

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 701 of 2009**

The New India Assurance Company Limited through its Divisional Manager, Divisional Office, IInd Floor, Rama Trade Centre, above Axis Bank, Opp. Rajiv Plaza, Bus Stand Road, Bilaspur, Chhattisgarh(Non-Applicant No.3)

---- Appellant**Versus**

1. (A) Shivnarayan, aged about 55 years, S/o late Shri Tirith Ram, R/o Village Khamariya, District Bilaspur, Chhattisgarh
1. (B) Ramnarayan, aged about 58 years, S/o late Shri Tirith Ram, R/o Village Khamariya, District Bilaspur, Chhattisgarh ..(LRs of Applicant)
- 2 Virendra Tengwar S/o Gangaram Tengwar, R/o Village Sipat, Tahsil Mastoori, District Bilaspur, Chhattisgarh(Non-Applicant No.1)
- 3 Pramod Tengwar S/o Gangaram Tengwar, R/o Village Sipat, Tahsil Mastoori, District Bilaspur, Chhattisgarh(Non-Applicant No.2)

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate
For Respondents 1.A & 1.B	:	Shri Pawan Kesharwani, Advocate

Misc. Appeal (C) No. 1020 of 2009

Shivnarayan, aged about 55 years, S/o late Shri Tirath Ram, R/o Village Khamariya, District Bilaspur, Chhattisgarh

---- Appellant**Versus**

1. Virendra Tengwar, aged about 31 years, S/o Ganga Ram Tengwar, R/o Village Sipat, Tahsil Masturi, District Bilaspur (CG)
2. Pramod Tengwar S/o Ganga Ram Tengwar, R/o Village Sipat, Tahsil Masturi, District Bilaspur (CG)
3. The New India Insurance Company Limited, Medal Office, Naya Bus Stand, Bilaspur (CG)

4. Ram Narayan, aged about 58 years, S/o late Shri Tirath Ram, R/o Village Darri, Korba, District Korba (CG)

---- Respondents

For Appellant : Shri Pawan Kesharwani, Advocate
 For Respondent no.3: Shri Dashrath Gupta and Shri P. Dutta, Advocates

Hon'ble Shri Justice P. Sam Koshy

Order On Board

15/09/2017

These are two appeals arising out of a common order dated 17.02.2009 passed by the 1st Additional Motor Accident Claims Tribunal, Bilaspur (CG) in Claim Case No. 136/2008. Vide impugned award the Tribunal has allowed application under Section 166 of the Motor Vehicles Act and ordered for payment of compensation of Rs.84,500/- to the claimant. The liability of payment of compensation has been fastened upon the New India Insurance Company Limited i.e. the insurer of the offending vehicle.

2. MAC No. 701/2009 is an appeal preferred by the Insurance Company challenging the liability which has been fastened upon it and MAC No. 1020/2009 is an appeal by the claimant seeking for enhancement of the compensation.

3. The fact of the case in brief is that on 06.05.2008, the deceased Tirath Ram aged around 72 years met with an accidental death while he was dashed by a motorcycle being driven by respondent no.2 and owned by respondent no.3 in MAC no.701/09. The owner and the driver of the motorcycle are real brothers. The deceased was a pedestrian when he was hit by the motorcycle driven by respondent Virendra.

4. The challenge by the Insurance Company to the impugned award is on two grounds: Firstly the driver of the offending vehicle i.e. respondent Virendra Tengwar was not having a valid licence rather the licence that was

in his possession was a fake licence. According to the counsel for the Insurance Company, the learner's licence which was in possession of respondent Virendra was found to be not actually issued in his name but was issued in the name of one Yegendra Sahu as has been deposed by the witness from RTO, Bilaspur namely Vikas Thakur. Thus, at the time of accident, the person who was driving the motorcycle was having a fake licence, therefore, the liability of payment of compensation cannot be fastened upon the Insurance Company and it should have been upon the owner and the driver of the vehicle. The second ground raised by the counsel for the Insurance Company is that the owner and the driver are residence of Bilaspur and therefore, they could have got the licence only from Bilaspur and that the RTO Bilaspur has stated that the license which has been produced by the driver was not issued from the RTO, Bilaspur. In view of the same, it is established that the driver was having a fake licence at the relevant point of time. Counsel for the appellant submits that the driver could have got a licence only from Bilaspur as per Section 8(1) of the MV Act.

5. So far as the first ground is concerned, a perusal of the record would show that the witness from RTO, Bilaspur has specifically stated that different RTOs from different Districts can also issue licnece bearing the same number which is reflected in the licence produced by respondent Virendra. The witness from the RTO, Bilaspur has also deposed that so far as his deposition is concerned, it is in respect of the records that are available in the RTO, Bilaspur and that he is not in a position to make a statement that whether this licence has been issued from any other RTO or not. From the aforesaid deposition it can safely be held that the witness of the RTO, Bilaspur has not authentically stated that the licence in possession of respondent Virendra is a fake licence. He has only deposed that the number which is reflected in the said licnece in Bilaspur has been issued to one Yogendra Sahu and not to

respondent Virendra. This by itself cannot be a conclusive proof of declaring the learner's licence in possession of respondent Virendra to be a fake licence for the reason that there can be a possibility of the licence to have been issued from some other RTO. Thus, the first ground raised by the Insurance Company stands negated.

6. So far as the second ground is concerned, this Court is of the opinion that from the evidence which has come on record it cannot be said that the Insurance Company has established the fact that respondents 2 & 3 in MAC No.701/09 at no point of time had moved out of Bilaspur in their life time with which they could have got a licence from a different RTO in any other Districts of the State. Further contention of the counsel for the Insurance Company regarding Section 8(1) of MV Act is not acceptable for the reason that the address shown in the case record as also in the appeal would only be the address where the owner and the driver are presently residing. So far as their past is concerned, there is no evidence or record to show that they had never moved out of Bilaspur. Thus, the possibility of a licence being obtained from a different RTO also cannot be ruled out. The objection so raised by the Insurance Company stands rejected.

7. Accordingly, the appeal preferred by the Insurance Company i.e. MAC No.701/2009 deserves to be and is accordingly dismissed.

8. So far as the appeal of the claimant for enhancement of compensation is concerned, the development which has erupted during the course of hearing is that the original claimant before the Tribunal namely Smt. Neera Bai, the widow of deceased Tirath has died and her sons i.e. Shiv Narayan and Ram Narayan have brought on record as her legal representatives. In view of the provisions of Section 306 of the Indian Succession Act, this Court is of the opinion that the legal representatives of the original claimant now would not be entitled for any enhancement of the compensation in addition to

what has already been awarded by the Tribunal in favour of the original claimant. Thus, the appeal of the claimant i.e. MAC No. 1020/2009 also deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE

Bhola