

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 583 OF 2017

Satya Prakash Sharma, S/o Shri Rajaram Sharma, aged about 35 years,
R/o M/s Gayatri Road Carrier, Katora Talab, Raipur (C.G.) Civil and
Revenue District Raipur.

... Appellant

versus

1. Smt. Krishna Rathore, W/o Rakesh Rathore & D/o Late Laakhan Ram Rathore, aged about 31 years
2. Kumari Shakuntala Rathore, D/o Late Laakhan Ram Rathore, aged about 27 years
3. Kumari Sharda Rathore, D/o Late Laakhan Ram Rathore, aged about 25 years

Address: Respondents No. 1 to 3: F.651, HTPP Colony, Darry, Katghora, Distriact Korba (C.G.)

4. Radhe Shyam Sahu, S/o Guha Sahu, aged about 44 years, R/o Dhamtari Road, Hathnipara, Bhathapara, Raipur, presently at Sharma Transport, Katora Talab, Raipur.
5. National Insurance Company, through its Branch Manager, Divisional Office, Raipur (C.G.)

... Respondents

For Appellant	:	Mr. B.P. Sharma and Mr. M.L. Sakat, Advocates.
For Respondent No.5	:	Mr. B.N. Nande, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

28/11/2017

1. The present is an owner's appeal under Section 173 of the Motor Vehicles Act, 1988, assailing the award dated 16.3.2017 passed by the Additional Motor Accident Claims Tribunal, Katghora, District Korba, in Motor Accident Claim Case No. 111/2008.

2. Vide the impugned, the learned Tribunal, in a death case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.26,96,216/- to the claimants with interest thereon at the rate of 7% per annum from the date of presentation of the claim application. While passing the award, the learned Tribunal has exonerated the insurance company of its liability, fastening the responsibility of payment of compensation upon the owner, the present appellant.

3. Present is a second round of litigation, as on earlier occasion the Tribunal had decided the case on 28.3.2011 quantifying the compensation at Rs.14,22,892/- with 6% interest per annum and fastening the liability for payment of compensation upon the insurance company. The insurance company then had filed an appeal before this Court which was registered as M.A.(C) No. 832/2011 which stood decided on 14.6.2012 and this Court while disposing of the appeal in paragraph 6 had held as follows:-

“6. Learned counsel for the appellant had submitted before this Court earlier that the offending vehicle of which they were insurer was not having a valid permit as the same was a commercial vehicle and, therefore, the liability could not have been fastened upon them due to breach of insurance policy condition. On this, we had summoned the R.T.O. concerned who had brought the relevant record and stated that the offending vehicle was not having any permit. However, during the course of arguments, learned counsel for the owner of the offending vehicle, to whom the liability was to be fastened, has submitted that before the M.A.C.T. concerned the proceedings against the owner were already *ex parte* and, therefore, he could not get any opportunity to defend himself and also that he has moved an application under Right to Information Act, 2005 to obtain the orders by which the permit was directed to be granted to the offending vehicle in question. He also wants that the quantum fixed by the Claims Tribunal may also be reconsidered. Therefore, we are of the opinion that the matter is liable to be reconsidered by the Claims Tribunal.”

Making the aforesaid observations, the matter was remitted back to the Tribunal for making a fresh adjudication and the Tribunal thereafter has now passed the impugned award.

4. So far as the facts of the case are concerned, the undisputed facts are: the accident that took place on 22.2.2008 at Village- Tohiladeeh; the vehicles involved in the accident being a Truck (CG04-G-3983) and a Motorcycle (CG11-BB-2802); the deceased-Laakhan Ram Rathore travelling on the motorcycle succumbed to the injuries sustained in the accident; the truck being duly insured with respondent no.5-National Insurance Company Limited for the period 2.3.2007 to 1.3.2008 and the driver-Radhe Shyam Sahu of the truck having a valid licence also is not in dispute.

5. The facts in short are that the offending Truck driven by respondent No.4-Radhe Shyam Sahu had been parked on the road without providing any parking indications or parking lights, to which the deceased-Laakhan Ram Rathore coming on a motorcycle dashed, resulting in his death.

6. The only point of dispute and on which the respondent no.5-insurance company has been exonerated, is the offending truck not having a valid permit.

7. The respondent no.5-insurance company in its written statement before the Tribunal had taken the objection of the accident to have occurred because of the negligence of the deceased. That the insurance company of the motorcycle driven by the deceased was not made a party and therefore the claim case was not maintainable. Further, that the driver of the offending truck was not having a valid and effective driving licence and lastly that the truck also did not have a valid permit.

8. So far as the other grounds which were raised by the respondent no.5-insurance company all have gone against it, as those grounds either stood disproved or were proved against the insurance company. Of all the other issues, the only issue which went against the present appellant-owner is that the truck at the relevant point of time not having a permit issued from the concerned Regional Transport Office.

9. According to the appellant-owner, he had produced a document to show that the offending truck at the relevant point of time had a valid permit. The said document was also marked as Exhibit D-5 which is said to have been issued from the office of the Regional Transport Office, Raipur.

10. The only ground for disbelieving the statement of the appellant-owner by the Tribunal was on the ground that the owner has failed to get examined any officer of the concerned Regional Transport Office, who had issued Exhibit D-5.

11. In view of the aforesaid factual matrix, the moot question which is required to be considered is, whether the owner had discharged his burden of producing sufficient document to show that the truck involved in the accident had proper permit from the concerned Regional Transport Office or not, and whether it has been sufficiently proved before the Tribunal or not.

12. The fact that the owner has produced Exhibit D-5 is not in dispute. The Exhibit D-5 produced is a duplicate certificate which is said to have been issued from the Regional Transport Office, Raipur.

