Received on : 15/09/2008
Registered on : 16/09/2008
Decided on : 14/05/2018
Duration : 09Y 07M 28D

BEFORE MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL-3, NAGPUR
(Presided over by D.D. Khoche)

CLAIM PETITION NO. 874/2008 **Exh. 64**
(CNR No. MHNG01-006203-2008)

PETITIONER : Vasudev S/o Dajiba Mundle
(died during pendency of petition)
through L.Rs.

1] Sayatrabai W/o. late Vasudev Mundle,
Aged about 57 years, Occu: Housewife,

2] Eknath S/o Vasudev Mundle,
Aged about 40 years, Occu: Cultivator,
Both R/o. Chicholi, Post – Dhanala,
Tah. Mouda, Distt. Nagpur.

// V E R S U S //

RESPONDENTS: 1] Chandrabhan B. Chavhan,
Aged about Major, Occu: Owner,
R/o. At Chicholi, Post – Dhanala,
Tah. Mouda, Distt. Nagpur.

2] The Branch Manager,
The Iffco-Tokio Gen. Ins. Co. Ltd.,
8th floor, 701-A, Shriramshyam Tower,
Beside NIT Complex, Kingsway,
Sadar, Nagpur.

PETITION FOR GRANT OF COMPENSATION UNDER SECTION 166 OF THE MOTOR VEHICLES ACT, 1988.

Advocates appeared :

Mr. P.S. Mirache, learned advocate for petitioner.
Petition proceeded ex-parte against respondent no.1.
Mr. Sanjay` Deshpande, learned advocate for respondent no.2.

J U D G M E N T

(Delivered on this 14th day of May, 2018)

This is a Petition for grant of compensation under Section 166 of the Motor Vehicles Act, 1988 on account of injuries sustained by the petitioner Vasudev Dajiba Mundle, in a vehicular accident.

2] Contentions of the petition are that on 18-08-2008 at about 9:30 a.m., the petitioner Vasudev Dajiba Mundle was pedestrian at village Chicholi, Post – Dhanala, Tah. Mouda, Distt. Nagpur. At that time, Hero Honda motorcycle no. MH-40-K-6648 came in high speed and in negligent manner dashed him. He sustained grievous injuries in said accident and was admitted to Apulki Vairagade Hospital and incurred expenses of Rs.1,00,000/-, but his injuries could not be cured and he became permanently disabled. Respondent no.1 Chandrabhan B. Chavhan was the owner of said motorcycle and respondent no.2 Iffco-Tokio General Insurance Co. Ltd. was its insurer. The petitioner claimed compensation of Rs.3,50,000/- from them, but restricted it to Rs.2,50,000/-.

The petitioner claimed the same with interest at the rate of 12% per annum from the date of petition till realization of entire amount, jointly and severally from the respondents with costs of the petition.

3] Respondent No.1 Chandrabhan B. Chavhan was served, but failed to appear. Hence, learned predecessor of this Tribunal passed an ex-parte order against him on 26-04-2010 at Exh.1.

4] Respondent No.2 The Iffco-Tokio General Insurance Co. Ltd. filed its written statement at Exh.15 and admitted that it was the insurer of aforesaid vehicle. However, it denied other contents of the petition and took defence that the rider of said motorcycle had no valid and effective driving licence at the time of accident. Hence, there is breach of terms and conditions of policy. Relying on it, it prayed to dismiss the petition.

5] After grant of no fault liability compensation, learned predecessor of this Tribunal framed issues at Exh.20. Petitioner filed his affidavit of examination in chief at Exh.22 and was cross examined. He examined Dr. Susheel Vairagade to prove his injuries and Mr. Shailesh Ragit to prove medicines bills. Thereafter, he closed his evidence by filing pursis at

Exh.57. Respondent no.2 insurance company filed true copy of the policy at Exh.61 and filed pursis at Exh.63 declaring that it does not want to lead evidence.

6] Tribunal heard oral arguments of learned Advocates Mr. P.S. Mirache, for the petitioner and Mr. Sanjay Deshpande, for respondent no.2 insurance company.

