

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 8-5-2018****Delivered on 10-5-2018****MAC No. 372 of 2015**

(Arising out of the award dated 31-1-2015 of the 2nd Motor Accident Claims Tribunal, Jagdalpur in MACT No. 111/2014)

The United India Insurance Company Limited through Its Branch Manager, in front of Anupama Talkies, Jagdalpur, District Bastar, CG

---- Appellant**Versus**

1. Dinesh Soni s/o Karan Bahadur Soni aged about 28 Years R/o Utkal Basti, Choube Colony, Thana - Saraswati Nagar, Raipur, District- Raipur, CG
2. Manish Jain S/o Narendra Kumar Jain aged about 30 Years R/o B-404, Arihant Heights, Bhairav Society, Pachpedi Naka, Raipur, District Raipur, CG
3. Raju Yadav @ Vijay Yadav S/o Meghnath aged about 26 Years R/o Village - Turpura, Development Block- Jagdalpur, Thana - Bhanpuri, Distt.- Bastar, CG

---- Respondents

For Appellant : Shri H.B. Agrawal, Sr. Adv. with Shri Pankaj Agrawal, Adv.

For Respondents : None appears though served through paper publication.

Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. JUDGMENT

1. By this appeal the appellant-Insurance Company has challenged its liability to pay compensation awarded by the 2nd Additional Motor Accident Claims Tribunal, Jagdalpur in Claim Case No. 111/2014 vide award dated 31-1-2015, whereby and whereunder learned Claims Tribunal has awarded Rs. 3,48,800/- to the claimant -respondent No. 3 and held respondents No. 1-driver, respondent No. 2-owner and the appellant-insurer of the offending vehicle jointly and severally liable to pay the amount of compensation.

2. In brief, respondent No. 3-claimant's case is that on 26-4-2013 at about 8 pm when he was going to Kondagaon in a motorcycle as pillion rider by getting lift from an unknown person, at village Chikhalkhati, the respondent No. 1-driver

of the offending vehicle Indica car bearing registration No. CG 04 FE 7165 by driving the vehicle rashly and negligently dashed the motorcycle from front side, as a result of which he sustained injuries and became permanently disabled. The respondent No. 2 was owner of the aforesaid car. The car was insured with the appellant.

3. The respondents No. 1 and 2 remained ex-parte and had not filed written statement.

4. In brief, the appellant's case is that the car was not insured with it at the time of accident, the respondent no. 1 did not have valid and effective driving licence. Thus, the appellant is not liable to pay compensation.

5. After completion of the trial, the Tribunal passed the aforesaid award.

6. Shri H.B. Agrawal, Sr. Counsel with Shri Pankaj Agrawal, counsel for the appellant argued that the Tribunal has committed illegality in fastening liability upon the appellant because the respondents No. 1 did not have valid driving licence thus, the appeal may be allowed. The impugned award may be set aside as it directs to pay the compensation by the appellant also.

7. None for the respondents at the time of hearing though served through paper publication.

8. Considerable point for the adjudication is that whether at the time of the accident the respondent No. 1 did not have effective and valid driving licence, thus no liability of payment of the compensation may be fastened upon the appellant.

9. In the matter of **Rukmani v. New India Assurance Co.**, [(1998) 9 SCC 160] Hon'ble Supreme Court observed in para 3 which reads as under :-

“3. We have seen the only evidence which the Insurance Company produced in support of the plea. This is the evidence of Inspector of Police who investigated the accident. In his evidence, PW 1 who was the

Inspector of Police, stated in his examination-in-chief, “My enquiry revealed that the 1st respondent did not produce the licence to drive the abovesaid scooter. The 1st respondent even after my demand did not submit the licence since he was not having it.” In his cross-examination he has said that it is the Inspector of Motor Vehicles who is required to check whether the licence is there but he had not informed the Inspector of Motor Vehicles that the 1st respondent was not having a licence since he thought it was not necessary. In our view, this evidence is not sufficient to discharge the burden which was cast on the Insurance Company. It did not summon the driver of the vehicle. No record from the Road Transport Authority has also been produced. In these circumstances, the Insurance Company has not discharged the burden cast upon it under Section 96(2) (b)(ii) of the Motor Vehicles Act, 1939. The impugned order of the High Court is, therefore, set aside and the order of the Tribunal is restored. The appeal is allowed accordingly. No order as to costs.”

10. in the matter of **Branch Manager, Oriental Insurance Co. Ltd. -v- Indirani and ors.** (2018 ACJ 110), Hon'ble Madurai bench of Madras High Court observed in para 9 as under :-

“9. Though the finding of the Tribunal is correct, the persons who are in possession of the documents, namely, driving licence to drive the two wheeler, are bound to produce the driving licence. As per the judgment of the Honourable Supreme Court, it is the burden of proof cast upon the Insurance Company to show that the rider of the two wheeler did not have any driving licence by issuing a notice to the owner of the two wheeler and also by summoning the officials of the Regional Transport Office, but the appellant-Insurance Company did not discharge the same and therefore, the said fixation of 10% negligence on the part of the rider of the two wheeler is set aside.”

11. Looking to the above mentioned judicial precedents laid down in **Rukmani** (supra) and **Branch Manager, Oriental Insurance Co. Ltd. -v- Indirani** (supra), this Court finds that burden of proof that at the time of the accident the respondent No. 1 did not have valid and effective driving licence lies upon the appellant.

12. As per the certified copy of the charge sheet Ex. A-7, the respondent No.

1 was not possessing the driving licence.

13. In the case in hand, the appellant has not examined the concerned police officer who found that the appellant did not have valid driving licence. Though the respondent No. 2 and 3 remained *exparte* but this fact does not dilute the burden of proof lies upon the appellant. Moreover, the appellant neither summoned the respondents No. 1 and 2 nor examined them as its witnesses to substantiate its burden of proof. The appellant also neither summoned any regional transport official nor examined him as its own witness, though the appellant had the opportunity to do so. But he failed to give any explanation for not doing so. In these circumstances and looking to the judicial precedent laid down in **Rukmani** (*supra*), this Court finds that Ex. A-7 is not sufficient to discharge the burden which was cast on the appellant. Thus, this Court finds that Ex. A-7 is not sufficient to show that the respondent No. 1 did not have allegedly valid and effective driving licence at the time of the accident.

14. Looking to the above mentioned facts, circumstances and material placed on record, this Court finds that the appellant failed to prove that, at the time of the accident the respondent No. 1 did not possess effective and valid driving licence, thus no liability of payment of the compensation may be fastened upon the appellant.

15. Looking to the above mentioned facts and circumstances, material placed on record, this Court finds that the appeal is devoid of merit. Thus, the finding of the Tribunal are affirmed to the above extent. The appeal is dismissed.

16. The appellant shall bear his own cost as well as cost of the respondents.

Sd/-
(Sharad Kumar Gupta)
JUDGE