**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Misc. Appeal (C) No. 933 of 2017**

Bajaj Allainz General Insurance Co. Pvt. Ltd. (actual name- Bajaj Allianz General Ins. Co. Ltd.) G. E. Plaza, Airport Road, Yarewada Pune (Maharashtra) through Branch Office, Bajaj Allianz Insurance Co. Pvt. Ltd. Shivmohan Bhavan, Vidhan Sabha Bhawan Road, Pandri, Police Station Pandri, Raipur, Tah. & Dist. Raipur, Chhattisgarh ................(Insurer of Vehicle No. C.G.13 D 9419)

**---- Appellant**

**Versus**

1. Budhnath Paikra S/o Munuram, aged about 28 years, Profession Labourer, R/o Ghoghra (Lakramuda), Post Farsatoli, Thana Bagbahra, Tahsil Patthalgaon, District Jashpur, Chhattisgarh ..............(Claimant)
2. Azruddin Khan S/o Mohammad Khan, Aged About 27 Years Profession- Driver, R/o Village Supa, Thana and Tahsil Pusaur, District Raipur, Chhattisgarh, at Present House of Bade Khan, Boirdadar, Than Chakradharnagar, Raigarh, Tahsil And District Raigarh, Chhattisgarh ..............(Driver of Vehicle No. C.G.13 D 9419)
3. Aftab Khan S/o Babu Khan, Profession- Vehicle Owner, R/o Maudahapara, Raigarh, Tahsil And District Raigarh, Chhattisgarh ..............(Owner of Vehicle No. C.G.13 D 9419)

**---- Respondents**

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For Appellant : Shri Rohitashva Singh, Advocate

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**Hon'ble Shri Justice P. Sam Koshy**

**Order On Board**

**06/07/2017**

Heard on I.A. No.01 for condonation of delay in filing the appeal.

**2.** For the reasons assigned in the said application and finding them to be satisfactory, I.A. No.01 is allowed and the delay of 58 days in filing the appeal stands condoned.

**3.** Heard on admission.

**4.** The challenge in the present appeal is the award dated 31.01.2017 passed by the Motor Accident Claims Tribunal, Raigarh (CG) in Claim Case No. 572 of 2013. Vide the impugned award, the Tribunal while allowing the claim application has ordered that the claimant shall be entitled for an amount of Rs.2,10,000/- as compensation on account of the death of his mother Ratni Bai Paikra.

**5.** The case in brief is that Ratni Bai while travelling back from Chandrapur temple to Kotwa, enroute the vehicle in which she was travelling was hit by a pickup bearing registration No. CG 13D9419 coming from the opposite direction which was being driven by respondent no.2 and owned by respondent no.3. As a result of the accident, Ratni Bai died. Subsequently, the claimant filed a claim application under Section 166 of the Motor Vehicles Act.

**6.** After conclusion of the evidences and the pleadings, the Tribunal vide impugned award dated 31.01.2017 ordered for payment of Rs.2,10,000/- as compensation to the claimant.

**7.** It is this award which is under challenge in the present appeal.

**8.** The solitary ground which has been raised by the Insurance Company for assailing the impugned award is that the driver of the offending vehicle at the relevant point of time was a fake license. According to the counsel for the appellant, the owner of the vehicle has not taken necessary precaution to verify whether at the relevant point of time, the driver had a proper license or not. Under such circumstances, the Insurance Company cannot be fastened the liability of payment of compensation. He further submits that the owner ought to have pleaded and stated before the Tribunal that he had made necessary enquiry in respect of his licence at the time of engaging the driver and only then could his liability be shifted. In the instant case, no such averment has reflected in the proceedings and therefore, the fastening of the liability upon the Insurance Company is bad in law.

**9.** Having heard the counsel for the appellant and on perusal of the record what clearly reflects is that during the course of evidence it has reflected that the licence which the driver of the offending vehicle had at the relevant point of time was renewed from RTO at Raigarh. The said licence was converted from light motor vehicle to heavy vehicle driving licence w.e.f. 11.07.2009. This fact is not disputed or disproved either by the Insurance Company or for that matter the RTO, Raigarh. When the owner had engaged the driver, he had a licence which was genuinely issued from the RTO, Raigarh though it was later on revealed much after the accident on an enquiry by the Insurance Company that the original licence of the driver before it was converted from LMV to HMV at Raigarh was a fake license. This by itself cannot be a ground for exonerating the Insurance Company of its liability. Apparently, it reflects that when the driver was engaged, he had a license which was genuinely issued from the RTO, Raigarh and therefore it has to be inferred that the owner had ensured that at the relevant point of time the driver had a valid driving licence. However, the owner might not have gone to the extent of verifying the original license or the first license which the driver had obtained and which subsequently got renewed at different places. This alone cannot be a strong ground for interfering with the impugned award.

**10.** Thus, this Court is of the opinion that no strong case has been made out by the Insurance Company calling for interference with the impugned award. Accordingly, the present appeal being devoid of merits stands dismissed.

**Sd/-**
**(P. Sam Koshy)**
**JUDGE**

Bhola