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HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 167 of 2016

United India Insurance Company Limited, Branch Ambikapur, Bramharoad, Ambikapur, District Surguja, Chhattisgarh ....(Non-Applicant No.3)

---- Appellant

Versus

1. Rajni Kushwaha D/o Muneshwar Prasad Kushwaha, Aged About 33 Years Occupation Nurse, R/o Village Karji, Jhandapara, Police Station Darima, Tahsil Ambikapur, District Surguja, Chhattisgarh.....(Claimant)
2. Sanjay Kumar Agrawal S/o J.R. Agrawal, Aged About 40 Years Occupation Business, R/o Near Dashmet Hospital, Gudri Bazar, Ambikapur, Police Station And Tahsil Ambikapur, District Surguja, Chhattisgarh ....(Non-Applicant No.1)
3. Saddam Ansari S/o Rajjak Ansari, Aged About 24 Years Occupation Driver, Permanent R/o Balajhakda Tola, Mayadih, Police Station Dandai, District Gadhwa (Jharkhand), Presently Residing At Gandhi Nagar, District Surguja, Chhattisgarh ....(Non-Applicant No.2)

------Respondents

For Petitioner:	Shri HB. Agrawal, Senior Advocate along with Shri Pankaj Agrawal, Advocate.
For Respondents:	None.

Single Bench: Hon'ble Shri P. Sam Koshy, J

Order On Board

12.2.2016

1. The Appellant has challenged the award dated 28.11.2015 passed by the Motor Accidents Claims Tribunal, Ambikapur in Motor Accident Claims Case No.148/2013.

2. According to Learned Counsel for the Appellant, he has challenged the present impugned award primarily on the ground that driver of the offending vehicle i.e. Truck No.CG 15 AC 0114 was not having a proper valid license and rather he was using a fake license at the time of accident. He further

submits that in the instant case, policy was also issued in the name of Sangeeta Agrawal, wife of Respondent No.1 and that the said Sangeeta Agrawal was not a Respondent in the claims case which is also a technical defect for which the appeal deserves to be allowed.

3. According to Learned Counsel for the Appellant, the accident took place on 27.4.2013 in which the offending truck which was driven by Respondent No.3 and owned by Respondent No.2 had hit the deceased Shilpi (the daughter of Respondent No.1, the claimant) aged about 17 years who was riding on a Scooty (scooter) bearing registration No.CG 15 CD 6022.

4. From the pleadings and the evidence which have come on record, it appears that it has been established that the deceased Shilpi was pursuing her studies in 12th standard at the time of accident and was aged 17 years at the relevant point of time.

5. Considering the age of the deceased, it appears that the findings of the Tribunal are appropriate and so far as the quantum is concerned, there is no illegality committed by the Court below calling for interference. So far as the driver having a fake license at the time of the accident, the law in this regard is a well settled with a series of judgements passed by the Supreme Court wherein, it has been held that at the time of engaging the driver, if the owner of the truck had ensured that the driver had a license or not and if the driver was able to adduce the license, then it cannot be said to be the fault of the owner if at a latter stage, it is found that the driver was having a fake license.

6. The Supreme Court in 2006 AIR SCW 4832 (Lal Chand vs. Oriental Insurance Co.Ltd.), while deciding the issue of the drier having a fake license, has held that in the event the owner takes requisite caution at the time of

engaging the driver as to whether he has a license and that he is capable of driving the vehicle assigned to him or not, then the Insurance Company cannot be exonerated from the payment of compensation. Again, this issue has further been considered by the Supreme Court in III (2013) ACC 871 (SC) (Pepsu Road Transport Corporation vs. National Insurance Company wherein also, the Supreme Court, in very categorical terms, has held that if the owner of the offending vehicle at the time of engaging the driver has inquired whether the driver was put to test to show his competence of driving a vehicle and if at a later stage, the said driving license is found to be fake, there would be no breach of policy conditions so far as the owner is concerned and the Insurance Company would not be absolved from the liability of compensation.

The co-ordinate Bench of this High Court also in the case of M/s. Primenet Global Limited passed in M.A(C) No.1289/2009 decided on 9.5.2014, has held that in the event the owner has taken necessary precaution by inquiring whether the driver has a valid license or not, then the Insurance Company cannot be absolved from its liability.

7. Considering the total facts and circumstances of the case and also the judgement of the Supreme Court as also this Court, I am of the opinion that the finding arrived at by the Tribunal so far as fastening the liability on the Insurance Company for payment of compensation in the given facts and circumstances, cannot be said to be bad in law, erroneous or contrary to the judgments of the Supreme Court.

8. For the foregoing reason, this Court is of the opinion that there is no need for interfering with the impugned award and the appeal being devoid of merits, the same is accordingly rejected.

(P. Sam Koshy)
JUDGE