**NAFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**MISC. APPEAL (C) NO. 732 OF 2011**

IFFCO Tokio General Insurance Co. Ltd., 3rd Floor, Shop No. 345-347, Ganga Shopping, G.E. Road, Raipur, Tahsil & District Raipur (C.G.)

**… Appellant**

**versus**

1. Jahangir Khan, S/o Shri Rasul Khan, aged about 42 years, R/o Faridnagar, Bhilai, Thana Supela, District Durg (C.G.)
2. Banti @ Teenu Gabda, S/o Shri Om Prakash, age not known to the appellant, resident of Ashirwad Butik, Piyush Colony, Main Road, Imleedhi, Raipur, Thana Rajendra Nagar, Raipur, District Raipur (C.G.)
3. Om Prakash Gabda, S/o Shri Udha Ram, age not known to the appellant, resident of Ashirwad Butik, Piyush Colony, Main Road, Imleedhi, Raipur, Thana Rajendra Nagar, Raipur, District Raipur (C.G.)

**… Respondents**

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| For Appellant | : | Mr. P. Acharya, Advocate, under instructions of Mr. Amrito Das, Advocate. |
| For Respondent No.1 | : | Mr. Suresh Tandan, Advocate. |
| For Respondents No.2 and 3 | : | Mr. Ajay Chandra, Advocate, under instructions of Mr. Y.C. Sharma, Advocate. |

**Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

**24/01/2018**

**1.** The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, filed by the appellant-insurance company assailing the award dated 17.3.2011 passed by the Second Additional Motor Accident Claims Tribunal, Raipur, in Claim Case No. 72/2010.

**2.** Vide the impugned award, the learned Tribunal, in an injury case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.66,000/- to respondent no.1-claimant with interest thereon at the rate of 6% per annum from the date of presentation of the claim application.

**3.** Facts of the case in brief are that on 18.1.2010 when the claimant was standing beside the road, the respondent no.2 Bunty came driving a motorcycle bearing registration no. CG04-CU-7971 and hit the claimant, as a result of which the claimant suffered grievous injuries. The claimant subsequently filed a claim application making the respondent no.2 Bunty as well as respondent no.3 Om Prakash Gabda who was the registered owner of the said motorcycle, a party, along with appellant-insurance company which had insured the said motorcycle. The Tribunal vide the impugned award decided the claim application of the claimant awarding an amount of Rs.66,000/- in his favour.

**4.** Learned counsel for the appellant-insurance company submits that the Tribunal has wrongly fastened the liability upon the insurance company as the driver of the offending vehicle at the relevant point of time did not have a valid and effective driving licence to drive a motorcycle. He further submits that the insurance company has led evidence of a witness Rajesh Bhargava from the RTO, Raipur, who had categorically deposed that the original licence number which is reflected from the licence which is in possession of the driver was not issued in the name of respondent no.2 Bunty, the driver of the offending vehicle, but was issued in the name of one Tankeshwar Shankar, which by itself would show that the Tribunal has not properly appreciated the evidence led on the part of the insurance company. He next submits that once when the original licence itself is fake, the subsequent renewal of it by a competent authority by itself would not make the original licence a proper and valid licence. In this regard, he has relied upon a judgment of the Hon'ble Supreme Court in the case of **Pushkar Mehra** v. **Brij Mohan Kushwaha & Others**, **2015 (12) SCC 688**.

**5.** Learned counsels appearing for the respective respondents opposing the appeal submit that the finding does not call for any interference as the insurance company has failed to lead cogent evidence to establish that the licence was a fake licence. They submit that the licence having been duly renewed from the RTO, Raipur, is not in dispute and if that be so, the owner cannot be found fault with and under such circumstances, the insurance company cannot be absolved of their responsibility indemnifying the insured.

**6.** Having heard the contentions put forth on either side, it would be relevant at this juncture to refer to the said judgment of the Hon'ble Supreme Court in **Pushkar Mehra** (supra) where the Hon'ble Apex Court in paragraph 13 has held as under:

> **"13.** ...We also hold that the compensation amount would first be paid by Respondent 3 the Insurance Company who can thereafter recover it from Respondent 2 the owner of the offending vehicle on the ground that it has been proved on record that the license possessed by Respondent 1 the driver of the offending vehicle was not issued from the RTO concerned and so the insurer is entitled to recovery of the compensation awarded from the owner and thereby we grant right of recovery to Respondent 3.**"**

**7.** Perusal of the aforesaid judgment itself would reveal that the Hon'ble Supreme Court has in very categorical terms held that once when the original licence itself was found to be fake, the renewal of it by itself would not cure the defect which is there in the licence. This Bench also in a recent judgment in the case of **ICICI Lombard General Insurance Co. Ltd.** v. **Chotelal Singh Thakur & Others,** decided on 17.1.2018 in M.A.(C) No. 1025/2011, relying upon the said judgment of the Hon'ble Supreme Court in **Pushkar Mehra** (supra), had partly allowed the appeal of the ICICI Lombard General Insurance Company under similar circumstances applying the principle of 'pay and recovery'. The insurance company was directed to pay the compensation and to recover the same from the owner.

**8.** In the instant case also, the evidence of Rajesh Bhargava, the witness from the RTO, Raipur, clearly proves that the original licence number reflecting in the licence of respondent no.2 Bunty was not issued in the name of Bunty but was in the name of one Tankeshwar Shankar. This by itself gives a strong inference of the original being a fake licence and the duplicate licence having been obtained on the basis of fake documents.

**9.** Given the facts and circumstances of the case, applying the same principle as has been decided by this Bench in the case of **ICICI Lombard General Insurance Co. Ltd.** (supra), this Court in the present case also holds that it shall be the responsibility of the appellant-insurance company to pay the entire amount of compensation awarded. However, the insurance company shall be at liberty to recover the same from the owner and driver of the offending vehicle.

**10.** The appeal stands accordingly allowed in part.

Sd/-
**(P. Sam Koshy)**
**Judge**

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