

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A(C) No.369 of 2013****Reserved on 19.11.2019****Pronounced on 29.11.2019**

1. Chumman Lal Sahu, S/o Nand Kumar Sahu Aged About 22 Years R/o Paroda, P.O. Kareli, P.S. Dhamdha, Distt. Durg C.G., Chhattisgarh
2. Ram Lal Sahu R/o Paroda, P.O. Kareli, P.S. Dhamdha, Distt. Durg C.G.

---- Appellants**Versus**

1. Gopal Ji Singh, S/o Manjur Singh Aged About 60 Years R/o Ward No. 55, Near Om Kirana Store, Harinagar, Durg, Katulbod, Distt. Durg C.G., Chhattisgarh
2. Smt. Kamla Devi W/o Gopal Ji Singh Aged About 55 Years R/o Ward No. 55, Near Om Kirana Store, Harinagar, Durg, Katulbod, Distt. Durg C.G.
3. Smt. Bhagyawanti W/o Amresh Singh Aged About 32 Years R/o Ward No. 55, Near Om Kirana Store, Harinagar, Durg, Katulbod, Distt. Durg C.G.
4. Ku. Megha D/o Late Amresh Singh Aged About 11 Years Minor, Thru- Mother Smt. Bhagyawanti, R/o Ward No. 55, Near Om Kirana Store, Harinagar, Durg, Katulbod, Distt. Durg C.G.
5. Bhanupratap Singh S/o Late Amresh Singh Aged About 8 Years Minor, Thru- Mother Smt. Bhagyawanti, R/o Ward No. 55, Near Om Kirana Store, Harinagar, Durg, Katulbod, Distt. Durg C.G., District : Durg, Chhattisgarh
6. The Oriental Insu.Co.Ltd. S/o Thru- Divisional Manager, Permanand Bhawan, G.E. Road, In Front Of Polytechnic College, Durg, Distt. Durg C.G.

----Respondents

For Appellants:	Shri Vivek Sharma, Advocate.
Respondents No.1 to 5:	None, though served.
For Respondent No.6:	Shri Raj Awasthi, Advocate.

Single Bench:Hon'ble Shri Sanjay S. Agrawal, J**C A V Award**

1. This appeal has been preferred by the Owner and driver of the vehicle in question under Section 173 of the Motor Vehicle Act, 1988 (for short 'the Act of 1988') questioning the legality and propriety of the award

dated 07.01.2013 passed by the 2nd Additional Motor Accident Claims Tribunal, Durg (for short 'the Claims Tribunal') in Claim Case No.112/2011, whereby the Claims Tribunal has allowed the Claim in part by awarding a total sum of Rs.27,30,000/- with 6% interest per annum from the date of filing of the Claim Petition till its realization while exonerating the Insurance Company from its liability. The parties to this Appeal shall be referred hereinafter as per their description in the Court below.

2. The facts in nut-shell are that on the fateful day of 04.01.2011, deceased Amresh Singh was going by his motorcycle bearing its Registration No.CG 07-ZR/8407 from Durg to Gandai and was hit vehemently by the offending vehicle "Tata 207" bearing its Registration No.CG 04-ZR/8588 owned by Non-Applicant No.2-Ramlal Sahu, insured with Non-Applicant No.3-The Oriental Insurance Company Limited. At the relevant time, it was being driven in a rash and negligent manner by its driver namely Chummanlal Sahu, Non-Applicant No.1. As a result of which, the alleged accident occurred and the deceased was injured badly, who was admitted into the hospital immediately but was found to be declared as brought dead, giving rise to the institution of the claim enumerated under Section 166 of the Act of 1988 by his legal representative claiming a total amount of compensation to the tune of Rs.42,90,000/- under various heads alleging therein that the deceased, a 35 year old, was employed in 7th Batallion at Gandai and used to earn Rs.20,000/- per month.

3. The aforesaid claim has been contested by the Non-Applicants. The owner and driver of the vehicle in question contested the claim on the ground that the alleged vehicle was not involved in the said accident and

the deceased himself was responsible for the alleged accident, while the insurer, Non-Applicant No.3 refuted to it by submitting *inter alia* that the driver of the offending vehicle, who possessed a Learner's license to drive the "Light Motor Vehicle", was not authorized to drive the alleged offending vehicle, i.e. "Light Goods Vehicle", a transport vehicle.

4. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 04.01.2011 due to rash and negligent driving by the driver of the offending vehicle resulting into the sad demise of Amresh Singh. It held further while referring to the provisions prescribed under Section 7 of the Act of 1988 that the driver of it, who possessed a Learner's license to drive the "Light Motor Vehicle" was not authorized to drive the alleged transport vehicle in absence of an endorsement made therein in this regard. In consequence, the Claims Tribunal, while exonerating the Insurance Company from its liability, awarded a total amount of compensation to the tune of Rs.27,30,000/- with 6% interest per annum from the date of filing of the Claim Petition till its realization.

5. Being aggrieved, the owner and driver of the offending vehicle have preferred this Appeal. Shri Vivek Sharma, learned Counsel appearing for the Appellants submits that while passing the award impugned, the Claims Tribunal has committed an illegality in exonerating the Insurance Company from its liability. According to him, the driver of the offending vehicle, though holding a Learner's license authorized to drive a "Light Motor Vehicle" was, nevertheless entitled to drive the same. While inviting attention to the terms and conditions stipulated in the Insurance policy (Ex.D-1), it is contended that since the vehicle in question was being used

without transporting the goods at the relevant time and the driver of it has driven the same in compliance of the provision prescribed under Rule 3 of the Central Motor Vehicle Rules, 1989 (hereinafter referred to as "Rules, 1989"), therefore, it cannot be held that the driver of it was not entitled to drive the same. In support, he placed reliance upon the decision rendered by the Supreme Court in the matter of National Insurance Co. Ltd. Vs. Swaran Singh and Others reported in **(2004) 3 SCC 297**.

6. Countering the aforesaid contention, it is contended by Shri Raj Awasthi, learned Counsel appearing for Non-Applicant No.3 that the Claims Tribunal, while referring to the provisions prescribed under Section 7 of the Act of 1988, has rightly observed that the driver of the alleged offending vehicle possessing a Learner's license to drive the "Light Motor Vehicle" was not authorized to drive the same i.e. the "Light Goods Vehicle" and therefore, not committed any illegality in exonerating the Insurance Company from its liability.

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

8. Admittedly, the driver of the offending vehicle has possessed a Learner's license and was entitled to drive the "Light Motor Vehicle" as evidenced by his driving license (Ex.D-2). The vehicle in question was a "Light Goods Vehicle", a transport vehicle. According to the driver Chummanlal Sahu, he was driving the alleged vehicle at the relevant time as per the instruction of his instructor namely Anil Kumar while indicating the sign of "L" in red colour on front and rear side of the said vehicle. It reveals further from a bare perusal of his (Chummanlal Sahu) evidence that when the alleged vehicle was driven by him, it was empty and no

goods were there in the said vehicle. His evidence was duly corroborated by the said instructor Anil Kumar, who holds an effective driving license (Ex.D1-C). That apart, it has neither been pleaded nor adduced any evidence by the insurer in order to establish the fact that the alleged vehicle was being used in transporting the goods at the relevant time or the driver of it had driven the same without accompanying his instructor. At this juncture, the terms and conditions stipulated in the insurance policy (Ex.D-1) are required to be examined and the relevant portion of it marked as 'A' to 'A' by the insurer through its witness G. Raja Shiv Kumar (N.A.W-1) reads as under:-

“Any person including insured: Provided that a person driving holds an effective driving license at the time of the accident and is not disqualified from holding or obtaining such a license.

“Provided also that the person holding an effective Learner's license may also drive the vehicle when not used for the transport of goods at the time of the accident and that such a person satisfies the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989.”

9. According to the aforesaid second proviso, it is clear that the driver holding an effective learner's license may drive the vehicle under twin conditions, firstly, when it was used without transporting of goods at the relevant time and, secondly, by such a driver while fulfilling the requirements of Rule 3 of the said Rules, 1989.

10. In the present case, what has been emerged from the evidence of driver Chumman Lal and his instructor Anil Kumar was that the vehicle in question at the relevant time was empty, when it was driven by said Chumman Lal as per the instruction of his instructor in strict compliance of Rule 3 of said Rules, 1989. In such an eventuality, it cannot held that the

driver of the alleged offending vehicle, who was holding the effective Learner's license, was not authorized to drive the same. However, this particular aspect, as visualized herein above, was not taken into consideration by the Claims Tribunal, while exonerating the Insurance Company from its liability. The finding of the Claims Tribunal, exonerating the Insurance Company from its liability holding that the driver of the alleged offending vehicle was not authorized to drive the same and the vehicle in question was being used in violation of the policy, cannot be held to be sustainable. It is accordingly set aside and, held that the alleged offending vehicle was not being used in violation of the insurance policy (Ex.D-1).

11. In the matter of National Insurance Co. Ltd. Vs. Swaran Singh and Others (supra), where a question that arose for determination before the Supreme Court was as to whether the Insurance Company can avoid the liability to indemnify the award on the ground that the vehicle at the time of accident was driven by a person having a Learner's license was answered by holding that the Insurance Company cannot be exonerated from its liability. Paragraph 110 (viii) relevant for the purpose is reproduced herein as under:-

“(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 fulfil the requirements of law or not will have to be determined in each case.”

12. By applying the principles laid down in the aforesaid decision, vis-a-vis, the terms and conditions of the alleged insurance policy (Ex.D-1), as

referred hereinabove, the finding of the Claims Tribunal exonerating the Insurance Company from its liability cannot be held to be sustainable in the eye of law. It is, accordingly, set aside and the Insurance Company is thus held liable to indemnify the insured.

13. In view of the foregoing discussions, the Appeal is allowed. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
JUDGE

Priya