NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No.624 of 2014

Ram Vilas Swarnkar S/o Geetu Swarnkar Aged About 66 Years R/o Pachpedi Naka, Raipur, Tah. And Distt. Raipur C.G., At Present R/o T.P. Nagar, Korba, Distt. Korba, Chhattisgarh

---- Appellant

Versus

1. Kumari Mamta And Ors. D/o Late Pardeshi Ram Aged About 14 Years Minor, Through - Guardian Samarin Bai, W/o Sadhram, R/o Saraipali, Thana And Post- Balco Nagar, Korba, Tah. And Distt. Korba Chhattisgarh
2. Kumari Champa D/o Late Pardeshi Ram Aged About 12 Years Minor, Through - Guardian Samarin Bai, W/o Sadhram, R/o Saraipali, Thana And Post- Balco Nagar, Korba, Tah. And Distt. Korba Chhattisgarh
3. Rakesh Kumar S/o Late Pardeshi Ram Aged About 6 Years Minor, Through - Guardian Samarin Bai, W/o Sadhram, R/o Saraipali, Thana And Post- Balco Nagar, Korba, Tah. And Distt. Korba Chhattisgarh
4. Rajeshwari D/o Late Pardeshi Ram Aged About 3 Years Minor, Through - Guardian Samarin Bai, W/o Sadhram, R/o Saraipali, Thana And Post- Balco Nagar, Korba, Tah. And Distt. Korba Chhattisgarh
5. Sadhram S/o Late Mohar Sai Aged About 55 Years R/o Saraipali, Thana And Post- Balco Nagar, Korba, Tah. And Distt. Korba C.G.,
6. Samarin Bai W/o Sadhram Aghariya Aged About 53 Years R/o Saraipali, Thana And Post- Balco Nagar, Korba, Tah. And Distt. Korba Chhattisgarh
7. Hemant Kumar Patel S/o Ramsai Patel Aged About 21 Years R/o Dewarmaal, P.O. Kudurmaal, Tah. And Distt. Korba C.G.,
8. Divisional Manager, United India Insu.Co.Ltd., Korba, Division Office- Station Road, Sitamadi, Korba, Tah. And Distt. Korba C.G.,

---- Respondents

For Appellant:	Shri Sanjay Patel, Advocate.
For Respondents No.1 to 7:	None, though served.
For Respondent No.8:	Shri Dashrath Gupta, Advocate.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Order On Board

29.08.2018

1. This Miscellaneous Appeal has been preferred by the Owner/Appellant

herein under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') questioning the award dated 22.02.2014 passed by the Motor Accidents Claims Tribunal, Korba (for short 'the Claims Tribunal') in Claim Case No.58/2010 by which, the learned Claims Tribunal, while awarding compensation to the tune of Rs.6,60,000/- with 6% interest per annum from the date of filing of the Claim Petition till its realization, has exonerated the Insurance Company from its liability.

2. Shri Sanjay Patel, learned Counsel for the Appellant submits that while passing the award impugned, learned Claims Tribunal has committed an illegality by exonerating the Insurance Company from its liability. According to him, the appellant (owner) of the vehicle in question has engaged said Hemant Kumar as his driver after verifying his driving license and only after that he was permitted to drive the said offending vehicle, therefore, it cannot be held that the appellant has committed wilful default or has violated the terms and conditions of the insurance policy as held by the learned Claims Tribunal. While placing his reliance upon the principles laid down in the matter of ***"Pepsu Road Transport Corporation Vs. National Insurance Company"*** reported in **(2013) 10 SCC 217**, it is contended further that the burden was heavily upon the Insurance Company to establish the fact that the owner of the offending vehicle has permitted the said driver despite knowing fully that he was not holding valid and effective driving license. In absence of the proof thereof, the Insurance Company cannot be exonerated. The award impugned is, therefore, liable to be modified to that extent while fastening the liability upon the Insurance Company.

3. On the other hand, Shri Gupta, learned Counsel for the Insurance Company submitted that the driver of the offending vehicle was not

possessing valid and effective driving license and in fact, he was authorized only to drive a light motor vehicle and was not entitled to drive a heavy vehicle i.e. Haiwa-truck and therefore, the learned Claims Tribunal has rightly exonerated the Insurance Company from its liability by holding that driver of the offending vehicle was not holding the effective and valid driving license at the relevant time.

