AFR

HIGH COURT OF CHHATTISGARH, BILASPUR
M. A. (C) No. 1205 of 2014

United India Insurance Company Limited Branch Office Bramha Road P.S. and Tah. Ambikapur District Surguja (CG) through its Divisional Manager Divisional Office 2nd Floor Gurukripa Towers Vyapar Vihar Road Bilaspur District Bilaspur (CG)

---- Appellant

Versus

1. Smt. Dhaneshwari Singh Wd/o Late Amar Sai Singh aged about 60 years
2. Bihari Singh S/o Late Amar Sai Singh aged about 41 years
3. Ramjit Singh S/o Late Amar Sai Singh aged about 37 years
4. Ajit Singh S/o Late Amar Sai Singh aged about 29 years
   Respondent No.1 to 4 all are R/o village Khala P.S. Darima Tah. Ambikapur District Surguja (CG)
5. Hiralal Tirkey S/o Sukhal Tirkey aged about 56 years R/o Pratappur Mahuari P.S. Darima Tah. Ambikapur District Surguja (CG)

---- Respondents

For Appellant	:	Mr. Dashrath Gupta, Advocate
For Respondent No.1 to 4	:	Mr. Dashrath Prajapati, Advocate
For Respondent No.5	:	Mr. A. N. Pandey, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

06/05/2019

1. By this instant appeal, appellant/Insurance Company has challenged the legality, validity and propriety of impugned award dated 30/08/2014 passed by Fourth Additional Motor Accident Claims Tribunal, Ambikapur, District Surguja, C.G. (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.161/2013, whereby learned Claims Tribunal partly allowed the claim application filed by claimants and awarded an amount of Rs.1,98,000/- as

compensation in a death case and fastened the liability of payment of amount of compensation on the Insurance Company.

2. Brief facts for disposal of this appeal are that on 13/03/2013 at about 5.30 pm non-applicant No.1/respondent No.5 while driving his Suzuki motorcycle bearing registration No.CG-15-ZH-7502 (hereinafter referred to as 'offending motorcycle') dashed Moped bearing registration No.CG-15-CE-2531 driven by one Amarsai. In the aforementioned accident, Amarsai sustained grievous injuries over his head, leg, chest along with other parts of body. During the course of treatment at District Hospital Ambikapur, he succumbed to those injuries.

3. On account of death of Amarsai, respondents No.1 to 4 who are legal representatives of deceased filed a claim application under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') before the competent Claims Tribunal claiming Rs.8,41,000/- as compensation on the grounds mentioned therein.

4. Non-applicant No.1/respondent No.5 submitted reply to claim application and denied all the adverse pleading mentioned in the claim application. It has been pleaded that accident took place due to negligence of deceased himself. It was further pleaded that on the date of accident, offending motorcycle was insured with the appellant/Insurance Company.

5. Appellant/Insurance Company submitted separate reply to the claim application and pleaded that on the date of accident, driver of

offending motorcycle i.e. non-applicant No.1 was not possessing valid and effective driving licence and therefore, there was violation of conditions of insurance policy.

6. On appreciating the pleadings and evidence available on record, learned Claims Tribunal framed as many as six issues for consideration and after conclusion of trial held that non-applicant No.1/respondent No.5 was possessing valid and effective driving licence and after holding non-applicant No.1-driver of offending motorcycle to be negligent awarded a sum of Rs.1,98,000/- as compensation along with interest @ 7.5% per annum from the date of filing of claim application till its realization against non-applicants therein including Insurance Company.

7. Learned counsel appearing for appellant/Insurance Company submitted that accident took place on 13/03/2013 whereas licence was initially issued to non-applicant No.1 on 18/09/2001, which was valid up to 16/01/2013 and subsequently, licence was renewed by Licencing Authority on 15/03/2013. He further submitted that original licence which was issued on 18/09/2001 could not be renewed for a period of about two months from its expiry, therefore, licence could not be renewed from the date of its expiry as mentioned in original licence and it will be renewed from the date of renewal mentioned in the renewal column.

