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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 448 of 2013

- The Oriental Insurance Co. Ltd. Thru-Divisional Manager, Divisional Office, Madina Building, Jail Road, Raipur, Distt. Raipur C.G., (Insurer of Truck bearing Registration No.CG/04/G/1171) (Respondent No.3)

---- Appellant

Versus

1. Nammu Singh Dhruv, S/o Late Veer Singh Dhruv, Aged About 55 Years R/o Paragaon, Thana-Gobra Naya Para, Tah. Rajim, Distt. Raipur C.G., (Non-appellant No.1/Claimant No.1)

2. Smt. Vidhya, W/o Nammu Singh Dhruv, Aged About 50 Years R/o Paragaon, Thana-Gobra Naya Para, Tah. Rajim, Distt. Raipur C.G., (Non-appellant No.2/Claimant No.2)

3. Mukesh Dhruv, S/o Nammu Singh Dhruv, Aged About 24 Years R/o Paragaon, Thana-Gobra Naya Para, Tah. Rajim, Distt. Raipur C.G., (Non-appellant No.3/Claimant No.3)

4. Satya Prakash Singh, S/o Keshav Prasad Singh, Aged About 24 Years R/o Royal Goods Carrier, Tatibandh, Raipur, Distt. Raipur C.G., (Non-appellant No.4/Respondent No.1) (Driver of Truck No. CG/04/G/1171)

5. Rajendra Pal Singh Gill S/o Sameshwar Singh Gill R/o Royal Goods Carrier, Tatibandh, Raipur C.G., (Non-appellant No.5/Respondent No.2)

---- Respondents

For Appellant	:	Smt. Chitra Shrivastava, Advocates.
For Respondent Nos.1 to 3	:	None, though served.
For Respondent Nos.4 & 5	:	Shri Satyendra Shrivas appears on behalf of Shri Devershi Thakur, Advocate.

Hon'ble Shri Justice Sanjay Agrawal

Order On Board

29.07.2019

1. This Miscellaneous Appeal has been preferred by Non-Applicant No.3/The Oriental Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') questioning the legality and propriety of the award dated 28.02.2013 passed by the 3rd Additional Motor Accident Claims Tribunal Raipur, District Raipur (C.G.) (for short 'the Claims Tribunal') in Claim Case No. 16/2011, by which the learned Claims Tribunal while allowing the claim in part has awarded the total amount of compensation to the tune of Rs.4,52,200/- with 6% interest per annum from the date of filing of the claim petition till its realization while fastening the liability upon the Insurance Company. The parties to this appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated the facts of the case are that on 07.04.2011 at about 08:00 am deceased Ashok Dhruv was coming along with his friend Mannu Dhruv by his motor cycle while sitting behind him from village Paragaon to primary school Doma and as soon as they reached near 'Navagaon Chowk', it was dashed vehemently by the offending vehicle (Truck) bearing Registration No.CG/04/G/1171. At the relevant time, the vehicle in question was being driven by its driver Satya Prakash Singh (Non-Applicant No.1) in a rashness and negligent manner, as a result of which, the deceased Ashok Dhruv and his friend Mannu Dhruv both fell down and received multiple injuries and died on the spot. The vehicle in question was owned by Rajendra Pal Singh Gill (Non-Applicant No.2), insured with Non-Applicant

No.3/The Oriental Insurance Co. Ltd., the appellant herein. According to the claim petition, the deceased Ashok Dhruv, who was 27 years old, was a 'Shiksha Karmi' and used to earn Rs.7,120/- per month, and therefore, the claimants have claimed total amount of compensation to the tune of Rs.46,22,000/-.

3. Non-Applicant Nos.1 & 2, the driver and owner of the vehicle in question were treated as ex parte. While, Non-Applicant No.3/The Oriental Insurance Co. Ltd., by disputing the monthly income of the deceased has contested the claim mainly on the ground that the driver of the offending vehicle was not holding the valid and effective driving license, and therefore, no liability could be fastened upon it.
4. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 07.04.2011 at 08:00 am due to rashness and negligent driving of the driver of offending vehicle (Truck), resulting into the sad demise of Ashok Dhruv, who was 25 years old and used to earn Rs.7,120/- per month while performing his duty as a 'Shiksha Karmi'. It held further that driver of the offending vehicle was holding the effective and valid driving license and insurer has failed to establish the fact that it was being used in violation of the policy. In consequence, while fastening the liability upon the Insurance Company, awarded total amount of compensation to the tune of Rs.4,52,200/- with 6% interest per annum from the date of filing of claim petition till its realization.
5. Being aggrieved, Non-Applicant No.3/Insurance Company has preferred this appeal. Smt. Chitra Shrivastava, learned counsel

for the Appellant submits that the award impugned as passed while holding that the driver of the offending vehicle was holding the effective and valid driving license is apparently contrary to law. She submits further that the alleged driving license of the driver of the offending vehicle was in fact issued in the name of one Shiv Kumar son of Gondram and not in the name of Satya Prakash Singh, the driver of the offending vehicle and was duly proved while summoning the license clerk of the RTO, Raipur, namely, Rajesh Kumar Bhargawa, as he deposed very specifically that the alleged driving license was issued in the name of said Shiv Kumar. However, without considering the same in its proper manner, the Claims Tribunal has erred in fastening the liability upon the Insurance Company.

6. On the other hand learned counsel for Non-Applicant Nos.1 & 2 (driver and owner of the offending vehicle) while supporting the award impugned submits that the said witness (Rajesh Kumar Bhargawa) has, however, stated very specifically at paragraph 6 that the driver of the offending vehicle, namely, Satya Prakash Singh was holding the effective and valid driving license at the time of incident, and therefore, the Claims Tribunal, while considering his testimony, has not committed any illegality in fastening the liability upon the Insurance Company.

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

8. The main contention of the appellant-insurer herein is that the driver of the offending vehicle namely, Satya Prakash Singh was not holding the effective and valid driving license at the time of

incident, and therefore, the Insurance Company cannot be held liable to indemnify the owner.

9. In order to establish the aforesaid fact, an application enumerated under Order 16 Rule 1 (3) of the Code of Civil Procedure, 1908 was made by the Non-Applicant No.3 before the Claims Tribunal praying for summoning the Officer of R.T.O. Raipur along with the original Register as its witness in order to prove the authenticity of the license bearing No. S/13915/R/02. Pertinently to be noted here that the driving license bearing No.C.G.-04/2002/0013915 was seized from the driver of the offending vehicle, namely, Satya Prakash vide Seizure Memo dated 07.04.2011 (Ex.P.9). While considering this fact, the Claims Tribunal, vide its order dated 24.09.2012 allowed the said application and directed for examination of both these licenses. In pursuance thereof, one Rajesh Kumar Bhargawa, the license clerk of the said RTO, Raipur was examined by the insurer, who in turn, has stated that the license number mentioned in the said application, which was filed under Order 16 Rule 1 (3) of C.P.C., was issued in the name of Shiv Kumar son of Gondram. However, it was stated by him at paragraph 5 that the License bearing No.CG/04/2002/0013915, alleged to have been seized from Satya Prakash Singh vide Seizure Memo (Ex.P/9), was in his (Satya Prakash Singh) name and he was authorized to drive the motorcycle, light motorcycle and heavy Goods vehicle. It was deposed further by him at paragraph 6 that said Satya Prakash, the driver of the offending vehicle, was authorized to drive the same on 07.04.2011, the date on which the alleged accident occurred.

10. In view of the aforesaid statements, it is evident that the driver of the offending vehicle was authorized to drive the alleged offending vehicle and in absence of any other cogent and reliable evidence led by the insurer, it is difficult to hold that the driver was not holding the effective and valid driving license, as contended by the learned counsel for the appellant. Consequently, the finding so recorded by the Tribunal holding that the driver of the offending vehicle was holding the effective and valid license at the relevant time deserves to be and is hereby affirmed.
11. In view of the foregoing discussions, I do not find any substance in this appeal. The appeal, being devoid of merits, is hereby dismissed. No order as to costs.

Sd/-
(**Sanjay Agrawal**)
Judge

Deepti Jha