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HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 432 OF 2012

Judgment reserved on: 05/07/2018
Judgment delivered on: 18/07/2018

1. Sukhpal Singh S/o Balchand Singh aged about 48 years
2. Sumitra Devi Singh W/o Sukhpal Singh aged about 43 years
3. Ku. Richa Singh S/o Sukhpal Singh, aged about 19 years,
   All above R/o Jagmahant, Police Station- Nawagarh, Janjgir District Janjgir-Champa (C.G.)

…....Appellants

Versus

1. Samaru Yadav S/o Baigaram Yadav, aged about 29 years, R/o Bajrangipara, Police Station Janjgir, District Janjgir-Champa (C.G.)
2. Manishankar S/o Balakram Yadav R/o Jarve Police Station Janjgir, District Janjgir-Champa (C.G.)
3. The Branch Manager, General Insurance Company Limited, T.P. Nagar, Korba, District-Korba (C.G.).

…....Respondents

For Appellants	:	Mr. N. K. Chatterjee, Advocate
For Respondents No.1 & 2	:	Mr. V. K. Pandey, Advocate
For Respondents No. 3	:	Mr. Rohitashva Singh, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

C A V Judgment

1. The unfortunate claimants/appellants have filed this instant appeal challenging the legality and validity of the impugned award dated 16/01/2012 passed by learned Chief Motor Accident Claims Tribunal, Janjgir-Champa (C.G.) (in short 'the Claims Tribunal') in Motor Accident Claim Case No.01/2011, whereby the learned Claims Tribunal has passed an award of Rs.7,31,750/- and directed for

deducting 50% of the amount towards contributory negligence of the deceased. The liability has been fastened upon respondents No.1 and 2 i.e. owner and driver.

2. Brief facts of the case are that on 03/10/2010, at about 10.00 P.M. on Dabhra Chandrapur Road, the motorcycle of deceased dashed with the Mini Truck bearing registration No. CG11/AB/0455 which was parked on road without liting parking lights. In the aforesaid accident, deceased Sourabh Singh, aged about 23 years, sustained grievous injuries on his person and during the course of treatment; he succumbed to injuries on 11/10/2010, at Ram Krishna Care Hospital, Raipur. The appellants/claimants who are parents of deceased have filed claim application for grant of compensation on account of untimely death of their son in motor accident and claimed Rs.20,30,337/- as total compensation from the respondents.

3. The respondents No. 1 & 2 submitted their reply to the claim application and stated that the accident did not occur due to their negligence and further that the respondent No.1 had parked his vehicle (Mini Truck) by the side of road and the deceased Sourabh Singh met with an accident due to his own negligence. Further, they have pleaded that the vehicle on the date of accident was insured with the respondent No.3, therefore, asked for their exoneration from payment of any compensation, if awarded.

4. The respondent No. 3/Insurance Company took a defence that the deceased met with an accident due to his own negligence. It was pleaded that the driver/respondent No.1 on the date of accident was not having valid and effective driving licence and further that the vehicle on the date of accident was driven in

the violation of conditions of the insurance policy, therefore, the respondent No.3 is not liable for payment of any compensation.

5. The learned Claims Tribunal while considering the pleadings, evidence and other materials available on record held that as the Mini Truck was negligently parked without parking light which is also instrumental in causing accident. Apart from the fact that the deceased was driving his motorcycle rashly and dashed his motorcycle with the stationary vehicle, and therefore held 50% negligence on the part of the deceased. The learned Claims Tribunal further held that on the date of accident validity of licence issued by the licensing authority in favour of respondent No. 1 was expired on 12/08/2010 but had not been renewed thereafter till date of accident i.e. 03/10/2010. Holding that there was violation of conditions of the insurance policy as, on the date of accident, the driver was not having valid and effective driving licence to drive the vehicle exonerated the Insurance Company from payment of compensation. The learned Claims Tribunal assessed the total compensation of Rs.7,31,750/- but held entitled the appellants/claimants for receiving the compensation of RS.3,65,875/- after deducting 50% of the total compensation towards contributory negligence.

6. It is this award, which is under challenge in this appeal.

7. Learned counsel appearing for the appellants/claimants submits that the learned Claims Tribunal committed an error in applying the multiplier on the basis that the parents are claimants. The learned Claims Tribunal further committed an error in deducting 50% of the amount towards contributory negligence and not awarded any amount towards loss of future prospects though the deceased was in permanent Government employment as he was working as Constable in

Police Station Dabhra and prays for enhancement of the amount of compensation suitably.

8. Per contra, learned counsel appearing for respondent No. 3/Insurance Company have supported the award passed by the learned Claims Tribunal and submits that the learned Claims Tribunal have awarded sufficient amount to the appellants/claimants and the Insurance Company has rightly been exonerated because on the date of accident, the driver of the Mini Truck was not having valid and effective driving licence.

9. Learned counsel appearing for the respondents No.1 and 2 who are owner and driver of the Mini Truck submits that they have filed cross-objection challenging the finding recorded by the learned Claims Tribunal with regard to holding the respondent No.1 to be contributory negligent as the Mini Truck, at the time of accident, was standing in stationary position as it was parked by the side of road. He further submits that the Insurance Company failed to prove that the owner has not taken any precaution at the time of engaging the respondent No.1 as driver and further submits that the respondent No.2 after looking to the licence produced before him and satisfying himself that the licence shown to him was valid and effective has engaged the respondent No.1 in his employment since last about four years. He lastly submits that he has not committed any wrong but during the course of employment, the period of validity of licence got expired by mistake of driver which was subsequently being renewed by the competent authority. He placed the renewed licence on record during the course of argument.

10. I have heard the learned counsel appearing for the parties and perused the entire records carefully.

11. So far as the submissions with regard to the deduction of 50% towards contributory negligence, in view of the facts and circumstances of the case and the manner, in which, the accident took place, I am not convinced with the submission made by the learned counsel for the appellants. Even the submissions of the counsel for respondent No. 2 that the sole negligence was of deceased motorcyclist is not acceptable because the ill-fated vehicle Mini Truck was parked on road in night without parking lights. For the above reasons, I do not find any error on the part of learned Claims Tribunal holding equally negligence i.e. 50% on part of deceased and 50% on part of respondent No. 1, and therefore, the finding of contributory negligence is affirmed.

12. So far as the claim of the appellants/claimants for enhancement of the award is concerned, undisputedly, the deceased was a Constable in Police Department and as per salary certificate (Ex. A-9), drawing a gross monthly salary of Rs.10,222/-. Looking to the age of deceased and the nature of job, which was permanent in nature, as per judgment rendered by the Hon'ble Supreme Court in the matters of ***Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another*** reported in ***(2009) 6 SCC 121*** and ***National Insurance Company Limited v. Pranay Sethi and others*** reported in ***AIR 2017 SC 5157***, 50% of the proved monthly income is to be added towards future prospects, which the learned Claims Tribunal failed to consider and award.

13. Accordingly, in view of the aforementioned law laid down by the Hon'ble Supreme Court in ***Pranay Sethi*** (supra)***,*** 50% of Rs. 10,222/- per month salary is to be added towards the future prospects i.e. Rs.5,111/- is to be added in his total monthly income of Rs.10,222/-, which brings the monthly income to the tune of Rs.15,333/- i.e. Rs.1,83,996/- per annum. As the claimants are parents and unmarried sister, deduction towards personal expenses would be half (1/2). After

deducting half (1/2) of the annual income towards his personal expenses i.e. Rs.91,998/-, the annual loss of dependency comes to Rs.91,998/- (1,83,996 – 91,998). The Claims Tribunal erroneously applied the multiplier of 10 instead of 18 as provided in the matter of ***Sarla Verma (Smt.)*** (supra) and the same was also affirmed in the matter of ***Pranay Sethi*** (supra)***.*** Therefore, by applying the multiplier of 18, the total loss of dependency comes to Rs.91,998/- X 18, i.e. Rs.16,55,964/-. In addition to the aforementioned amount of compensation, the appellants/claimants are also entitled for the amount towards conventional heads i.e. loss of estate and funeral expenses to the tune of Rs.40,000/-. In view of the aforementioned recalculation, the appellants/claimants are entitled for total compensation of Rs.16,95,964/- on account of death of Sourabh Singh instead of Rs.7,31,750/- as awarded by the learned Claims Tribunal. This amount of compensation shall carry interest @ 7% per annum as awarded by the learned Claims Tribunal from the date of filing of the claim application till its realization. The other conditions imposed by the learned Claims Tribunal shall remain intact.

14. The next question for consideration arose with regard to the exoneration of the Insurance Company from its liability on account of violation of conditions of insurance policy as held by the learned Claims Tribunal. On perusal of the licence (Ex. A-6), it is evident that initially licence was issued from the licensing authority on 05/01/1994, which was renewed time to time and lastly, it was renewed before accident on 13/08/2007 and was valid up to 12/08/2010. The authenticity of the licence is not under challenge except to the fact that the validity period of licence expired on 12/08/2010 and the accident took place on 03/10/2010.

15. On perusal of evidence of respondent No. 2 Manishankar (NAW-2) in which, he had categorically stated in Paragraph-8 that the respondent No.1 was engaged

by him for last 3-4 years to drive the vehicle and after looking to the licence, he kept him as driver. The aforementioned evidence made by the respondent No.2, owner of the vehicle remained uncontroverted.

16. Considering the facts and circumstances of the case in hand, here it is not the case of no licence but it is a case where driver of the vehicle was having valid and effective driving licnece for last about 16 years but due to mistake of driver, it could not be renewed and expired before the date of accident. It is not the case that the respondent No.1 was ever disqualified for holding the valid and effective driving licence as the licence of the respondent No.1 was subsequently being renewed by the licencing authority. As per the document annexed by the counsel appearing for respondents No.1 and 2 i.e. driving licence along with an application for taking documents on record mentioning therein that the driving licence of respondent No.1 was renewed on 31/12/2011 up to 30/12/2014.

17. The Hon'ble Supreme Court while considering the issue with regard to the driving licence in the matter of ***National Insurance Co. Ltd. v. Swaran Singh and Others*** reported in ***(2004) 3 SCC 29,*** has held as under :-

> "110. The summary of our findings to the various issues as raised in these petitions is as follows:
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> (i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.
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> (ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163 A or Section 166 of the Motor Vehicles Act, 1988, *inter alia,* in terms of Section 149(2)(a)(ii) of the said Act.
>
> (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, has 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 the 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 licenced driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, 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.

(v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfill the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims *inter se* between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes *inter se* between insurer and the insured. The decision rendered on the claims and disputes *inter se* between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in sub-section (4) with the proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims *inter se* might delay the adjudication of the claims of the victims.”

18. In the case in hand, on the date of employment, the driver was having a valid and effective driving licence, but it expired during the course of employment due to some negligence on the part of the driver for which, the owner cannot be held liable unless and until it is proved by the insurer that the insured was guilty of

negligence and failed to exercise reasonable care in the matter of fulfilling condition of the policy regarding use of vehicles by a duly licenced driver or one who was not disqualified to drive at the relevant time. As at the time of accident the respondent No. 1- driver was not having the valid and effective driving licence with him as its validity was expired, therefore, there was breach of conditions of insurance policy. The respondents No. 1 & 2 are liable for payment of compensation.

19. Looking to the fact that the deceased was a third party and Insurance Company have issued certificate of insurance and valid on the date of accident, therefore, in view of provision of Section 147 of the Motor Vehicles Act, 1988, it is the first duty of the insurer to satisfy the judgments and awards against persons insured in respect of third party risks.

20. In view of the peculiar facts and circumstances of the case and in the light of the decision passed by Hon'ble Supreme Court in the matter of ***Swaran Singh*** (supra), I direct that the respondent No. 3 would first satisfy the amount of compensation as awarded and thereafter recover the same from the respondents No. 1 & 2.

21. In the result, the appeal is allowed in part and the award impugned stands modified to the extent indicated herein-above.

22. No order as to costs.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh