

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)  
ON THE 17th OF FEBRUARY, 2024  
MISC. APPEAL No. 2206 of 2017**

**BETWEEN:-**

**BRANCH MANAGER ORIENTAL INSURANCE  
COMPANY LIMITED KHANDUJA COMPLEX STATION  
CHOURAHA SAGAR ROAD DISTRICT DAMOH  
MADHYA PRADESH THROUGH DIVISIONAL  
MANAGER DIVISION OFFICE BHAGWANGANJ SAGAR  
(MADHYA PRADESH)**

**.....APPELLANT**

**(BY SHRI GULAB CHAND SOHANE – ADVOCATE )**

**AND**

**1. SMT. AARTI W/O RAMADEEN AHIRWAR, AGED  
ABOUT 35 YEARS, R/O VILLAGE BARKHERA, P.S.  
GESHABAD, TEHSIL HATTA DISTT. DAMOH (MADHYA  
PRADESH)**

**2. BALA PRASAD S/O NONELAL KURMI, AGED  
ABOUT 24 YEARS, BARKHERA KALAR P.S. GESHABAD  
TEH. HATTA DISTT. DAMOH (MADHYA PRADESH)**

**.....RESPONDENTS**

**( SHRI S.K.MISHRA – ADVOCATE FOR RESPONDENT NO.2 )**

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*This appeal coming on for admission this day, the court passed the following:*

**ORDER**

Heard on IA No.12224/2017 for condonation of delay in filing  
the appeal.

Considering the averments mentioned in the application which is supported by affidavit, IA No.12224/2017 is allowed and delay of 61 days in filing the appeal is hereby condoned.

Accordingly, IA No.12224/2017 is disposed of.

Heard on admission.

Admit.

With the consent of learned counsel for the parties, heard final arguments.

This Miscellaneous Appeal under Section 173(1) of the Motor Vehicles Act has been filed by the appellant/Insurance Company being aggrieved with the award dated 03.04.2017 passed by Additional MACT, Hatta, District Damoh (M.P.) in Claim Case No.100009/2016, whereby, the learned claims tribunal has awarded a sum of Rs.70,000/- (Seventy Thousand) with 7% interest to the appellant/claimant by way of compensation for the injuries which he has sustained in a motor vehicle accident.

2. Brief facts of the case are that the on 20.10.2015 respondent No.2 (non-applicant No.1) was driving his motorcycle bearing registration No.MP-34/MG-2023 in rash and negligent manner and hit the respondent No.1/claimant while she was going towards Hatta, due to which she sustained injuries in her waist and other parts of the body.

3. By way of filing written statement, respondent No.2/owner-driver of the offending vehicle denied the averments mentioned in the claim petition and stated that his vehicle was insured with the respondent No2-insurance company, hence he is not liable to pay any compensation.

4. Insurance company in its written statement denied the averments of the claim petition stated that there is a delay of about 02 months in lodging the FIR which makes the case doubtful. It was also stated that on the date of incident offending vehicle was being driven by respondent No.2 in breach of policy as he was not having valid driving licence on the date of incident, hence, appellant/insurance company has no liability to pay any compensation and prayed for dismissal of the claim petition against the insurance company.

5. Learned tribunal framed the issues and recorded the evidence. After considering the evidence placed on the record and the arguments advanced by the learned counsel for the parties, learned tribunal awarded a sum of Rs.70,000/- (Seventy Thousand). Being aggrieved by the impugned order, appellant/Insurance Company has preferred this Appeal.

6. Learned counsel for the appellant submits that FIR was delayed by 75 days and on the date of incident offending vehicle was being driven by respondent No.2 in breach of policy as he was not having valid driving licence on the date of incident and submits that findings of tribunal regarding issue No. 3 and 4 are erroneous and prays to exonerate the appellant-Insurance Company from liability to pay the award amount. On the strength of aforesaid, it is submitted that the appeal be allowed and impugned order be set aside against appellant-insurance company.

7. I have considered the arguments advanced by the learned counsel for the parties and perused the record.

8. As per claim petition and the statement of claimant Smt.Arti (AW-1) the date of incident is 22.10.2015 at 2:30 to 3:00 pm and place of

accident was Murach-Hinota Road, Village Barkhera Kalar, P.S.Geshabad, Teh. Hata, Distt. Damoh. It is evident from the certified copy of First Information Report Ex.P-3 that for the first time FIR Ex.P-3 at crime no.1/2016 under Section 279 and 337 of the IPC was registered against respondent No.2 before police station Gausabad, Teh. Hata, Distt. Damoh on the written complaint Ex.P-4. Delay for lodging FIR was mentioned in the FIR as she was under treatment and due to plaster she was unable to walk, hence, she could not lodge report within time.