8. Learned counsel appearing for respondents No. 1 to 4 submitted that learned Claims Tribunal passed just and proper award which do not call for any interference.

9. Learned counsel appearing for respondent No.5 submitted that he was validly issued licence by competent authority and the same licence was renewed and therefore, he was having valid and effective driving licence.

10. I have heard learned counsel appearing for appellant/Insurance Company and perused the record carefully.

11. Perusal of photocopy of licence marked as Ex. D1C bears date of first issuance i.e. 18/09/2001 and validity of licence is shown to be 14/03/2018. Appellant/Insurance Company submitted Extract of Licence particulars issued by Transport Department, Government of Chhattisgarh and Licensing Authority, Ambikapur (Surguja) on 11/02/2014 with an application dated 14/04/2014 which is available on record.

12. From perusal of particulars of licence of Hira Lal, which is placed on record at page No. 53 mentions issuance details in which, it has been mentioned that initially licence was issued on 18/09/2001 and has been shown to be valid up to 15/01/2013, but at Clause (C) of the document, it has been made for subsequent transaction in which, renewal date of licence has been shown to be 15/03/2013 and its validity period has been shown to 14/03/2018. In the same column, it has also been mentioned the period of driving licence not valid, if

any. In said column, it has been shown and mentioned very specifically that original driving licence issued on 18/09/2001 remained not valid from 16/01/2013 to 14/03/2013.

13. From the aforementioned entries showing the period of driving licence not to be valid, it is clear that driving licence was valid from its original date of issue i.e. 18/09/2001 to 15/01/2013 only.

14. In view of aforementioned specific dates and particulars issued by the Transport Department, it is evident that driving licence of non-applicant No.1 Hiralal Tirkey remained not valid from 16/01/2013 till 14/03/2013, therefore, on the date of accident i.e. 13/03/2013, non-applicant No.1/respondent No.5 (driver of offending motorcycle) was not possessing valid and effective driving licence.

15. Section 15 of M.V. Act provides for renewal of driving licence, which is reproduced herein below:-

> "**15. Renewal of driving licences.** —(1) Any licensing authority may, on application made to it, renew a driving licence issued under the provisions of this Act with effect from the date of its expiry:
>
> Provided that in any case where the application for the renewal of a licence is made more than thirty days after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal:
>
> Provided further that where the application is for the renewal of a licence to drive a transport

vehicle or where in any other case the applicant has attained the age of forty years, the same shall be accompanied by a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8, and the provisions of sub-section (4) of section 8 shall, so far as may be, apply in relation to every such case as they apply in relation to a learner's licence.

(2) An application for the renewal of a driving licence shall be made in such form and accompanied by such documents as may be prescribed by the Central Government.

(3) Where an application for the renewal of a driving licence is made previous to, or not more than thirty days after the date of its expiry, the fee payable for such renewal shall be such as may be prescribed by the Central Government in this behalf.

(4) Where an application for the renewal of a driving licence is made more than thirty days after the date of its expiry, the fee payable for such renewal shall be such amount as may be prescribed by the Central Government:

Provided that the fee referred to in sub-section (3) may be accepted by the licensing authority in respect of an application for the renewal of a driving licence made under this sub-section if it is satisfied that the applicant was prevented by good and sufficient cause from applying within the time specified in such-section (3):

Provided further that if the application is made more than five years after the driving licence has ceased to be effective, the licensing authority may refuse to renew the driving licence, unless the applicant undergoes and passes to its satisfaction the test of competence to drive referred to in sub-section (3) of section 9.

(5) Where the application for renewal has been rejected, the fee paid shall be refunded to such extent and in such manner as may be prescribed by the Central Government.

(6) Where the authority renewing the driving licence is not the authority which issued the driving licence it shall intimate the fact of renewal to the authority which issued the driving licence."

16. The proviso appended to sub-section (1) of Section 15 of M.V. Act very specifically provides that if application for renewal of a licence is made after lapse of period of thirty days from its expiry, then the driving licence shall be renewed with effect from the date of its renewal.

17. In view of aforementioned specific provisions available under the M.V. Act, it is amply clear that on the date of accident, non-applicant No.1/respondent No.5 was not possessing valid and effective driving licence.

18. The issue of effect of not making an application for renewal of driving licence within the grace period of thirty days as provided under Section 15 of M.V. Act has been considered by Hon'ble Supreme

Court in the matter of **Ishwar Chandra and Others v. Oriental Insurance Company Limited and Others**[1], in which, Hon'ble Supreme Court held as under:-

> "8. From a bare perusal of the said provision, it would appear that the licence is renewed in terms of the said Act and the rules framed thereunder. The proviso appended to Section 15(1) of the Act in no uncertain terms states that whereas the original licence granted despite expiry remains valid for a period of 30 days from the date of expiry, if any application for renewal thereof is filed thereafter, the same would be renewed from the date of its renewal. The accident took place on 28.04.1995. As on the said date, the renewal application had not been filed, the driver, did not have a valid licence on the date when the vehicle met with the accident."

19. Further, in the matter of **Ram Babu Tiwrai v. United India Insurance Company Limited and Others**[2], Hon'ble Supreme Court held as under:-

> "18. It is beyond any doubt or dispute that only in the event an application for renewal of licence is filed within a period 30 days from the date of expiry thereof, the same would be renewed automatically which means that even if an accident had taken place within the aforementioned period, the driver may be held to be possessing a valid licence. The proviso

1 **2007 (2) T.A.C. 393 (S.C.)**
2 **2008 AIR SCW 6512**

appended to sub-section (1) of Section 15, however, clearly states that the driving licence shall be renewed with effect from the date of its renewal in the event the application for renewal of a licence is made more than 30 days after the date of its expiry. It is, therefore, evident that as, on renewal of the licence on such terms, the driver of the vehicle cannot be said to be holding a valid licence, the insurer would not be liable to indemnify the insured.

The second proviso appended to sub-section (4) of Section 15 is of no assistance to the appellant. It merely enables the licensing authority to take a further test of competent driving and passing thereof to its satisfaction within the meaning of Sub-section (3) of Section 9. It does not say that the renewal would be automatic. It is, therefore, a case where a breech of the contract of insurance is established. This aspect of the matter has been considered by this Court in National Insurance Co. Ltd. v. Kusum Rai & Ors. [(2006) 4 SCC 250] holding :

> “11. It has not been disputed before us that the vehicle was being used as a taxi. It was, therefore, a commercial vehicle. The driver of the said vehicle, thus, was required to hold an appropriate licence therefor. Ram Lal who allegedly was driving the said vehicle at the relevant time, as noticed hereinbefore, was holder of a licence to drive a light motor vehicle only. He did not possess any licence to drive a commercial vehicle. Evidently,

> therefore, there was a breach of condition of the contract of insurance. The appellant, therefore, could raise the said defence."

It was furthermore held :

> "14. This Court in National Insurance Co. Ltd. v. Swaran Singh and Others [(2004) 3 SCC 29] clearly laid down that the liability of the Insurance Company vis-a-vis the owner would depend upon several factors. The owner would be liable for payment of compensation in a case where the driver was not having a licence at all. It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle."

It was opined :

> "16. In a case of this nature, therefore, the owner of a vehicle cannot contend that he has no liability to verify the fact as to whether the driver of the vehicle possessed a valid licence or not."

19. The principle laid down in Kusum Rai (supra) has been reiterated in Ishwar Chandra & Ors. v. Oriental Insurance Co. Ltd. & Ors. [(2007) 10 SCC 650], referring to sub-section (1) of Section 15 of the Act, this Court stated the law, thus :

> "9. From a bare perusal of the said provision, it would appear that the licence is renewed in terms of the said Act and the rules framed thereunder. The proviso appended to Section 15 (1) of the Act in no uncertain terms states

> that whereas the original licence granted despite expiry remains valid for a period of 30 days from the date of expiry, if any application for renewal thereof is filed thereafter, the same would be renewed from the date of its renewal. The accident took place on 28-4-1995. As on the said date, the renewal application had not been filed, the driver did not have a valid licence on the date when the vehicle met with the accident."

20. In view of aforementioned specific provisions of M.V. Act and authoritative pronouncement of Hon'ble Supreme Court, undoubtedly, on the date of accident i.e. 13/03/2013, non-applicant No.1/respondent No.5 was not possessing valid and effective driving licence because the licence has been renewed after two months of its expiry only on 15/03/2013, therefore, licence of non-applicant No.1/respondent No.5 would become effective only from the date of its renewal and not retrospectively from the date of its expiry as mentioned in original licence.

21. In view of above discussions, impugned award passed by learned Claims Tribunal making Insurance Company liable to pay the amount of compensation is set aside and it is held that the liability to satisfy the award is on the owner and driver of the offending motorcycle. The deceased was a third party. The Motor Vehicles Act is a benevolent piece of legislation and made to compensate the injury/death of third party under Section 149 of M.V. Act and further taking into consideration that the appellant/Insurance Company has already paid

major portion of amount of award i.e. Rs. 1,50,000/- out of Rs. 1,98,000/- by virtue of interim order passed by this Court and also considering the law laid down by Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. v. Swaran Singh and Others**[3]**,** wherein it is held as under :-

> "110. The summary of our findings to the various issues as raised in these petitions is as follows:
>
> (i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.
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> (ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163 A or Section 166 of the Motor Vehicles Act, 1988, *inter alia,* in terms of Section 149(2)(a)(ii) of the said Act.
>
> (iii) The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves

3 **(2004) 3 SCC 29**

defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licenced driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section

149(2) of the Act.

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

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims *inter se* between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes *inter se* between insurer and the insured. The decision rendered on the claims and disputes *inter se* between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in sub-section (4) with the proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the

> insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims *inter se* might delay the adjudication of the claims of the victims."

22. As held in preceding paragraphs, the Insurance Company is not having any liability to satisfy the award, but is having the liability under law first to pay the amount of compensation and then to recover it from insured. The Hon'ble Supreme Court in the matter of **Shamanna and Another v. Divisional Manager, Oriental Insurance Company Limited and Others**[4] held as under:-

> "5. In the case of third party risks, as per the decision in *National Insurance Company Ltd. v. Swaran Singh and others (2004) 3 SCC 297*, the insurer had to indemnify the compensation amount payable to the third party and the insurance company may recover the same from the insured. Doctrine of "pay and recover" was considered by the Supreme Court in Swaran Singh case wherein the Supreme Court examined the liability of the insurance company in cases of breach of policy condition due to disqualifications of the driver or invalid driving licence of the driver and held that in case of third-party risks, the insurer has to indemnify the compensation amount to the third party and the insurance company may recover the same from the insured. Elaborately considering the insurer's contractual liability as well as statutory liability vis-a-vis the claims of third parties, the Supreme Court

4 **(2018) 9 SCC 650**

issued detailed guidelines as to how and in what circumstances, “pay and recover” can be ordered. In para 110, the Supreme Court summarised its conclusions as under: (SCC pp. 341-42)

> “110. The summary of our findings to the various issues as raised in these petitions is as follows:
>
> (i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.
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> (ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(a)(ii) of the said Act.
>
> (iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the

insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefore would be on them,

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.

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

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in sub-section (4) with the proviso there under and sub-section (5) which are intended to cover specified contingencies mentioned therein to

> enable the insurer to recover the amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims,”
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> (emphasis supplied)

6. As per the decision in Swaran Singh case, onus is always upon the insurance company to prove that the driver had no valid driving licence and that there was breach of policy conditions. Where the driver did not possess the valid driving licence and there are breach of policy conditions, “pay and recover” can be ordered in case of third party risks. The Tribunal is required to consider

> “as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver... does not fulfill the requirements of law or not will have to be determined in each case.”

23. In view of above, appellant/Insurance Company is directed to first satisfy the entire award and thereafter to recover it from owner of offending motorcycle in the manner as provided in the matter of **Shamanna** (supra).

24. In the result, appeal filed by appellant/Insurance Company is allowed in part and the impugned award passed by learned Claims Tribunal is modified to the extent indicated above.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh