NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 374 of 2014

- Branch Manager, Future Generali India Insurance Co. Ltd. Shop No. 01, Second Floor, B-Block, Maruti Business Park, Near Dhuppad Petrol Pump, Raipur C.G.

---- Appellant

Versus

1. Dujo Bai Rathiya W/o Late Pitarbaigin Aged About 40 Years, occupation none.

2. Banshi Ram Rathiya Aged About 27 Years

3. Banas Ram Rathiya Aged About 8 Years Minor,

All above (respondent 2 & 3) S/o Late Pitarbaigin and all are R/o Village – Aamgaon, Tahsil & P.S. Dharamgaigarh, Distt. Raigarh (CG) Respondent No.3 minor represented through natural guardian mother Smt. Dujo Bai Rathiya. - claimants

4. Harishankar Soni S/o Sukandar Lal Soni Aged About 42 Years R/o Village- Kirodimal, Tah. And Distt. Raigarh C.G. - driver.

5. Chandra Raj Singhaniya S/o Laxminarayan Singhaniya R/o Near Bharat Mata School, G.E. Road, Tatibandh, Raipur C.G. - owner.

---- Respondents

For Appellant	:	Shri SS Rajput, Advocate.
For Respondents No. 1 to 3	:	Shri Sunil Sahu, Advocate.
For Respondent Nos. 4 & 5	:	None though served.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

22/10/2018 :

This is an appeal by the insurance company under Section 173 of the Motor Vehicles Act, challenging its liability fastened upon it by the learned Motor Accident Claims Tribunal, Raigarh in Claim Case No.70/2012 vide award dated 10.1.2014.

02. Brief facts of the case are that on 24.11.2010 at 5.30 pm, Pitarbaigin along with Jogiram Rathiya was going on his motorcycle bearing No. CG 04 D 5173 and he was dashed by truck Hyva (10 wheeler) bearing No. CG 04 ZC 5188 which was being driven by non-applicant No.1 Harishankar Soni in a rash and negligent manner as a result of which both Pitarbaigin and Jogiram died on the spot. At the time of accident, the offending vehicle truck was owned by non-applicant No.2 Chandraraj Singhaniya and insured with the insurance company – appellant herein.

03. As against the claim of Rs.30.35 lacs of the claimants for the death of Pitarbaigin Rathiya, the Tribunal awarded a total compensation of Rs.5.80 lacs with interest @ 6% per annum from the date of application till realization fastening the liability upon the appellant/insurance company. Hence this appeal by the insurance company.

04. Learned counsel for the appellant submits that the Tribunal has erred in fastening liability upon the insurance company as on the date of accident, the driver of the offending vehicle was not having a valid and effective driving licence.

05. On the other hand, learned counsel appearing for the respondents/claimants has duly assisted the Court.

06. Heard learned counsel for the parties and perused the material available on record.

07. The only issue to be decided in this appeal is whether the non-applicant No.1/driver of the offending vehicle was having a valid and effective driving licence on the date of accident to drive the same?

08. As per Ex.D/2C which is a licence for LMV (Transport), its validity was from 21st March, 2013 to 20th March, 2016. From perusal of Ex.D/3, it appears that this driving licence is not issued by the competent authority – RTI, Bilaspur. NAW-1 Umesh Tripathi, clerk of RTO, Bilaspur, has specifically stated that driving licence No.H-8743/02 was never issued by RTO, Bilaspur in the name of Harishankar Soni (non-applicant No.1). As such, the licence of Ex.D/3 is not a valid and

effective driving licence issued by the competent authority.

09. In this case, owner of the vehicle remained exparte before the Tribunal and no evidence was adduced by him. No any specific pleading was taken by the owner before the Tribunal that he had seen the document of Ex.D/3 and after satisfying himself about its genuineness and competence of non-applicant No.1 Harishankar Soni to drive the vehicle in question, he handed over the same to him. Therefore, without any such pleading or evidence, it cannot be presumed that owner of the vehicle had employed non-applicant No.1/driver after satisfying himself as to the genuineness of the licence Ex.D/3 as being a valid and effective driving licence. Thus, the owner has failed to discharge his onus as required under the law.

10. As per Ex.D/2C and statement of NAW-1 Umesh Rathiya, it is clear that on the date of accident i.e. 24.11.2010, non-applicant No.1 Harishankar Soni was not having a valid and effective driving licence to drive the offending vehicle Hyva, gross weight of which was 25000 kg as per insurance policy Ex.D/1, as its validity starts from 21st March, 2013. The document of Ex.D/3 has been proved to be a fake licence. Section 14 of the Motor Vehicles Act reads as under:

"**14. Currency of licences to drive motor vehicles.**

1. A learner' licence issued under this Act shall, subject to the other provisions of this Act, be effective for a period of six months from the date of issue of the licence.
2. A driving licence issued or renewed under this Act shall,--

a. in the case of a licence to drive a transport vehicle, be effective for a period of three years;

[Provided that in case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus; and]

b. in the case of any other licence,--

i. if the person obtaining the licence either originally or on renewal thereof, has not attained the age of forty years on the date of issue or, as the case may be, renewal thereof,--

A. be effective for a period of twenty years from the date of such issue or renewal; or

B. until the date on which such person attains the age of fifty years, whichever is earlier;

(ii) if the person referred to in sub-clause (i) has attained the age of fifty years on the date of issue or, as the case may be, renewal thereof, be effective on payment of such fee as may be prescribed, for a period of five years from the date of such issue or renewal]

Provided that every driving licence shall, notwithstanding its expiry under this sub-section, continue to be effective for a period of thirty days from such expiry."

11. Thus, in view of the above, this Court is of the opinion that the Tribunal has erred in fastening liability on the appellant/insurance company of satisfying the award.

12. In the result, the appeal is allowed. The appellant/insurance company is exonerated of its liability to satisfy the award. However, considering the facts and circumstances of the case, it is directed that the appellant/insurance company shall first pay the entire awarded amount to the claimants and thereafter, recover the same from the owner/non-applicant No.2 in accordance with law. The impugned award stands modified to the above extent. However, rest of the conditions of the impugned award shall remain intact.

Sd/

(Gautam Chourdiya)

Judge

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