4. I have heard learned Counsel for the parties and perused the entire record carefully.

5. By way of the award impugned, the learned Claims Tribunal, while exonerating the Insurance Company from its liability, awarded a total amount of compensation to the tune of Rs.6,60,000/- with 6% interest per annum from the date of filing of the Claim Petition till its realization. The main contention as raised by Shri Patel learned Counsel for the Appellant based upon the said case law is that the owner of the vehicle in question has not committed wilful default by permitting the driver i.e. Hemant Kumar to drive the same. According to him, the owner (Appellant) of the offending vehicle after verifying his driving license, has permitted him to drive the same and in order to establish the said fact, the Appellant has produced his son-in-law namely Ravindranath Soni as a witness who was examined as N.A.W.-1. I have examined his statement. According to paragraph-1 of his statement, he engaged said Hemant Kumar Patel as a driver for driving the said offending vehicle and stated further that he also kept a photocopy of his driving license. It was, however, not produced by him on record for the reason best known to him. No other witness was produced by the owner in order to establish the said fact. Pertinently to be noted here further that owner-Ram Vilas Swarnakar has even not entered into the witness box in order to establish the

fact that he engaged the said driver through his son-in-law after due verification of his driving license and in absence of furnishing the photo copy of the said driving license, it is difficult to hold that he was not aware of his driver's license. It, therefore, appears that despite knowing fully of his driving license, it was deliberately not brought to the knowledge of the learned Claims Tribunal and permitted the said driver to drive the alleged offending vehicle. i.e. the transport vehicle “Haiwa-truck”.

6. Besides, the Insurance Company, in order to establish the fact that the driver was not possessing the effective and valid driving license and despite knowing the said fact he was permitted wilfully by the appellant to drive the alleged transport vehicle, has produced two of its witnesses namely Siddik Kushman and Sanjay Vastrakar, who were examined respectively as Non-Applicants witnesses No.2 & 3. Siddik Kushman (N.A.W-2), who is an Administrative Officer of the Insurance Company, has deposed that the offending vehicle i.e. Haiwa – truck bearing Registration No.CG 04 JA 1796 was insured by the Company by issuing a policy (Ex.D-2) and according to it, the person who holds the effective and valid driving license alone was entitled to drive the same. Sanjay Vastrakar (N.A.W-3), who was one of the employees of the Regional Transport Authority, Korba has entered into the witness box along with the original register of his Office and stated at paragraph-2 of his evidence that “particulars” regarding the alleged driving license of the said driver (Hemant Kumar) was issued from his Office vide Ex.D-4 and its entries are made there in the said Register. According to the said particulars(Ex.D-4), it is evident that the driver of the offending vehicle was authorized to drive the Light Motor Vehicle only. The vehicle in question is admittedly a heavy transport vehicle and the driver of it, who was authorized to

drive the Light Motor Vehicle, was therefore, certainly not authorized to drive the vehicle in question and despite of it, he was permitted to drive the same as evidenced by the admission of owner's son-in-law namely Ravindra Nath Soni. It reveals further from his statement that the appellant was very well aware regarding the alleged driving license of said Hemant Kumar as photocopy of his driving license was in possession of his son-in-law and despite of the said material fact, it was not brought to the knowledge of the learned Claims Tribunal. The conduct of the owner and his son-in-law, who was his power of attorney holder, coupled with the evidence adduced by the insurer, would therefore, lead to an irresistible conclusion that the Appellant has wilfully violated the terms and conditions of the insurance policy (Ex.D-2) by permitting the driver of the offending vehicle namely Hemant Kumar to drive the same. In such an eventuality, the principles laid down in the matter of **"Pepsu Road Transport Corporation Vs. National Insurance Company"** (supra) while following the principles laid down in ***"National Insurance Company Limited Vs. Swaran Singh"*** reported in **(2004) 3 SCC 297** would, therefore, not come as a rescue for the appellant, as contended by Shri Patel.

7. Consequently, the learned Claims Tribunal has not committed illegality in exonerating the Insurance Company from its liability by holding that the driver was not possessing a valid and effective license at the relevant time to drive the said offending vehicle i.e. Hiawa - truck. The finding so recorded, therefore, deserves to be and is hereby affirmed.

8. The Appeal is accordingly dismissed. No order as to costs.

Sd/-
(Sanjay Agrawal)
Judge

Priya