

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 216 of 2010**

1. Nemeshwari Bai, Aged about 27 years, W/o. Late Bheshram @ Bheshkumar Sahu,
2. Tejesh Kumar, Aged about 8 years, S/o. Late Bheshram @ Bheshkumar Sahu,
3. Ku. Heena, Aged about 2 months, D/o. Late Bheshram @ Bheshkumar Sahu,
4. Purushottam Sahu, Aged about 64 years, S/o. Ajitram Sahu,
5. Bhuri Bai Sahu, Aged about 61 years, W/o. Purushottam Sahu,

Appellants No. 2 & 3 are Minors, Through: legal guardian Mother (Appellant No.1).

All are R/o. Village Dhandhani, Police Station Sarsiwan, Tahsil Bilaigarh, District Raipur, Chhattisgarh

---- Appellants**Versus**

1. Baliram Sahu, S/o. Kejuram Sahu, Aged about 42 years, R/o. Jhalap, Police Station Pithora, District Mahasamund, Chhattisgarh
At present Kamad Rice Mill, Jharband (Bhanwarpur), Police Station Basna, District Mahasamund, Chhattisgarh
2. Shivprakash Agrawal, S/o. Omprakash Agrawal, Aged about 51 years, R/o. Bhanwarpur, Police Station Basna, District Mahasamund Chhattisgarh
3. The Oriental Insurance Company Limited, Branch Kachahari Chowk, Madina Majil, Raipur, Chhattisgarh
4. Ramcharan Sahu, S/o. Pukram Sahu, Aged about 23 years, R/o. Butipali, Police Station Basna, District Mahasamund, Chhattisgarh
5. Jagmohan Patel, S/o. Chheduram Patel, R/o. Butipali, Police Station Basna, District Mahasamund Chhattisgarh

----Respondents**AND****MAC No. 1483 of 2009**

The Oriental Insurance Company Limited, Branch Kachahari Chowk, Madeena Mazil, Raipur, Chhattisgarh

---- Appellant**Versus**

1. Nemeshwary Bai, Aged about 27 years, W/o. Late Bheshram @ Bheshkumar Sahu,
2. Minor Tejesh Kumar, Aged about 8 years, S/o. Late Bheshram @ Bheshkumar Sahu,

3. Minor Ku. Heena, Aged about 2 months, D/o. Late Bhesram @ Bheskumar Sahu,
4. Purushottam Sahu, Aged about 64 years, S/o. Ajeetram Sahu,
5. Bhuri Bai Sahu, Aged about 61 years, W/o. Purushottam Sahu,
(For Minor Respondents No. 2 & 3 their natural mother Respondent No.1).

All are R/o. Village Dhandhani, Police Station Sarsiwan, Tahsil Bilaigarh, District Raipur, Chhattisgarh

6. Baliram Sahu, S/o. Kejuram Sahu, Aged about 42 years, R/o. Jhalap, Police Station Pithora, District Mahasamund, Chhattisgarh
At present Kamad Rice Mill, Jharband (Bhanwarpur), Police Station Basna, District Mahasamund, Chhattisgarh
7. Shivprakash Agrawal, S/o. Omprakash Agrawal, Aged about 51 years, R/o. Bhanwarpur, Police Station Basna, District Mahasamund Chhattisgarh
8. Ramcharan Sahu, S/o. Pukram Sahu, Aged about 23 years, R/o. Butipali, Police Station Basna, District Mahasamund, Chhattisgarh
9. Jagmohan Patel, S/o. Chheduram Patel, R/o. Butipali, Police Station Basna, District Mahasamund Chhattisgarh

----Respondents

For Claimants	:	Mr. Ashish Gupta, Advocate
For Insurance Company	:	Mr. Sudhir Agrawal, Advocate
For respective Respondents	:	Mr. Pawan Kesharwani, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

27/10/2017

1. These are two appeals under Section 173 of the Motor Vehicles Act challenging the award dated 31.07.2009, passed by the 2nd Additional Motor Accident Claims Tribunal, Baloda Bazar, Chhattisgarh, in Claim Case No. 48/2008.
2. Vide the impugned award, the Tribunal in a death case on an application under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.4,17,000/- with interest @ 6% per annum from the date of application.

3. While passing the award, the liability of payment of compensation has been fastened upon the appellant-Insurance Company. The brief fact of the case is that the deceased in the instant case namely Bheshram met with an accidental death on 20.12.2007 when the deceased who was traveling on a Tractor bearing registration No. CG-06-C-3837 was hit by a Truck which came from behind bearing registration No. CG-04-ZC-2823. The Tractor was owned by the respondent No.9 and was driven by the respondent No.8. The Truck which hit the Tractor was owned by the respondent No.7 and driven by the respondent No.6.
4. The legal representative of the deceased Bheshram filed a claim case under Section 166 of the Motor Vehicles Act before the Tribunal and the Tribunal considering the evidence which has come on record vide the impugned award has fastened the liability of payment of compensation upon the Owner, Driver and the Insurer of the Truck, which had hit the Tractor, in which the deceased was traveling.
5. MAC No. 1483/2009 is an appeal by the Insurance Company assailing the liability which has been fastened upon the Insurance Company and MAC No. 216/2010 is an appeal by the Claimants seeking for enhancement of the compensation.
6. So far as the appeal of the Insurance Company is concerned, the primary ground of challenge is that the Driver of the offending Truck at the relevant point of time did not have a valid license and the license, which was in possession of the Driver was a fake license allegedly issued from the R.T.O. Kanpur (U.P.). According to the

counsel for the appellant, since the Insurance Company has led the evidence from the office of R.T.O. Kanpur, who has specifically stated before the Tribunal that the Driver of the Truck never got prepared a driving license from R.T.O. Kanpur and that the license which was allegedly issued from the R.T.O. Kanpur is a fake document. Therefore, there is a clear breach of policy condition and the impugned award deserves to be modified to the extent of fastening the liability of payment of compensation on the Owner and Driver of the Truck.

7. It is the contention of the counsel for the appellant-Insurance Company that once when the license which was issued originally is found to be fake all subsequent renewals which have been made would have no sanctity and the document *per se* would remain a fake document and the liability of the Insurance Company in the said case should have been accordingly discharged and the liability in turn should have been fastened upon the Owner and Driver.
8. Counsel for the appellant relied upon the decision of the Hon'ble Supreme Court in the case of ***"New India Assurance Company Limited, Shimla vs. Kamla & Others"* (2001) 4 SCC 342** and also ***"United India Insurance Company vs. Leheru and others"* (2003) 3 SCC 338**. According to the counsel for the Insurance Company the liability all the more should had been fastened upon the Owner for the reason that the Owner has not either pleaded or proved by sufficient evidence in respect of having taken all necessary precautions and care while engaging the Driver and only then could

the liability be shifted upon the Insurance Company indemnifying the insured and prayed for the appeal to be allowed and for suitable modification of the order.

9. Per contra, the counsel appearing for the Claimants opposing the appeal as well as claiming for further enhancement of the compensation in an appeal separately filed by the Claimants submitted that it is a case where the liability fastened upon the Insurance Company is proper, legal and justified and which does not warrant interference. At the same time the Claimants prayed for the impugned award be modified by enhancing the compensation payable. According to the Claimants, the Tribunal has inadvertently taken into account much less income than that was actually drawn by the deceased at the time of accident. According to the Claimants apart from the income assessed being unreasonably low, the deduction made towards the personal expenses also ought to have been 1/4 considering the total number of Claimants rather than 1/3 as assessed by the Tribunal. It was further contended by the Claimants that the multiplier also was not as per the guidelines laid down by the Hon'ble Supreme Court in the case of "**Sarla Verma & Ors vs Delhi Transport Corp. & Anr.**" (2009) 6 SCC 121) and all subsequent decisions.

10. Per contra, the counsel for the Claimants opposing the appeal submitted that it is a case where the Owner cannot be blamed for a lapse, if at all which has been committed by the Driver. According to the counsel for the Claimants, the Insurance Company has not been

able to prove the guilt against the insured of having failed to exercise reasonable care while engaging the Driver ensuring that the Driver is not disqualified to drive when he was engaged. That in the absence of such evidence or proof the order passed by the Tribunal in the instant case cannot be said to be bad in law or contrary to the evidence, thus, prayed for the rejection of the appeal on this ground.