13. Now when we look into the evidence which have come on record, the power of attorney holder of the present appellant is Mukesh Sharma, who is also the son of the appellant-owner, and who has been examined before the Tribunal as NAW-2. He has in his deposition stated that the offending truck at the relevant point of time had a permit and that the original had got misplaced and therefore a duplicate was got issued from the Regional Transport Office, Raipur and the same has been produced before the Tribunal and marked as Exhibit D-5.

14. Thus, so far as the permit part is concerned, the owner has adduced evidence that he could before the Tribunal with documentary proof and having done so, the burden of rebuttal now falls upon the insurance company to disprove the contentions made by the owner and to conclusively also establish that the document Exhibit D-5 produced before the Tribunal was a fake and fabricated document and that the truck was not having a permit at the relevant point of time.

15. In rebuttal, a witness from the Regional Transport Office, Raipur has been examined on behalf of the insurance company, namely, Suresh Yadu. If we peruse the statement of Suresh Yadu, it clearly reflects that he has deposed before the Tribunal that the permit register which is maintained in

the office shows the permit to have been issued for the offending vehicle from 3.8.2001 to 2.8.2006 and as far as the subsequent renewal or issuance of a new permit is concerned the said witness is silent. He has not stated before the Tribunal that the document Exhibit D-5 is a fake or fabricated document. He has also not deposed as regards the permit not being granted to the offending truck for the period 19.8.2006 to 18.8.2011.

16. The finding in paragraph 10 of the award is only an inference which the learned Tribunal is trying to draw. The said witness Suresh Yadu in his deposition has stated that as per the permit register, the vehicle had got the permit from 3.8.2001 to 2.8.2006. At the same time, the said witness has clearly admitted referring to Exhibit D-5 that the seal put on the permit is the one which is maintained in the office of the Regional Transport Office, Raipur. He has also admitted the fact that the signature on the seal also is that of the authority granting permit in the office of the Regional Transport Office, Raipur. He has further deposed that the said seal is only maintained in the office of the Regional Transport Office, Raipur and is in the custody of the officer at Raipur and there is no possibility of the seal being available anywhere else.

17. This deposition of the witness Suresh Yadu gives sufficient indication of the genuineness of the seal and signature on Exhibit D-5, which is a seal granting permission to the offending vehicle for operation for the period between 19.8.2006 to 18.8.2011. The said witness has not in any manner denied the document Exhibit D-5 to be fake, fabricated or not a genuine document neither does he depose of the seal and signature to be fake or fabricated.

18. In the absence of any specific averment made by the witness from the Regional Transport Office denying Exhibit D-5 the same cannot be

ignored or held to be a fake document and therefore the inference which has been drawn by the learned Tribunal is not worth accepting.

19. So far as the standard of proof required for establishing the case before the Motor Accident Claims Tribunal under the provisions of Motor Vehicles Act is concerned, it is preponderance of probability which is to be applied and, in the instant case, Exhibit D-5 is a document which has been produced and exhibited before the Tribunal on behalf of the owner. Thereafter, the burden of proof gets shifted upon the insurance company to disprove the same and to also prove that the said document is not a genuine document. The only evidence which has come on record is that the said witness, Suresh Yadu, from the Regional Transport Office, Raipur, in his deposition has not stated that the offending vehicle was not having a permit after 2.8.2006. All that the said witness has stated is that the vehicle for the first time was issued with a permit valid from 3.8.2001 to 2.8.2006. He has also not deposed before the Tribunal that he had searched and scrutinized the records available in the concerned Regional Transport Office in respect of the offending vehicle not having valid permit from 2.8.2006. Thus, applying the doctrine of preponderance of probability an inference has to be drawn in favour of the owner who has deposed before the Tribunal in respect of the vehicle having a permit and has also exhibited a duplicate certificate issued as Exhibit D-5.

20. The Hon'ble Supreme Court in the case of **National Insurance Co. Ltd. v. Swaran Singh, 2004 (3) SCC 297**, in paragraphs 52 and 69, has held as follows:

"52. In *Narcinva* case, a Division Bench of this Court observed:

"12...The insurance company complains of breach of a term of contract which would permit it to disown its liability under the contract of insurance. If a breach of term of contract permits a party to the contract to not to perform the contract, the burden is squarely on that party

which complains of breach to prove that the breach has been committed by the other party to the contract. The test in such a situation would be who would fail if no evidence is led..."

* * *

69. The proposition of law is no longer res integra that the person who alleges breach must prove the same. The insurance company is, thus, required to establish the said breach by cogent evidence. In the event, the insurance company fails to prove that there has been breach of conditions of policy on the part of the insured, the insurance company cannot be absolved of its liability."

21. Following the dictum in **Swaran Singh** (supra), recently the Hon'ble Supreme Court again in the case of **Lakhmi Chand v. Reliance General Insurance, 2016 (3) SCC 100**, in paragraph 16, reiterating the aforesaid principles, has held as follows:

"16. It becomes very clear from a perusal of the abovementioned case law of this Court that the insurance company, in order to avoid liability must not only establish the defence claimed in the proceeding concerned, but also establish breach on the part of the owner/insured of the vehicle for which the burden of proof would rest with the insurance company..."

22. In view of the aforesaid factual matrix of the case, this Court is of the opinion that the impugned award passed by the learned Tribunal on 16.3.2007 in Motor Accident Claim Case No. 111/2008 to the extent of exonerating the insurance company does not seem to be proper, legal and justified and the same deserves to be and is accordingly set aside and the liability part stands modified to the extent that the liability of payment of compensation shall jointly and severally be upon the owner, driver and insurer i.e. respondent no.5-insurance company.

23. As a consequence, the appeal stands allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge