**AFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 381 of 2013**

1. Paras Ram Dewangan, aged about 34 years, son of Shyam Lal Dewangan, resident of Subhash Ward No.9, Jagdalpur, District Bastar (CG) (Owner Truck No. CG 17-H 1818)

**---- Appellant**
**Owner**

**Versus**

1. Soman Das, son of Kewal Das, aged about 58 years,
2. Smt. Dharmin Bai, wife of Soman Das, aged about 55 years,
3. Tilochan, son of Bhola Das, aged about 12 years,
4. Kumari Gashwani, daughter of Bhola Das, aged about 10 years,

   Respondents No. 3 & 4 are minor through legal guardian, grand father, Soman Das

   All resident of Village Borid (Gujra), Tahsil Dellirajhara, P.S. Balod, District Balod (CG) - **Claimants**
5. Narendra Kumar @ Chintaram Baghel, son of Ramdhar Baghel, aged about 28 years, resident of Village Dashapal, P.S. Bakawand, Jagdalpur, District Baster (CG) (**Driver**)
6. Divisional Manager, Sriram General Insurance Company Limited, E-8 Railko, Industrial Area, Seetapura, District Jaipur, Rajasthan (**Insurance Company**)

**---- Respondents**

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| For Appellant | : | Shri Shobhit Koshta, Advocate. |
| For Respondent Nos.1 to 4 | : | Shri R.K. Pali, Advocate. |
| For Respondent No.5 | : | None though served. |
| For Respondent No.6 | : | Shri S.S. Rajput, Advocate. |

**Hon'ble Shri Gautam Chourdiya, J**

**Judgment On Board**

**24/06/2019**

This appeal is filed by the owner/non-applicant No.2 under Section 173 of the Motor Vehicles Act, 1988 against the award dated 5.3.2013 passed by Additional Motor Accident Claims Tribunal, Balod, Distt. Durg (CG) in Claim Case No.53/2012 awarding total compensation of Rs.7.18 lacs with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants No. 1 & 2/driver & owner jointly and severally while exonerating non-applicant No.3/insurance company.

02. As per claim petition, on 29.6.2012 Bhola Das (deceased) as a pillion rider was going to Dhamtari on motorcycle being ridden by his brother. However, while they were standing near a shop, at that time non-applicant No.1 by driving vehicle truck bearing registration No. CG 17H 1818, owned by non-applicant No.2 and insured with non-applicant No.3, in a rash and negligent manner dashed Bhola Das as a result of which Bhola Das died on the spot. On report being made, crime was registered against non-applicant No.1.

03. On claim petition being filed by the claimants, parents and children of the deceased, under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

04. Learned counsel for the appellant/owner submits that though he has also challenged the quantum of compensation in the memo of appeal but he is not pressing the said ground and is confining his arguments only to the extent of liability. He submits that the Tribunal has wrongly exonerated the insurance company mainly on the basis that charge sheet (Ex.D/2) was filed against owner & driver of the vehicle under Sections 279, 337, 338 & 304A of IPC and Sections 3/181 & 5/181 of the Motor Vehicles Act, 1988 (in short "the Act, 1988") as well by the police.

In this case, true copy of the driving licence duly attested by Notary was produced before the Tribunal, which goes to show that non-applicant No.1 was having a valid and effective licence on the date of accident to drive the offending vehicle. However, no enquiry in respect of the said driving licence was conducted by the insurance company nor any evidence in rebuttal of the same was adduced by it before the Tribunal. Even NAW-1 Chandrashekhar, Sales Executive of Sriram General Insurance Co. Ltd. has admitted in examination-in-chief as well as in cross-examination that no enquiry was conducted by him or the insurance company to ascertain whether non-applicant No.1 was having a valid and effective driving licence on the date of accident or whether the driving licence produced by the owner before the Tribunal belongs to non-applicant No.1/driver.

05. Learned counsel for the appellant further submits that non-applicants No. 1 & 2 submitted their joint written statement wherein it was specifically pleaded in para-16 that name of non-applicant No.1 is Chintaram @ Narendra Kumar @ Lokeshwar and in the driving licence his name is mentioned as Lokeshwar. Though copy of the driving licence was supplied to the insurance company, but the insurance company failed to verify the same and did not discharge the burden lying upon it. This apart, non-applicant No.2 Paras Dewangan (NAW-2) has stated on oath before the Tribunal that while engaging non-applicant No.1 as a driver he had seen his driving licence and he was working as his driver for the last one year. Thus, even if the driving licence of non-applicant No.1 is fake, since the owner while appointing him as a driver had satisfied himself about his competence of driving and seen his driving licence, there being no willful breach on the part of the owner, the insurance company cannot be absolved of its liability. Reliance has been placed on the decisions of the Hon'ble Supreme Court in ***Lal Chand Vs. Oriental Insurance Co. Ltd., 2006 AIR SCW 4832*** and ***Ram Chandra Singh Vs. Rajaram and others, Civil Appeal No.8145 of 2018, dated 14th August, 2018***.

06. Learned counsel for respondents/claimants supporting the contention of the appellant's counsel submits that though no counter appeal or cross-objection has been filed by the claimants, however, since no future prospects have been granted to the claimants, considering the age of the deceased i.e. 35 years and nature of his job i.e. carpenter, in view of decision of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, 40% may be granted towards future prospects.

07. On the other hand, learned counsel for the respondent/insurance company opposing the contention of the appellant submits that as per charge sheet filed against non-applicants No. 1 & 2 under Sections 3/181 and 5/181 of the Act, 1988, it is evident that the driver was not having a valid and effective driving licence and the owner was also guilty of permitting non-applicant No.1 to drive his vehicle without licence. He submits that the driving licence produced before the Tribunal is issued in favour of one Lokeshwar whereas name of non-

applicant No.1 is Narendra Kumar @ Chintaram and there is no evidence adduced by the owner & driver to prove that non-applicant No.1 is also known as Lokeshwar. Thus, the Tribunal considering all the relevant aspects of the matter has rightly exonerated insurance company and the said finding does not call for any interference.

08. Heard learned counsel for the parties and perused the material available on record.

09. In this case, no counter appeal has been filed by the insurance company or the claimants.

10. It is not disputed by the parties that in the joint written statement filed by non-applicants No. 1 & 2 it has been specifically mentioned in para-16 that non-applicant No.1 is known as Chintaram @ Narendra Kumar @ Lokeshwar. Non-applicant No.2 Paras Dewangan (NAW-2) in his evidence has also stated that the driving licence produced before the Tribunal belongs to non-applicant No.1 Narendra @ Lokeshwar. He has further stated that while engaging non-applicant No.1 as a driver he had seen his driving licence and that he was working as his driver for the last one year. This evidence remained uncontroverted in cross-examination. Thus, it is apparent that the owner after taking due care and caution, seeing driving licence of non-applicant No.1 and satisfying himself about the driving skill of non-applicant No.1 had appointed him as driver. Therefore, there appears to be no willful default on the part of the owner.

Apart from the above, true copy of the driving licence duly notarized was produced before the Tribunal which bears the name of Lokeshwar S/o Late Shri Ramadhar Baghel, R/o Sargipal, Block-Bakawand, Tahsil-Jagdalpur, Distt. Bastar. In the claim petition as well as in the charge sheet non-applicant No.1 is described as "*Narendra Kumar @ Chintaram Baghel, S/o Ramadhar Baghel, R/o Dasapal, Police Station – Bakawand, Jagdalpur, Distt. Bastar (CG)*. Though the said document is not proved but copy of the same was also supplied to the insurance company. NAW-1 Chandrashekhar, Sales Executive of Sriram General Insurance Co. Ltd. has admitted in examination-in-chief as well as in cross-examination that no enquiry was conducted by him or the insurance company to ascertain whether non-applicant No.1 was having a valid and effective driving licence on the date of accident or whether the driving licence produced by the owner before the Tribunal belongs to non-applicant No.1/driver. Thus, the insurance company has failed to discharge the burden lying upon it by adducing any evidence in rebuttal with regard to driving licence produced before the Tribunal by the driver & owner of the vehicle and as such, it could not prove breach of any policy conditions on the part of owner of the vehicle.

11. On the basis of aforesaid discussions, this Court is of the opinion that the Tribunal was not justified in exonerating the insurance company and fastening liability on non-applicants No. 1 & 2/driver & owner of the vehicle.

12. Since there is no cross-appeal or cross-objection filed by the claimants, this Court is not inclined to consider the quantum of compensation at the instance of the claimants.

13. In the result, the appeal is allowed with modification in the impugned award to the extent that it is non-applicant No.3/insurance company which is jointly and severally along with non-applicants No. 1 & 2/driver & owner liable to pay the entire amount of compensation to the claimants as awarded by the Tribunal. If the owner has already deposited the compensation and the same has been paid to the claimants, he shall have the right to recover the same from the insurance company in accordance with law.

**Sd/**

**(Gautam Chourdiya)**

**Judge**

Khan