7] Issues framed at Exh.20 are as follows. Tribunal records its findings thereon for reasons to be recorded below.

Sr.No.	**ISSUES**	**FINDINGS**
(1)	Whether petitioner proves that on 18-08-2008 impugned accident occurred due to rash and negligent driving of motorcycle no. MH-40-K-6648?	**Yes**
(2)	Whether petitioner proves that in the impugned accident he has sustained injuries?	**Yes**
(3)	Whether there is breach of policy condition?	**Yes**
(4)	Whether petitioner is entitled for compensation? If yes, what amount and from whom?	**Partly Yes, Rs.42,264/- from respondent no.1, however, respondent no.2 to pay and recover**
(5)	What order?	**As per final order.**

R E A S O N S

8] **AS TO ISSUE NO.1** : Petitioner Vasudev filed his affidavit of examination in chief at Exh.22 and reiterated the contents of the petition. In support of his evidence, he filed police papers at Exh.23 to Exh.26. In cross examination, nothing special is come on record, which would show that his evidence is inadmissible or inconsistent with the petition.

9] Perusal of FIR at Exh.24 shows that on 18-08-2008 at about 10:00 a.m. petitioner Vasudev was proceeding from the road side by walk. At that time, the rider of Hero Honda motorcycle no. MH-40-K-6648 rode it in rash and negligent manner and had dashed petitioner Vasudev from back side. It finds that FIR was lodged on the next day of the accident, but, that has not been denied. Thus, the evidence of the petitioner is corroborated by the FIR. Same is not challenged in any way by the respondent no.1 Chandrabhan and respondent no.2 insurance company and could not bring contrary material on record. Consequently, evidence is to be believed and thereby it gets proved that the rider of motorcycle caused the accident due to his rash and negligent driving, by giving dash to the petitioner Vasudev. Tribunal records its affirmative finding to issue no.1.

10] **AS TO ISSUE NO.2** :- Petitioner contended and deposed that in said accident he had suffered fracture at his tibia – fibula left and fracture at right supra condyle tibia. In support of it, he examined Dr. Susheel Vairagade through learned Commissioner of this Tribunal at Exh.C-1. Dr. Vairagade deposed that he is MBBS and MS (Orthopedician), runs his Apulki Hospital at Nagpur since 2004; patient Vasudev Mundle aged about 68 years was admitted to his hospital on 18-08-2008 at 3:00 p.m. with road traffic accident and diagnosis of (1) fracture both bones of left leg and (2) fracture tibia right; said patient was operated by him for the fractures of both legs and was discharged on 26-08-2008. Dr. Vairagade identified and admitted the discharge card at Exh. C-2 with his signature. In cross-examination, there is nothing to disbelieve the evidence. Moreover, the evidence is of the independent, expert and professional corroborated by the discharge card, therefore, it proves the grievous injuries of the petitioner. Tribunal records its affirmative finding to this issue no.2.

11] **AS TO ISSUE NO.3** :- This issue is framed on the basis of the defence that the rider of the offending motorcycle was riding it without having the valid and effective driving licence. In this respect, the respondent no.2 insurance company had put up the suggestion to the petitioner that motorcycle rider had no valid driving licence. He denied the same. Respondent no.2 insurance company, however, brought to the notice of Tribunal the FORM COMP AA Exh.23. It shows that police applied section 3/181 of the Motor Vehicles Act. This brings on record that the rider of said motorcycle by name Shankar Ghanshyam Patiye had no valid and effective driving licence. In such circumstances, it was for the respondent no.1 Chandrabhan B. Chavhan to appear and to take particular defence and to lead evidence about existence of driving licence of Shankar Patiye, the rider of motorcycle, but he failed to do so. Consequently, it is for the Tribunal to hold that offending motorcycle was being ridden without having valid and effective driving licence.

12] Regarding this, the case of ***United India Assurance Co. Ltd. Vs. Rakesh Kumar Arora, 2008 AIR SCW 6872*** helps the insurance company. In that case, the Hon'ble Supreme Court was pleased to observe that when obviously & apparently, there was no licence with the rider/driver, it was for the owner to take care to lead necessary evidence andto show that the rider had the same. However, since it is not led, the breach gets proved. In present case, the present rider was not minor, but was of 21 years old as it finds from the FORM COMP AA. If a major person if gets the driving licence at the age of 18 years, particularly to ride the motorcycle, it does not expire within 3 years like the transport vehicle. Therefore, when it is clarified in the FORM COMP AA that he had no driving licence, it is sufficient for the insurance company to prove the fact to this extent and it was then for the owner of the motorcycle to come before the Tribunal & to lead otherwise evidence to prove that the rider has driving licence. This could have been his burden under Section 106 of the Evidence Act, but the owner failed in proving it. Thus, Tribunal is inclined to hold that the insurance company is succeeded in proving the breach of terms and conditions of the policy for want of proper licence. Tribunal records its affirmative finding to this issue.

13] However, it must be noted that the criteria of pay and recover is different. In the case of ***National Insurance Co. Ltd. Vs. Swaran Singh and others, AIR 2004 (SC) 1531***, in paragraph nos.99 and 102, the Hon'ble Supreme Court though pleased to hold the breach of the terms and conditions of the policy, is pleased to guide that it is for the Tribunal and the Court to exercise their jurisdiction to issue the direction to pay and recover in appropriate cases.

14] In present case, the petitioner is now died and his wife is old aged, probably more than 65 years of age, therefore, she cannot be now expected to work for recovery of said amount. As against this, the insurance company has all its machinery, ability and binding force of law to pay and even then to recover. Hence, the Tribunal will require it to pay and recover. Tribunal holds the same.

15] In view of the findings recorded to issues nos.1 to 3, petitioner was entitled for the compensation of his accident. However, now it has come on record that he is died and his wife is surviving, so she is entitled for recovery of actual expenses i.e. hospitalization charges, medicines bills, attendance charges, traveling expenses and special diet only and not for other amount. Tribunal records its such partly affirmative finding to this issue.

16] Coming to the liability, the respondent no.1 Chandrabhan is stated to be owner of said offending motorcycle. Same is corroborated by the FORM COMP AA. Same is not denied by the respondent no.1 Chandrabhan, therefore, he is liable to compensate the petitioner and as held above, though the insurance company is in position to avoid the policy, it is directed to pay and recover. Therefore, Tribunal records its such finding to this issue.

17] Turning to compensation, first comes the hospitalization charges. The petitioner is no more, however, his heirs are entitled for the actual expenses made. In this respect, though the petitioner contended and deposed that he had spent Rs.1,00,000/- on the treatment, Dr. Vairagade deposed about the hospital bill of Rs.22,400/- and admitted said bill in his evidence at Exh.C-3, however, admitted in cross-examination that it was only the amount of Rs.20,000/-. In addition to this, he identified the bill at Exh.C-4 i.e. worth Rs.350/-. Thus, petitioner's heirs are entitled for the hospitalization charges total Rs.20,350/-.

18] Coming to the medicines bills, Dr. Vairagade identified the bills of pathology at Exh.C-5. Those are 3 in numbers. Their total bill comes to Rs.800/-. In addition to this, petitioner examined Mr. Shailesh Ragit, the Proprietor of Shailesh Pharmacy attached to Vairagade Hospital. He deposed and identified the medicines bills at Exh.56/1 to 56/27. All those bills are signed by him and identified by him. His evidence is not at all challenged by the insurance company. Therefore, those bills can be believed. Their total comes to Rs.13,989/-. Thus, petitioner's heirs are entitled for Rs.800/- + Rs.13,989/- i.e. Rs.14,789/- towards medicines bills.

19] Third comes the attendant charges. It is proved by the evidence of Dr. Vairagade that petitioner was hospitalized from 18-08-2008 to 26-08-2008 i.e. for 9 days. During said period, certainly someone from his house must have required to provide service to him in said hospital and that person must have kept away his/her duties/household affairs. This is in fact the pecuniary loss to the petitioner. Therefore, petitioner is entitled to get the amount against those expenses. Tribunal considers as Rs.125/- per day against the services of such person in the year 2008 and thereby the amount of 9 days come to Rs.1,125/-. Petitioner's heirs are entitled for the same.

20] Fourth comes the traveling expenses and special diet. The petitioner was asked for follow up treatment for 6 months. This has come in the evidence of Dr. Vairagade. This is actual pecuniary loss of the petitioner. In such circumstances, his legal heirs are entitled to get the same. Tribunal held it as Rs.4,000/- towards traveling expenses and Rs.2,000/- towards special diet.

21] The loss of earning during treatment period now has no cause of action to be granted as related with the petitioner, being personal relief. Similarly, Petitioner could not prove the FORM COMP B i.e. permanent disability. Since he is died, the question of granting non pecuniary losses does not arise. Therefore, his legal heirs are entitled only for Rs.20,350/- towards hospitalization charges, Rs.14,789/- towards medicines bills, Rs.1,125/- towards attendance charges, Rs.6,000/- towards traveling expenses and special diet, total Rs.42,264/-. Tribunal records such finding to this issue. Petitioner's heirs are entitled for the same. In addition to this, they are entitled for the interest @7.5% p.a. from the date of the petition till this Award and then till realization of entire amount. Thus, Tribunal records such finding to this issue and passes following order.

ORDER

1] Claim Petition is partly allowed with proportionate costs.

2] Legal heirs of original Claim Petitioner i.e. Sayatrabai Wd/o Vasudev Mundle and Eknath S/o Vasudev Mundle, are entitled for compensation of Rs.42,264/- (Rupees Forty Two Thousand Two Hundred Sixty Four only) inclusive of no fault liability compensation.

3] Respondents No.1 and 2 respectively Chandrabhan B. Chavhan and The Iffco-Tokio Gen. Ins. Co. Ltd., are jointly and severally ordered to pay aforesaid amount of compensation to the legal heirs of original Claim Petitioner with simple interest @ 7.5% per annum from the date of the petition till the present Award and then till realization of entire amount by way of account payee cheque / demand draft / NEFT, within next 30 days from this Award.

4] However, the respondent no.2 The Iffco-Tokio Gen. Ins. Co. Ltd. is to pay the amount to the legal heirs of original claim petitioner and to recover the same from the respondent no.1 Chandrabhan B. Chavhan.

4] However, after depositing aforesaid amount by the Respondent No. 2 The IFFKO-TOKIO General Insurance Company in the Tribunal, insurance company may file an application to the Tribunal to issue notice to the concerned Respondents No. 1 Chandrabhan B. Chavhan and to direct him to furnish security to the satisfaction of the Tribunal for the amount so deposited within a period of fifteen days of receipt of said notice, and even to attach the offending vehicle as part of the security of the amount payable. The Tribunal then shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle i.e. Respondent no.1 shall make payment to the insurer. In case there is any default, the Insurance Company may pray for the realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured.

5] Out of said principal + interest amount, 75% amount be apportioned to the share of legal heir i.e. Smt. Sayatrabai Vasudev Mundle and remaining 25% amount be apportioned to the share of another legal heir i.e. Eknath Vasudev Mundle. Amount being minimum, their respective share's amount shall be deposited in their respective saving bank account in any nationalized bank.

6] Legal heirs of original Claim Petitioner shall pay the requisite Court fees in the form of stamp in the valuation of the Award, before payment of the compensation to them, if not already paid.

7] Award be drawn up accordingly.

(Pronounced and dictated in open Tribunal)

(D.D. Khoche)
Member,
Motor Accident Claims Tribunal-3,
Nagpur.

Nagpur
Dated : 14/05/2018

CERTIFICATE

I affirm that the contents of this judgment are word to word as per original judgment uploaded in the CIS System by way of PDF File.

Name of Stenographer : Prashant P. Yenurkar.