NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 49 of 2000

Reserved on 6-8-2018
Decided on 27-8-2018

- Vishnu Das Sewani s/o. Lae Motan Mal Sewani, aged 38 years, r/o. Behind Ganj, Nawapara, Rajim, District Raipur.

---- Appellant

Versus

1. National Insurance Company through Branch Manager, Raipur (MP) (now CG).
2. Khemlal Pal, s/o. Sakha Ram Pal, aged about 37 years, r/o. Village Kurra, Thana Nayaprara Rajim , District Raipur..
3. Daya Ram Dewangan, s/o. Bisal Dewangan, aged about 37 myears.
4. Ku. Malti, d/o. Daya Ram Dewangan.
5. Rajesh Kumar s/o. Daya Ram Dewangan.
6. Ku. Ritu Dewangan, aged about 9 years.

Respondents No. 3 to 6 are r/o. Shatalpara, Bhilai-3, Tahsil Patan, District Durg (MP) Now CG.

---- Respondent

For appellant	:	Mr. J.N. Nande, Advocate.
For respondent No.1	:	Mr. Anand Kumar Gupta, Advocate.
For other respondents	:	None though served.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV Order

1. The appellant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 against the award dated 30-10-1999 passed by the 6th Additional Motor Accident Claims Tribunal (for short, “the Tribunal”), Durg, in claim case No.16 /1995 wherein the said Tribunal awarded compensation of Rs.1,22,400/- in favour of

the claimants/respondents No. 3 to 6 on account of death of one Hira Bai in a motor accident occurred on 21-1-1995.

2. Facts of the case, in brief, are that on 21-1-1995 at 4.15 pm deceased Hira Bai was going along with her daughter Malti in a bicycle towards G.E. Road, Raipur and at the same time driver of the vehicle Metador vehicle bearing registration No. MKS 9530 dashed the said Hira Bai as a result of which she died on the spot. The claim petition was filed by husband, daughter and son of the said deceased and after recording the evidence and after hearing the parties, the Tribunal awarded compensation as mentioned above against owner/appellant but exonerated the respondent No.1 which is National Insurance Company.

3. Learned counsel appearing for the appellant would submit that policy was effective on the date of incident i.e., 21-1-1995 and the driving licence of respondent No.2 was also effective on the date of incident but the Tribunal exonerated the National Insurance Company against the settled principles of law which is not sustainable and the Insurance Company is liable to pay the compensation.

4. The Tribunal exonerated the National Insurance Company on the ground that the original driving licence was issued from place Alwar and subsequently it was renewed by the Transport Office of Raipur on 21-8-1994 and it was again renewed on 22-8-1997. From the

evidence of Khemlal (NAW/1)/respondent No.2 and Prakash Arya (NAW/2), who is an employee of Regional Transport Office, Raipur, driver Khemlal was having driving licence from 21-8-1994 to 21-8-1997 and again it was renewed from 21-8-1997 as per Ex.D/1. Admittedly, respondent No.2 was having effective driving licence on the date of incident i.e., 21-1-1995, but the Tribunal exonerated the National Insurance company on the ground that since the original driving licence issued by the Transport Office of Alwar in the year 1988 is not genuine, therefore, driving licence issued by the Transport Department of Raipur, is also not valid.

5. Admittedly, the driver of the offending vehicle was having driving licence to drive the vehicle on the date of incident. When the driver of the vehicle is having driving licence, it can be easily inferred that the owner of the vehicle has entrusted the vehicle to him after examining the driving licence and there is no negligence on the part of the owner of the vehicle.

6. In **National Insurance Company Limited vs. Swaran Singh and others, reported in (*2004(3) SCC 297**, it is held by the Hon'ble Apex Court as under:

> "(i) xxxxxxx
>
> (ii) xxxxxxx

(iii) 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.

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them".

7. In the present case, National Insurance Company failed to prove any negligence on the part of the owner, therefore, it cannot be absolved from liability towards third party and the finding of the

tribunal on this count is not sustainable as the same is against settled principles of law. The finding of the Tribunal is reversed and it is declared that the respondent No.1/National Insurance Company is liable to pay compensation to the claimants/respondents No. 3 to 6. The incident took place way back in the year 1995 and therefore, assessment of the Tribunal regarding loss of dependency and other counts which is based on price index of the said period is now not liable to be interfered with.

8. Accordingly, the appeal is allowed and award is passed against respondent No.1/ Insurance Company as under:

I) Respondent No.1/National Insurance Company shall pay Rs.1,22,400/- to the claimants/respondents No. 3 to 6 within 60 days from the date of passing of this order, failing which 9% interest shall be charged.

ii) The amount, if any deposited by the National Insurance Company, shall be adjusted towards awarded sum.

iii) Amount shall disbursed as per direction of the tribunal.

iv Parties to bear their own costs.

Sd/-

(**Ram Prasanna Sharma**)
JUDGE

Raju