**9.** Claimant (AW-1) has filed certified copy of MLC report Ex.P-5 and prescription issued by Orthopedic Department of Medical College, Jabalpur and discharge ticket Ex.P-19 of the same hospital. It is pertinent to mention here that MLC report and prescription issued by Orthopedic Department, Medical College, Jabalpur both were exhibited by the tribunal as Ex.P-5.

**10.** In prescription Ex.P-5 issued by Orthopedic Department of Medical College, Jabalpur, the date of incident is mentioned as 17.11.2015 and date of admission is mentioned as 07.12.2015 and History of Patient Injury (HOPI) is mentioned which is reproduced as below :

“as per patient self history of trauma due to RTA on 17.11.2015 at around 2.30 pm at place near village Hinota, Teh. Hata, Distt. Damoh.”

**11.** In discharge ticket issued by Medical College, Jabalpur Ex.P-19 history of RTA on 17.12.2015 at around 2.30 pm is mentioned. Hence, in medical documents Ex.P-5 and Ex.P-19 date of incident is not the same as mentioned in written report Ex.P-4 and FIR Ex.P-3.

**12.** Claimant has not filed any medical document regarding treatment which she had taken on the date of incident i.e. 22.10.2015. Whereas, AW-1 has admitted in cross-examination para-9 that after incident she has not lodged the report despite the fact that while coming from village Hinota, the police station Hata is on the road. AW-1 has also admitted that she did not lodge report at police chowki situated at Damoh Hospital.

**13.** Smt. Rajkumari (AW-2) examined as eye-witness in para-7 has stated that after the incident she lifted up the injured and she also went with her to the hospital. She also narrated doctor regarding the incident and she also disclosed the name of the accused of the incident.

**14.** As discussed above there is no documentary evidence regarding treatment of the claimant relating to the date of incident. As per FIR Ex.P-3, written report Ex.P-4 and as per claim petition date of incident is 22.10.2015 and report was lodged on 04.01.2016 i.e. with a delay of about 2 months 13 days and no proper reason of delay has been explained and proved. Hence, it is not proved that due to rash and negligent driving of offending vehicle by non-applicant No.1/respondent No.2 on 22.10.2015 at 2.30 pm, claimant/respondent No.1 sustained grievous injury. Hence, finding on issue No.1 and 2 of learned tribunal are hereby set-aside.

**15.** It reveals from final report Ex.P-1 that during investigation it was found that the driver of the offending vehicle was not having any driving licence, therefore, challan was also filed under Section 3/181 of the Motor Vehicles Act. It is also pertinent to mention here that respondent No.2/non-applicant No.1 appeared before the tribunal and has filed

written statement and denied the averments mentioned in the claim petition but he has not filed his driving licence.

**16.** Learned tribunal has framed issues No.3 and 4 regarding driving licence and breach of policy and the tribunal has given findings in negative concluding that burden was not discharged by the insurance company. It is true that issues No. 3 and 4 regarding breach of policy is to be proved by the insurance company but firstly it is the duty of the owner and driver of the offending vehicle to produce the driving licence then the burden shifts on the insurance company to rebut that the driving licence produced in the case was not valid and effective on the date of incident. Since there is no driving licence filed before the tribunal and before the investigating agency, hence appellant-insurance company has no source to verify the validity and effectiveness of the driving licence of the driver of the offending vehicle. In the case of *Pappu & others vs. Vinod Kumar Lamba and another (2018) 3 SCC 208*, Hon'ble Apex Court has held that – mere production of a valid insurance certificate in respect of offending vehicle is not enough for owner to make insurance company liable to discharge liability arising from rash and negligent driving by driver of his vehicle. Insurance company can be fastened with liability on basis of a valid insurance policy only after basic facts are pleaded and established by owner of offending vehicle that vehicle was not only duly insured but also that it was driven by an authorized person having a valid driving licence.

**17.** Hence, as discussed above, finding of issue no.3 and 4 of the tribunal is also erroneous and is hereby set-aside and claimant/respondent No.1 is not entitled to get any compensation amount because she has failed to prove her case.

**18.** Resultantly, appeal allowed and award passed by the learned tribunal in favour of the claimant/respondent No.1 is hereby set-aside and accordingly disposed.

**19.** Let the record be sent back to the concerned tribunal alongwith copy of this order for information and necessary compliance.

No order as to costs.

**(AMAR NATH (KESHARWANI))  
JUDGE**

@s.