own use or rented under any scheme made under sub-section (2) of section 75 unless his driving licence specifically entitled him to do so.

Section 5 of the Act prescribes that no owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of Section 3 or Section 4 to drive the vehicle. Driving licence has to be granted by the licensing authority having jurisdiction in the area to any person who is not, for the time being, disqualified of holding or obtaining a driving licence in terms of Section 9 of the Act. Section 10 of Act prescribes forms and contents of the licences to drive which reads as under:--

(1) Every learner''s license and driving licence, except a driving licence issued u/s 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

(2) A learner''s licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:--

(a) motorcycle without gear;

(b) motorcycle with gear;

(c) invalid carriage;

(d) light motor vehicle;

(e) transport vehicle;

(i) road roller;

(j) motor vehicle of a specified description.

Driving licence has to be issued by the licencing authority on presentation of the application Form IV as prescribed by Rule 14 of the Motor Vehicles Rules, 1989. The application form shall be accompanied by documents specified in the said Rule. The applicant has to apply for a licence in terms of Form IV enabling him to drive a particular vehicle of the description as specified in Section 10 of the Act, 1988. The licensing authority shall grant driving licence to the applicant in terms of Form VI and Rule 16 (1) of the Central Motor Vehicles Rules, 1989."

9. The Supreme Court, in the case of Oriental Insurance Co. Ltd. Vs. Zaharulnisha and Others, 1, after noticing the above provisions of Act referred herein above and placing its reliance upon earlier 3 Judges'' Bench''s judgment of Supreme Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, has observed in para 18 of its judgment as under:

In the light of the above-settled proposition of law, the appellant-insurance company cannot be held liable to pay the amount of compensation to the claimants for the cause of death of Shukurullah in road accident which had occurred due to rash and negligent driving of scooter by Ram Surat who admittedly had no valid and effective licence to drive the vehicle on the day of accident. The scooterist was possessing driving licence of driving HMV and he was driving totally different class of vehicle which act of his is in violation of Section 10 (2) of the MV Act.

10. Coming to the facts of the present case, it is crystal clear that the motorcyclist was possessing driving licence to drive LMV and he was driving totally different type of vehicle i.e. motorcycle which act of his is in violation of Section 2 of the Act and the appellant insurance company cannot be held liable

to pay the amount of compensation to the claimant for the injuries sustained by her in a road accident which had occurred due to rash and negligent driving of motorcycle by Bisahuram (respondent No. 2), who had no valid and effective driving licence to drive motorcycle.

11. In view of above, the Tribunal has certainly erred in fastening the liability upon the appellant/insurance company, which is not sustainable in law.

12. Further, the part of the award whereby the penal interest has been awarded by the Tribunal is also not sustainable in law in view of judgment of Supreme Court in case of Union of India (UOI) and Another Vs. Sneha Khemka and Another, wherein it has been 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.

13. For the foregoing, the appeal is allowed in part. The parts of the award whereby the appellant has been held liable for payment of compensation and also whereby the penal interest has been awarded are set aside. The award is modified to the extent indicated above. Rest of the conditions of the award shall remain intact.

14. However, by applying the ratio of law laid down by the Supreme Court in the case of National Insurance Company Limited v. Swaran Singh (supra), I direct the appellant/insurance company to first pay the amount of compensation fixed by the Tribunal to respondent No. 1/ claimant and then to recover the same from the owner. The appellant shall not be required to file a suit, it may initiate execution proceedings before the Executing Court concerned as if the dispute is between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. No order as to costs.