11. For convenience sake we take the appeal of Insurance Company first i.e. MAC No. 1483/2009. The primary contention in the said appeal is that the Driver of the offending Truck Baliram was in fact having a fake license on the date of accident and therefore there being a clear breach of policy condition, the same deserves to be rejected.
12. As regard the evidence which have come on record in respect of the fake license of Baliram, the primary witness who has been examined and relied upon by the Insurance Company is that of DW/3 Fajiuddin an employee of the R.T.O. Kanpur (U.P.) who has stated that the original license which is said to have been used by Baliram for the renewal that was made at Raipur was a fake license. The witness has stated that at the relevant point of time the license which were being issued from the R.T.O. Kanpur were under an entirely different series than the series, which is reflected in the alleged original license of Baliram. Thus according to the counsel for the appellant since the original license itself is fake, immaterial of whether it was renewed by the R.T.O. Raipur. The license would always remain a fake license. According to the appellant one of the most important

policy conditions is that the vehicle insured should be driven by a person having valid license and in the event of the Driver not having a valid license, the liability of payment of compensation shall be upon the Owner alone and the Insurance Company cannot be fastened with the liability of payment of compensation. According to the appellant, insurer and insured are bound by the conditions enumerated in the policy and the insurer is not liable to indemnify the insured, if there is violation of any policy condition.

13. In paragraph 12 of the judgment of the Hon'ble Supreme Court in the case of ***"New India Assurance Company Limited, Shimla vs. Kamla & Others"*** (2001) 4 SCC 342 it has been held as under:-

"12. As a point of law we have no manner of doubt that a fake licence cannot get its forgery outfit stripped off merely on account of some officer renewing the same with or without knowing it to be forged. Section 15 of the Act only empowers any licensing authority to renew a driving licence issued under the provisions of this Act with effect from the date of its expiry. No licensing authority has the power to renew a fake licence and, therefore, a renewal if at all made cannot transform a fake licence as genuine. Any counterfeit document showing that it contains a purported order of a statutory authority would ever remain counterfeit albeit the fact that other persons including some statutory authorities would have acted on the document unwittingly on the assumption that it is genuine."

14. The Hon'ble Supreme Court further in the case of ***"National Insurance Company Limited vs. Swaran Singh & Others"*** (2004) 3 SCC 297 has settled the issue of fake license by holding that, the fact as to whether the owner has taken reasonable care to find out whether the driving license produced by the Driver was genuine or

not, will have to be determined in each case. The Hon'ble Supreme Court in another case of ***"United India Insurance Company Limited vs. Devinder Singh"*** (2007) 8 SCC 698 has reiterated the fact that once when the license is found to be fake, the renewal of it cannot take away of effect of a fake license and where the original license was a fake on renewal it cannot cure the inherent fatality.

15. The Hon'ble Supreme Court however in the judgment passed in the case of ***"New India Assurance Company, Shimla vs. Kamla & Others"*** (supra) which has also been relied upon by the counsel for the Insurance Company. In the said judgment at paragraph No.25 while summing of the matter has held as under:

25. The position can be summed up thus:

The insurer and insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence.

16. The Hon'ble Supreme Court in the said judgment itself ordered for pay and recovery from the insured if there was a breach of policy condition. In the same paragraph No.25, the Hon'ble Supreme Court had further observed that the breach of policy condition would have to be established by the Insurance Company so as to attract the principles of 'pay and recovery'. Even in the case of ***"Swaran Singh"*** (supra), the Hon'ble Supreme Court in its concluding

paragraph while summarizing the findings in paragraph No. 110(iv) have categorically held that the Insurance Company with a view to avoid their liability must not only establish the availability of defense but also must establish “breach” on the part of the owner of the vehicle and have further envisaged that the burden of proof wherefor would be on the Insurance Company. In the same paragraph in clause (iii), the Hon’ble Supreme Court has referring to the case of a fake or invalid driving license has held that to avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care. More recently in one of the decisions in the case of **“Pepsu Road Transport Corporation vs. National Insurance Company” (2013) 10 SCC 217** the Hon’ble Supreme Court in paragraph No.10 holds as under:-

10. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. 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. That is what is explained in Swaran Singh's case (supra). 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.

17. Relevant also at this juncture is the proposition of law, which has been enunciated by the Hon'ble Supreme Court in the case of ***"United India Insurance Company Limited vs. Lehu and others"* (2003) 3 SCC 338**, where in paragraph No.20 it has been held as under:

"20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that Insurance Companies expect owners to make enquiries with RTO's, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The Insurance Company would not then be absolved of liability. If it ultimately turns out that the licence was fake the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly even in such a case the Insurance Company would remain liable to the

innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skandia 's Sohan Lal Passi 's and Kamla 's case. We are in full agreement with the views expressed therein and see no reason to take a different view."

18. With the aforesaid proposition of law laid down by the Hon'ble Supreme Court in the aforesaid judgments, what is now required to be seen is whether the Owner in the instant case has produced sufficient evidence to show that he had taken reasonable precaution or care while engaging the Driver/respondent No.6 Baliram.
19. Now when we look into the evidence which have come on record, Baliram, the Driver of the offending vehicle was examined before the Tribunal as Non-applicant witness No.2. He in his evidence has categorically stated that he had a valid license to drive the Truck, which he was driving at the time of accident and that the license was renewed from the R.T.O. Raipur and was valid between 13.05.2007 to 13.05.2010 during the period when the accident took place.
20. However, the owner of the said has not appeared before the Tribunal to substantiate his contentions and to prove that he had taken reasonable precaution and care. In the absence of any evidence on behalf of the Owner of the Truck Shiv Prakash Agrawal/respondent No.7 in the present appeal, the principles laid down by the Hon'ble Supreme Court in the case of ***"New India Assurance Company Limited, Shimla vs. Kamla & Others"*** (supra) and which has been further reiterated in the case of ***"Lehru"*** (supra) so also in the case of ***"Pepsu Road Transport Corporation"*** (supra).

21. Given the facts and law, this Court is of the opinion that it is a fit case where the principles of 'pay and recovery' is to be ordered and the impugned award thus is ordered to be modified accordingly. It is ordered that it shall be the responsibility of the Insurance Company to deposit the entire amount of compensation with liberty to recover the same from the respondent No.7-Shiv Prakash Agrawal, the owner of the Truck bearing registration No. CG-04-ZC-2823. The appeal of the Insurance Company thus stands partly allowed. This view of the Court further stands fortified in a recent decision of the Hon'ble Supreme Court in the case of "**Lal Singh Marabi vs. National Insurance Co. Ltd. and Others**" 2017 ACJ 1362.
22. So far as the appeal of the Claimants seeking for enhancement i.e. MAC No. 216/2010 is concerned, if we look into the facts of the case, the date of death was in December, 2007, when admittedly the minimum income of even an unskilled labour would have been somewhere around Rs.150/- a day i.e. Rs.4500/- a month though there is no sufficient proof led by the Claimants to prove the income, but under no circumstances could it have been less than Rs.4000/- and the income of the deceased thus is assessed at Rs.4000/- instead of Rs.3000/- as assessed by the Tribunal.
23. Considering the judgment of the Hon'ble Supreme Court in the case of "**Sarla Verma**" (supra), the Claimants shall also be entitled for the income under the future prospects while quantifying the compensation. Considering the age of the deceased, the percentage of income to be added towards future prospects would be 50%.

Thus, making the monthly income at Rs.6000/-. Further, considering the fact that the total number of Claimants being 5, the deductions made towards the personal expenses would be $\frac{1}{4}$ th of the monthly income and if $\frac{1}{4}$ th of Rs.6000 is deducted, the amount would come to Rs.4,500/- a month which would come to Rs.54,000/- annually, which if multiplied by applying the multiplier of 16, the amount would come to Rs.8,64,000/-. It is ordered accordingly that the Claimants shall be entitled for compensation of an amount of Rs.8,64,000/- towards loss of dependency instead of Rs.4,08,000/- as assessed by the Tribunal.

24. Considering the factual matrix of the case, if we look into the year of accident and the total number of Claimants, this Court is of the opinion that ends of justice would meet if the Claimants are granted a lump sum compensation of Rs.36,000/- towards conventional head which would make the total compensation payable to the Claimants at Rs.9,00,000/-. It is ordered accordingly that the Claimants shall be entitled for the total compensation of Rs.9,00,000/- instead of Rs.4,17,000/- as assessed by the Tribunal. Of the said Rs.9,00,000/- the Claimants No. 4 & 5 shall be entitled for an amount of Rs.1,50,000/- each, totaling Rs.3,00,000/- and the remaining Rs.6,00,000/- shall be equally divided between the appellants No.1 to 3. The enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.
25. The amount of compensation awarded shall be deposited by the Insurance Company with the liberty of recovering the same from the

Owner and Driver of the Truck. As a result the MAC No. 1483/2009 filed on behalf of the Insurance Company is allowed in part and MAC No. 216/2010 also is allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved