

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 1108 of 2008**

The Oriental Insurance Company Limited, Divisional Office, Kamptee Line, Rajnandgaon, Through: Divisional Office, The Oriental Insurance Company Limited, Madina Building, Kutchery Chowk, Jail Road, Raipur, Chhattisgarh

---- Appellant**Versus**

1. Kumari Renu Sahu, Father Ganesh Kumar Sahu, Aged 17 years, Natural Guardian Mother Smt. Prabha Bai Sahu, Aged about 38 years, W/o. Shri Ganesh Kumar Sahu, R/o. Village Prince Colony, Laxmi Nagar, Raipur, Tahsil and District Raipur, Chhattisgarh
2. Naresh Kumar Nishad, Aged about 46 years, S/o. Shri Ghanaram Nishad, R/o. Village Samoda, Thana Pulgaon, Tahsil and District Durg, Chhattisgarh
Present Address- Subhash Nagar, Near to Dewar Dera, Telibandha, Raipur, Chhattisgarh
3. Tamrakar Bus Service, Proprietor, Gayaram Tamrakar, R/o. Village Parpodi, Tahsil and District Durg, Chhattisgarh

----Respondents

For Appellant	:	Mr. Sudhir Agrawal, Advocate
For Respondent No.1	:	Mr. A.L. Singroul, Advocate (Amicus appointed by the Court)

Hon'ble Shri Justice P. Sam Koshy**Order on Board****30/10/2017**

1. The present is an appeal by the Insurance Company assailing the award dated 25.04.2008, passed by the 12th Additional Motor Accident Claims Tribunal (FTC), Raipur, Chhattisgarh, in Claim Case No. 131/2006.
2. Vide the impugned award, in an injury case, the Tribunal, in a proceeding under Section 163-A of Motor Vehicles Act, has awarded a compensation of Rs.2,53,561/- with interest @ 7.5% per annum from the date of application.

3. The liability of payment of compensation has been jointly and severally fastened upon the Owner, Driver and the Insurance Company. The present is an appeal by the Insurance Company challenging the liability which has been fastened upon it.
4. The grounds assailing the impugned award are, the Driver of the offending vehicle had a license, which was fake and as such, the Insurance Company cannot be fastened with the liability of payment of compensation.
5. The counsel for the appellant relied upon the decisions of the Hon'ble Supreme Court in the case of "**New India Assurance Co., Shimla vs. Kamla and Others**" 2001(4) SCC 342 and "**National Insurance Company vs. Sajjan Kumar Aggarwalla**" 2008(2) TAC 385, judgment of this Court in MAC No. 708/2009 decided on 25.08.2012. Further, relied upon the decision of the Hon'ble Supreme Court in the case of "**National Insurance Co. Ltd. vs. Swaran Singh and Others**" 2004(3) SCC 297.
6. The other ground raised by the appellant is that the compensation awarded towards medical expenses is also on the higher side as the claim itself being under Section 163-A of the Motor Vehicles Act, the compensation under the medical expenses could have been only up to Rs.15,000/- under the schedule.
7. The next ground raised by the Insurance Company is that since there was a head on collision between two vehicles, there is an apparent contributory negligence which ought to have been attributed upon the Drivers of both the vehicles and the liability part

should have been accordingly apportioned between the Owner, Driver and the Insurance Company of the two vehicles. Lastly, it was contended that treatment has not been properly substantiated by the appellant, in as much as the certificate of disability cannot be said to be a duly certified document in as much as the prescribed authority i.e. the Government Doctor has not issued the certificate, but has been issued by a private Doctor.

8. So far as the first ground as regard the license of Driver being fake, it would be relevant at this juncture to consider the fact that undisputedly the accident is not in dispute, the vehicles involved in the accident is not in dispute, the Driver at the relevant point of time had a license, which stood renewed from the R.T.O. Durg is also not in dispute.
9. The Owner had entered appearance before the Tribunal and had made a statement, wherein he has categorically stated that at the time of engagement of the Driver, he had tested the Driver and his license and only thereafter had engaged him.
10. The Insurance Company in the instant case had led the evidence of a witness from the R.T.O. Faisabad, Uttar Pradesh, who has stated that the original license, which is alleged to have been issued in the instant case, is a fake license and has not been issued from the said R.T.O. However, the witness from the office of the R.T.O. Durg has accepted the fact that the license has been duly renewed from the office of the R.T.O. Durg.
11. At this juncture, it would be relevant to refer to the decision of the

“**Swaran Singh**” (supra), which has also been relied upon by the counsel for the appellant, in paragraph 92, the Hon'ble Supreme Court has held as under:-

92. It may be true as has been contended on behalf of the petitioner that a fake or forged licence is as good as no licence but the question herein, as noticed hereinbefore, is whether the insurer must prove that the owner was guilty of the wilful breach of the conditions of the insurance policy or the contract of insurance. In Lehu's case (supra), the matter has been considered at some details. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of law in terms whereof the insurer is to establish wilful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or the owners be absolved from any liability whatsoever. We would be dealing in some details with this aspect of the matter a little later.

12. The said judgment was passed keeping in view of the decision of the Hon'ble Supreme Court in the case of “**United India Insurance Co. Ltd. vs. Lehu**” (2003) 3 SCC 338. After considering all the judgments, the Hon'ble Supreme Court by summarizing the findings, in paragraph No. 110 (viii) has held as under:-

“110 (viii). If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.”

13. Recently, the Hon'ble Supreme Court in the case of “**Pepsu Road Transport Corporation vs. National Insurance Company**” (2013) 10 SCC 217 has held as under:-

As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly

verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation.”

14. In view of the aforesaid decisions of the Hon'ble Supreme Court in the case of “**Swaran Singh**” (supra) as well as in the case of “**Pepsu Road Transport Corporation**” (supra), coupled with the fact that the Owner in the instant case had entered appearance before the Tribunal has deposited of having taken necessary precautions of ensuring that the Driver had a license and he was tested of efficiently driving the vehicle, the grounds raised by the appellant in the instant case would not be sustainable and thus stands negated.
15. So far as the issue of medical expenses is concerned, this Court is of the opinion that the provisions of providing compensation to the Claimant, injured or a dead as the case may be, is a beneficial legislation. The schedule which was enacted under the Motor Vehicles Act is a very old schedule and with the passages time the medical expenses also has substantially increased and therefore, awarding of Rs.68,561/- by the Tribunal cannot be said to be erroneous or a perverse finding of the fact.
16. So far as the issue of contributory negligence is concerned, since the case of the injured in the instant case is that he was travelling as a pillion rider itself is sufficient to negate the ground of contributory negligence raised by the Insurance Company.

17. As far as the medical certificate is concerned, what is undisputed in the instant case is that the Doctor in the instant case has been examined, who is an Orthopedic specialist practicing at Raipur at one of the known private institution and if the said Doctor has deposed of having treated and has issued the certificate, only because the certificate was not duly signed by a Government Doctor by itself would not dis-entitle the claimant from raising a claim for compensation. Thus, the ground raised by the appellant does not have much force in the facts of the present case and the appeal thus deserves to be and is accordingly dismissed.
18. The interim order earlier granted stands vacated and merged with the final order. The appellant is directed to deposit the balance of amount also at the earliest with the liberty to the claimant for receiving the same.
19. The Registry is directed to send a copy of this judgment to the Secretary, District Legal Services Authority, Raipur, who should ensure that the copy of this judgment is served upon the Claimant-respondent No.1 at the address shown in the cause title.

Sd/-
(P. Sam Koshy)
Judge