NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1041 of 2013

1. Sanjay Kumar Singh S/o Late B.K. Singh Aged About 36 Years R/o House No. Auto Akasal, B-144, Shakti Nagar, Korba, Distt. Korba C.G., Chhattisgarh

---- Appellant

Versus

1. Ayodhya Prasad Patel, S/o Late Gayaram Aged About 43 Years R/o Porda, Tahsil Gharghoda, District Raigarh C.G.
2. Smt. Radha Bai W/o Ayodhya Prasad Aged About 38 Years R/o Porda, Tahsil Gharghoda, District Raigarh C.G.
3. Punilal Sidar S/o Mitthu Lal Sidar Aged About 27 Years R/o Khajaridhap, Tahsil Bagbahara, Distt. Jashpur C.G., At Present R/o Gudiya, Tahsil Tamnar, Distt. Raigarh C.G.
4. The Oriental Insurance Company Ltd. Through- Branch Manager, The Oriental Insurance Company Ltd., Branch Raigarh C.G.

---- Respondents

For Appellant	:	Shri Manoj K Sinha, Advocate
For Respondent No.4	:	Shri Pankaj Agrawal, Advocate

Order On Board By Hon'ble Shri Justice Parth Prateem Sahu

14/05/2019

1. Appellant - owner of offending vehicle bearing registration No.CG12-ZC-1649 has preferred this appeal questioning correctness of award dated 8.4.2013 passed by learned Motor Accident Claims Tribunal, Raigarh (for short 'the Claims Tribunal') in Claim Case No.24/10 whereby the Claims Tribunal partly allowed claim application of claimants, awarded compensation of Rs.2,42,000/- along with interest @ 6% p.a. and saddled appellant herein with liability of paying

compensation on the ground that offending vehicle was plied in breach of conditions of insurance policy.

2. Brief facts relevant for disposal of this appeal are that on 5.3.2010 Kheer Prasad (since deceased) and his father Shaukilal were going on his motorcycle to village Dongaamhua from village Porda. Shaukilal was driving motorcycle whereas Kheer Prasad was travelling as pillion rider. At about 9.45 p.m. when they reached at Main Road, Jhinkabahal, one truck bearing registration number CG12-ZC-1649, driven by non-applicant No.1, dashed their motorcycle from behind as a result of which Kheer Prasad fell down, came under rear wheel of said truck and died on spot. Accident was reported to Police Station Tamnaar based on which Crime No.38/10 for commission of offence under Section 304A of the Indian Penal Code was registered against non-applicant No.1-driver.

3. Claimants/respondents No.1 & 2 herein, who are parents of deceased, have filed claim application claiming compensation to the tune of Rs.13,05,000/- against non-applicants therein.

4. Non-applicant No.1 & 2 i.e. owner & driver of offending vehicle respectively, filed their reply to claim application and denied all adverse pleadings made in application. They have pleaded that the accident in question was not caused by offending vehicle and that on the date of accident, offending vehicle was fully insured with non-applicant No.3-insurance company. They have further pleaded that on refusal to fulfil demand of compensation made on spot itself, threat was given to burn

offending vehicle, therefore, non-applicant No.2 under compulsion paid Rs.50,000/- in presence of witnesses. On 17.3.2010 also a sum of Rs.1,00,000/- was illegally obtained from non-applicant No.2.

5. Non-applicant No.3 Insurance Company submitted reply to claim application and denied all adverse pleadings made in claim application. It has been pleaded that on the date of accident offending vehicle was plied in breach of condition of insurance policy as its driver was not possessing valid and effective driving license. Further, there was contributory negligence on the part of rider of motorcycle also. On these grounds, the insurance company claimed exoneration from its liability.

6. The Claims Tribunal after appreciating pleadings and evidence available brought on record by respective parties has partly allowed claim application; awarded compensation of Rs.3,46,160/- along with interest @ 6% p.a. and, exonerated insurance company from its liability on the ground that on the date of accident the driver of offending vehicle was not having valid and effective driving license to drive offending vehicle.

7. Learned counsel for appellant-owner of offending vehicle argued that insurance company failed to prove that license was fake and it had not been renewed by Licensing Authority, Raigarh. The Claims Tribunal further erred in deducting one-third towards personal and living expenses of deceased as he was bachelor on the date of accident.

8. Per contra, learned counsel appearing on behalf of

respondent No.4 supported the impugned award passed by the Claims Tribunal and submitted that an employee of Regional Transport Office, Raigarh was examined by insurance company and said employee in his evidence before the Claims Tribunal has specifically stated that there is no entry in register of office regarding issuance of any license having No.P/7141/01, which was seized by police in criminal case. Thus, in view of evidence of Ranjit Singh Toppo (NAW-3), the license (Ex.P-7) is fake.

9. I have heard learned counsel for the parties and perused the record.

10. A bare perusal of driving license (Ex.P-7) shows that it bears No.P/7141/01, it was issued on 12.6.1981 by Licensing Authority, Raipur in name of respondent No.3- Punilal Sidar son of Mittulal Sidar and valid upto 06.07.2011 and license holder was authorized to drive light motor vehicle & heavy goods vehicle. However, a glance of backside of photocopy of license Ex.P-7 would show that it has been issued by Licensing Authority, Jashpur on 7.6.2008; original number of license is P/7141/01 and date of renewal is 6.7.2011. Thus, contents of both sides of driving license (Ex.P-7) do not tally with each other. Both the sides of photocopy of license (Ex.P-7) not only contain two different dates but also different licensing authorities. Most surprising factor is that backside of license (Ex.P-7) bears signature of holder i.e. respondent No.3 herein, and his date of birth is mentioned as 16.4.1983, whereas front side of license reflects date of issuance of

license as 12.6.1981 i.e. just after two years of the birth of license holder. According to R.S. Toppo (NAW-3), Regional Transport Officer, Raigarh, there is no entry in the office register with respect to issuance of license bearing No.P/7141/01. Intimation given by office is Ex.D-2. All these go to show that license produced before the Claims Tribunal was not genuine and at the time of accident the offending vehicle was driven by a person who was not duly licensed. The owner of offending vehicle did not enter into witness box to make statement as to on what basis he kept respondent No.3 in his employment.

11. In the light of above oral and documentary evidence, this Court is of the opinion that the Claims Tribunal has not committed any error in holding that on the date of accident, non-applicant No.1-driver of offending vehicle was not having valid and effective driving license to drive.

12. Coming to next ground urged by learned counsel for appellant that the Claims Tribunal erred in deducting one-third instead of half towards personal & living expenses of deceased. The Claims Tribunal for the purpose of awarding compensation to claimants has taken monthly income of deceased as Rs.4,500/-, but failed to add any amount in the income of deceased towards future prospects. Likewise, on the date of accident deceased was 19 years of age, therefore correct multiplier would be 18 and not 10 as applied by the Claims Tribunal. True it is that in case of a bachelor, 50% of income is required to be deducted towards personal and living

expenses. Admittedly, in case at hand deduction towards personal & living expenses of deceased is not in accordance with the law laid down by Hon'ble Supreme Court, but keeping in mind the fact that the Act of 1988 is a benevolent piece of legislation object of which is to award just & reasonable amount of compensation to injured or legal representatives/ claimants in case of death and considering non-inclusion of future prospects in income of deceased, wrong application of multiplier by Claims Tribunal while calculating compensation and total amount of compensation, it does not appear that the amount awarded is more than the entitlement of claimants or a bonanza to them. Therefore, I am not inclined to interfere with the impugned award passed by the Claims Tribunal.

13. In the result, the appeal is bereft of merit and hence dismissed.

Sd/-
(Part Prateem Sahu)
Judge

roshan/-