NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 520 of 2017

Surendra Kumar Ram S/o Lahru Ram, Aged About 27 Years R/o Thuthamba, Post Office Ara, Tahsil & District Jashpur, Chhattisgarh

---- Appellant

Versus

1. Smt. Birasmuni Bai W/o Late Kamlesh Ram, Aged About 25 Years
2. Rahul Ram S/o Late Kamlesh Ram, Aged About 2 Years Minor Represented Through Mother & Legal Guardian Smt. Birasmuni Bai,
3. Ramu Ram S/o Late Suka Ram, Aged About 62 Years

   All are by Caste Uraon, R/o Village Thuthiamba, Post Office Ara, Tahsil & District Jashpur, Chhattisgarh
4. Branch Manager, National Insurance Company Limited, D.O.X. Hero Motocarp, Vertical 101-106 G.M.C. House Konarf, Place New Delhi 110001

---- Respondents

For Appellant	:	Mr. J.K. Saxena, Advocate
For Respondents No.1 to 3	:	Mr. R.K. Pali, Advocate
For Respondent No.4	:	Mr. Sudhir Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

21/08/2017

1. The challenge in the present appeal is by the owner of the Motorcycle Hero Honda Splendor bearing registration No. CG 14 MB 0785 to the award dated 05.01.2017, passed by the Motor Accident Claims Tribunal, Jashpur.
2. Vide the impugned award, the Tribunal in a proceeding under Section 166 of the Motor Vehicle Act filed by the Respondents No. 1 to 3 in a death case has awarded a compensation of Rs.6,64,600/- along with interest @ 9% per annum from the date of award.
3. While passing the award, the Tribunal exonerated the Insurance Company and fastened the liability of payment of compensation upon the present applicant, who was the registered owner of the motorcycle involved in the accident. It is a case where on the fateful

day i.e. 13.05.2015 one Raju Singh had taken the vehicle from the present appellant and was going along with pillion rider Kamlesh Ram. On-route the motorcycle met with an accident by dashing with a cycle rider as a result both Raju Singh and Kamlesh Ram fell from the motorcycle resulting in grievous injuries to which both of them subsequently succumbed.

4. The legal representative of Kamlesh Ram filed a claim application under Section 166 of Motor Vehicle Act seeking for compensation. The tribunal considering the facts and circumstances of the case awarded the compensation of Rs.6,64,600/- along with interest @ 9% per annum. However while awarding the compensation had exonerated the Insurance Company of its liability on the ground that since the driver of the motorcycle at the time of the accident i.e. deceased Raju Singh was not having a license therefore the owner was saddled with the responsibility of payment of compensation exonerating the Insurance Company.

5. It is this award which is under challenged in the present appeal. The contention of the counsel for the appellant is that the applicant is the registered owner of the vehicle. He has a proper license in his custody. His vehicle was borrowed by one Raju Singh for some personal work and Raju Singh was also accompanied by the pillion rider Kamlesh Ram when the accident occurred. He submitted that he had taken a comprehensive policy from the respondent No.4-Insurance Company.

6. He submits that since he has taken a comprehensive policy liability so far as the pillion rider is concern should also have been borned by the Insurance Company as present appellant was not responsible for either the accident nor for any sought of breach of policy condition which has been issued. He further submits that it is also a case where the claimants before the Tribunal were in fact legal representatives of the pillion rider and the said pillion rider deceased Kamlesh Ram was not responsible for the accident that occurred and therefore, liability so far as the claimant in the present case is concerned ought to had been shifted upon the Insurance Company

and thus prayed for the modification of the impugned award accordingly.

7. Shri Sudhir Agrawal appearing for the Insurance Company opposes the appeal and submits that it is a case of no license and therefore the Tribunal was justified in exonerating the Insurance Company. He further submits that owner i.e. the present appellant of the motorcycle has not produced the license of deceased Raju Singh, who was driving the motorcycle at the relevant point of time.

8. In the absence of any production of license by the present appellant, it has to be presumed and rightly been presumed by the Tribunal for treating the case being one with no license. It was further contended that if for any reason, this Court holds that Insurance Company should indemnify the owner i.e. at least doctrine of pay and recovery should be passed by this Court, so that Insurance Company ultimately may recover from the owner of the vehicle i.e. the present appellant.

9. Having heard the counsel for the both the parties and on perusal of records, what is undisputed before this Court is the accident that occurred on 13.05.2015, the two persons traveling on the motorcycle namely Raju Singh and Kamlesh Ram, both died from the said accident. Deceased Raju Singh was driving motorcycle at the relevant point of time. The claimants before the Court below are the legal representatives of the deceased Kamlesh Ram, the pillion rider on the motorcycle. The motorcycle involved in the accident being duly insured by a comprehensive policy with the respondent No.4 -Insurance Company.

10. Further during the course of the evidence, the present appellant had entered appearance and he had produced his license which was also found to be a valid license.

11. In view of the aforesaid factual matrix which have come, the only point of consideration is whether the Tribunal was justified in exonerating the Insurance Company of its liability. True it is that the owner i.e. the present appellant has not been able to produce any license which the deceased Raju Singh driver of the motorcycle on

the date of accident was having. It is also true that the claimants also have not produced any license of the deceased Raju Singh to show that there was no breach of policy condition. But what is more relevant at this juncture to take note off is that the Insurance Company as such has not led any evidence to substantiate its contention of it being a case of no license.

12. Once when the owner the present applicant has established having a valid license and comprehensive policy having being issued by the respondent No.4 not in dispute and the claimants before the Court below being legal representatives of the pillion rider, this Court does not find any good reason for the Tribunal to have exonerated the Insurance Company of its liability, particularly when there is no evidence of any sort of breach of policy condition by the present appellant.

13. So far as whether the deceased Raju Singh who was driving the motorcycle was having a license or not also could not be established for the reason he had died, his family member may not be aware whether he had a license or not. There was no evidence to prove otherwise that deceased Raju Singh was not having a license. For all these reasons, this Court is of the opinion, exonerating of Insurance Company from its liability was not proper and deserves to be modified and is accordingly ordered. It shall be the responsibility of the respondent No.4 to deposit the compensation as awarded by the Tribunal being jointly and severally liable for paying the compensation.

14. The counsel for the Insurance Company submits that it was the duty of the owner and driver to produce copy of license as required under Section 134 of the Motor Vehicle Act. The said contention of the counsel for the appellant would not be applicable in the present case for the reason that owner was not driving the motorcycle at the relevant point of time. It was some other person, who was driving the motorcycle and who has died and therefore registered owner may not be in a position to produce the license. The said contentions also would not be applicable in the present context for the reason that

Insurance Company has not led any evidence before the Tribunal to substantiate its contentions. The counsel for the appellant refers to the judgment of "National Insurance Co. Ltd. vs. Parvathneni and another" 2009(8) SCC 785 wherein it has been held by the Supreme Court that in the event there being a breach of policy condition, Insurance Company should not be compelled to pay the compensation. The said judgment also with great respect would not be applicable in the present facts of the case for the reason that breach of policy condition has not been proved or established by the Insurance Company by leading any cogent evidence in this regard.

15. The impugned award therefore stands modified accordingly. Appeal stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved