**AFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 146 of 2012**

- The Oriental Ins. Co.Ltd., through Divisional Manager, Division No.1, the Oriental Insurance Co. Ltd., Madeena Manzil, Kutcheri Chowk, Raipur, Teh. District. Raipur (CG)

**---- Appellant**

**Versus**

1. Smt. Fulwati Sahu Wd/o Vinod Sahu, aged 52 years,
2. Yogesh Kumar Sahu, S/o Vinod Sahu, 30 years,
3. Jagdev Prasad S/o Vinod Sahu, age 28 years,
4. Lekhram Sahu, S/o Vinod Sahu, aged 26 years,
5. Bhanuram Sahu, S/o Late Patangaram Sahu, aged 80 years,

   Resident Gram Mohada, PO O. Tarpongi, Thana Dharsiva, Distt. Raipur (CG)
6. Rajesh Kumar Chauhan, S/o Dashrath Chauhan, Sakin Gram Mohada, PO O. Tarpongi, Thana Dharsiva, Distt. Raipur (CG)
7. Prafull Giri Goswami, S/o Late Krishna Giri Goswami, Sakin Gram Mohada, PO O. Tarpongi, Thana Dharsiva, Distt. Raipur (CG)

**---- Respondents**

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| For Appellant | : | Shri Sudhir Agrawal, Advocate. |
| For Respondent No.1 to 5 | : | Shri Amiyakant Tiwari, Advocate. |

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**Hon'ble Shri Gautam Chourdiya, J**

**Judgment On Board**

**29/08/2018** :

This is an appeal filed by the insurance company against the award dated 31.10.2011 passed by 1st Motor Accident Claims Tribunal, Raipur in Claim Case No.53/2010 whereby the Tribunal in a death case has awarded a total compensation of Rs.4,23,500/- in favour of the claimants with interest @ 6% p.a. from the date of application till realization fastening the liability on the insurance company, jointly and severely along with driver and owner of the offending vehicle.

02. As per claim petition, on 2.7.2009 non-applicant No.1 Rajesh Kumar Chauhan was ploughing the agriculture field by tractor bearing registration No. CG 04 DA 5330 and the deceased Vinod Kumar Sahu, aged 55 years, earning Rs.40,000/- per annum by doing agriculture and carpenter work, was sitting in the said vehicle. However, due to rash and negligent driving of the said vehicle, Vinod Kumar Sahu fell off the vehicle, suffered grievous injuries and during treatment he died on 17.7.2009 in the hospital. At the time of accident, non-applicant No.2 was owner of the vehicle and non-applicant No.3 was insurer.

03. The claimants, who are widow, children and parents of the deceased, filed a claim petition u/s 163A of the Motor Vehicles Act, 1988 (in short “the Act”) before the Tribunal claiming total compensation of Rs.5,62,000/- under various heads.

04. Non-applicants No. 1 & 2/driver & owner filed their joint written statement and stated that driver had no knowledge that the deceased was sitting in the vehicle, the deceased himself was responsible for his death and report of the accident was lodged 14 days after the accident. They stated that since the driver was having a valid and effective driving licence, the vehicle was insured with non-applicant No.3, liability, if any, is of non-applicant No.3 to pay compensation to the claimants.

05. Non-applicant No.3 in its written statement though admitted that the vehicle in question was insured with it at the relevant time but denied its liability on the ground that death of the deceased occurred due to his own utter negligence. It further stated that the deceased was equally responsible for the accident and the vehicle was being driven in violation of the policy conditions.

06. The Tribunal on appreciation of the entire material available on record by the impugned award granted a total compensation of Rs.4,23,500/- in favour of the claimants with interest @ 6% p.a. from the date of application till realization fastening the liability on the insurance company, jointly and severely along with driver and owner of the offending vehicle.

07. Learned counsel for the appellant submits that the driver/non-applicant No.1 was not having a valid and effective driving licence to drive the offending vehicle and it has been proved by NAW-1 Rajesh Bhargav, clerk in RTO, Raipur. Therefore, on account of there being breach of policy conditions, the insurance company is not liable to pay any compensation. He further submits that the FIR is delayed by 14 days and therefore, it can be presumed that the claimants have filed the claim petition with concocted story. Lastly, he submits that the tractor is insured with the insurance company but the attached cultivator is not insured and therefore, since the deceased was sitting in the cultivator, the insurance company is not liable to indemnify the owner for the death of the deceased.

08. Learned counsel for the respondents/claimants submits that on the date of accident, the vehicle was being driven by non-applicant

No.1 Rajesh Kumar Chauhan. According to the owner/non-applicant No.2, before handing over the vehicle to the driver, he had seen his driving licence and satisfied himself as to the competence of the driver to drive the vehicle. As such, in view of decision of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Swaran Singh and others, (2004) 3 SCC 297***, there was no breach of policy conditions and the Tribunal was justified in fastening liability on the insurance company. He submits that there is no need of cultivator being insured as it is a part of the tractor used for agriculture purpose and since the tractor was insured with the insurance company, it cannot avoid its liability on the ground of non-insurance of the cultivator. Lastly, he submits that the insurance company has not adduced any evidence to substantiate the fact that the claimants filed claim petition with concocted story.

09. Heard learned counsel for the parties and perused the material available on record including the impugned award.

10. As regards the argument of the appellant that the claim petition has been filed by narrating false story, true it is that the FIR has been lodged with a delay of 14 days after the accident, however, the insurance company has not adduced any evidence to substantiate the said allegation. On the contrary, FIR (Ex.P/2) has been duly proved by CW-1 Smt. Fulwati Bai, lodger of the report and it has been mentioned in the report that delay occurred due to medical treatment of the deceased. In the facts and circumstances of the case, in particular the explanation offered for delay in lodging the report, it cannot be said that the claimants filed claim petition with concocted story and such delay

appears to be bonafide.

11. As for the arguments of the appellant that the death of the deceased occurred due to his own negligence, there is nothing on record which could suggest that the deceased was in any manner negligent which gave rise to the accident. Even otherwise, the claim petition has been filed under Section 163A of the Motor Vehicle Act and it has been duly proved by the claimants that the death of the deceased was due to use of motor vehicle. Therefore, keeping in view the provisions of Section 163 of the MV Act, the argument of the appellant regarding neglience of the deceased himself is not tenable.

12. So far as contention of the appellant that the driver was having a fake licence is concerned, as per Ex.P/5 the investigating officer seized the driving licence of non-applicant No.1 Rajesh Kumar bearing No. R/19017/R dated 16.10.2006 and NAW-1 Rajesh Kumar Bhargav, clerk in RTO, Raipur has stated that the said licence was not issued by RTO in the name of non-applicant No.1 Rajesh Kumar. NAW-1 has also proved the above fact by adducing document of Ex.D/1 i.e. certificate issued by RTO to the effect that the said licence was not issued in the name of non-applicant No.1 Rajesh Kumar Chauhan. However, as per statement of NAW-1 Prafull Giri Goswami (non-applicant No.2/owner), he has categorically stated that non-applicant No.1 Rajesh Kumar is driving his tractor since 10.10.2008, before engaging him as a driver he (owner) had satisfied himself about his competence as driver and seen his driving licence also. In cross-examination, suggestion was given to the owner/non-applicant No.2 by the insurance company that the driving licence was forged and it was in the knowledge of the owner,

but the same has been vehemently denied.

13. In the matter of ***Swaran Singh and others*** (supra), the Hon'ble Supreme Court while considering the issue of liability of the insurance company in the event of there being fake or invalid driving licence observed as under:

> “The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.”

14. Thus, keeping in view the aforesaid principles of law laid down by the Hon'ble Apex Court and the evidence available on record, it is clear that the owner/non-applicant No.2 had taken all due care and caution before engaging non-applicant No.1 as driver of his vehicle and therefore, even if the licence held by the driver was fake, the insurance company cannot be absolved of its liability.

15. There is also no force in the argument of counsel for the appellant that the insurance company is not liable to pay compensation

because it had insured the tractor only whereas the deceased was sitting in the cultivator. Cultivator is attached to the tractor and used for agriculture purpose, it cannot be used separately without being attached to tractor and therefore, the insurance company cannot escape its liability on the aforesaid ground.

16. For the reasons stated above, this Court is of the opinion that the Tribunal was fully justified in holding the insurance company/appellant liable for indemnifying the owner of the offending vehicle and satisfying the award.

17. In the result, the appeal being bereft of any substance is liable to be dismissed and is, accordingly, dismissed.

Sd/

**(Gautam Chourdiya)**

**Judge**

Khan