AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 467 of 2013

- The New India Assurance Co. Ltd. through Its Divisional Manager, Divisional Office, 2nd Floor, Rama Trade Centre, Above Axis Bank, Opp. Rajiv Plaza, Bus Stand Road, Bilaspur, Tah. & Distt. Bilaspur (CG)

---- Appellant

Versus

1. Brijmati, W/o Late Bhajjuram Aged About 27 Years, Occupation-Wife
2. Ku. Yamuna D/o Late Bhajjuram Aged About 9 Years
3. Basant Kumar S/o Late Bhajjuram Aged About 6 Years
4. Ku. Santoshi D/o Late Bhajjuram Aged About 5 Years

   Respondent No.2 to 4 are minor, through their mother Smt. Brijmati, W/o Late Bhajjuram (respondent No.1)

5. Jagmohan S/o Chullusai Aged About 59 Years, Occupation-agriculture.
6. Smt. Bifaiya W/o Jagmohan Aged About 52 Years

   Respondent No.1 to 6 all are R/o Kunwarpur, PO & PS Lakhanpur, Tah. Ambikapur, District Surguja (CG)

7. Shambhunath Soni S/o Govind Prasad Soni Aged About 34 Years R/o Bhanpuri, P.O. Bhanpuri, Tah. And Distt. Raipur C.G., At Present Sattipara, Ambikapur, Tah. Ambikapur, Distt. Surguja (CG)

   (Owner of Truck No.CG04/J/8978)

8. Sunil Yadav S/o Baijnath Yadav Aged About 22 Years R/o Behind Holy Cross School, Subhash Nagar, Gandhi Nagar, P.O. Ambikapur, P.S. Gandhi Nagar, Ambikapur, Tah. Ambikapur, Distt. Surguja (CG).

   (Driver of Truck No.CG04/J/8978)

---- Respondents

&

MAC No. 793 of 2013

1. Shambhunath Soni S/o Govind Prasad Soni Aged About 34 Years R/o Bhanpuri, Post- Bhanpuri, Tah. And Distt. Raipur C.G., Present

Add.- Sattipara, Ambikapur, Tah. Ambikapur,Civil and Revenue District Surguja (C.G.)

---- Appellant

Versus

1. Brijmati, W/o Late Bhajjuram Aged About 27 Years, Occupation-Wife
2. Ku. Yamuna D/o Late Bhajjuram Aged About 9 Years
3. Basant Kumar S/o Late Bhajjuram Aged About 6 Years
4. Ku. Santoshi D/o Late Bhajjuram Aged About 5 Years

   Appellant No.2 to 4 legal guardian their mother Smt. Brijmati, W/o Late Bhajjuram.

5. Jagmohan S/o Chullusai Aged About 59 Years, Occupation-agriculture.
6. Smt. Bifaiya W/o Jagmohan Aged About 52 Years

   All are R/o Kunwarpur, PO & PS Lakhanpur, Tah. Ambikapur, District Surguja (CG)

7. Sunil Yadav S/o Baijnath Yadav Aged About 22 Years R/o Behind Holy Cross School, Subhash Nagar, Gandhi Nagar, Post Ambikapur, P.S. Gandhi Nagar, Ambikapur, Tah. Ambikapur, Distt. Surguja C.G., District : Surguja (CG) [Driver of vehicle bearing registration No.CG/04J/8978)
8. The New India Insurance Company Limited, D.O. No. 130200 through Branch Manager, Plot No.C6, M.C.L. Wandre Premises Society Limited, 1st Manjil Bandra Kurla Complex, Wandre (East) Mumbai, District : Mumbai, Maharashtra [Insurer of vehicle bearing registration No.CG/04J/8978)

---- Respondents

MAC No.467/2013

For Appellant	:	Mr. Dashrath Gupta, Advocate
For Respondent No.1 to 6	:	Ms. Priyanka Mehta, Advocate
For Respondent No.7	:	Mr. S.R. Sinha, Advocate.
For Respondent No.8	:	None.

MAC No.793/2013

For Appellant	:	Mr. S.R. Sinha, Advocate
For Respondent No.1 to 6	:	Ms. Priyanka Mehta, Advocate
For Respondent No.7	:	None.
For Respondent No.8	:	Mr. Dashrath Gupta, Advocate.

Order On Board By Hon'ble Shri Parth Prateem Sahu

17/05/2019

1. As above two appeals arise out of award dated 31.1.2013 passed by the learned 1st Additional Motor Accident Claims Tribunal, Ambikapur (for short 'the Claims Tribunal') in Claim Case No.89/11, they are being disposed off by this common order.

2. Appellant Insurance Company has filed MAC No.467 of 2013 seeking setting aside of direction of pay and recover issued by Claims Tribunal on the ground that the same is bad in law in view of judgment dated 13.9.2011 passed by this Court in MAC No.1453/2009.

3. Appellant-owner of offending vehicle has filed MAC No.793/13 challenging exoneration of insurance company from its liability on the ground that there was no violation of any of the conditions of insurance policy. Appellant has also challenged quantum part of the impugned judgment.

4. Brief facts of the case are that on 28.5.2007 deceased Bhajjuram & his wife Brijmati were returning from Ambikapur to his village Kunwarpur on motorcycle bearing registration number MP27-D-6099, driven by one Hirasai. On the way, at about 9 p.m. truck bearing registration number CG04-J-8978, driven by non-applicant No.2, dashed said motorcycle as a result, said Hiralal and Bhajjuram sustained grievous injuries. Bhajjuram died in hospital on 29.5.2007 while undergoing treatment.

5. Claimants, who are wife & children of deceased Bhajjuram filed claim application before competent Claims Tribunal on account of death of deceased Hiralal in a motor accident claiming Rs.36,45,000/- as compensation against non-applicants mentioned therein.

6. Non-applicant No.1- owner of offending vehicle, submitted reply to claim application denying all adverse averments made against him and pleaded that on the date of accident,

driver of offending vehicle was having valid and effective driving license; the offending vehicle was insured with non-applicant No.3 Insurance Company, therefore, compensation, if any, awarded by Claims Tribunal then Insurance Company would be liable to pay the same.

7. Non-applicant No.2-driver of offending vehicle did not appear before the Claims Tribunal and therefore he was proceeded ex-parte.

8. Non-applicant No.3-Insurance Company filed its reply to claim application and pleaded that offending vehicle was not involved in accident in question. Owner & insurer of motorcycle have not been impleaded as parties to the proceeding, therefore, claim application is not maintainable. On the date of accident, driver of offending vehicle was not holding valid and effective driving license. There was no valid permit and fitness to ply offending vehicle on road. Hence, there was violation of conditions of insurance policy and therefore the insurance company is not liable to indemnify the insured.

9. On the basis of pleadings and evidence brought on record by both the parties, Claims Tribunal vide impugned award partly allowed claim application by holding that accident occurred due to rash and negligent driving of offending vehicle by its driver, there was violation of condition of insurance policy as driver of offending vehicle was not possessing valid & effective driving license and awarded a sum of Rs.14,15,000/- as compensation. Although the Claims Tribunal exonerated insurance company from its liability but directed to first pay amount of compensation and then to recover the same from owner & driver of offending vehicle, jointly & severally.

10. Appellant-Insurance Company has assailed the impugned award on the ground that direction of pay and recover is

bad in law in view of judgment dated 13.9.2011 passed by this Court in MAC No.1453/2009.

11. Appellant – owner of offending vehicle has challenged exoneration of insurance company on the ground that there was no violation of any of conditions of insurance policy.

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

13. In the given facts and circumstances of case and grounds urged by learned counsel for respective parties, it will be beneficial to first decide the grounds urged by learned counsel for appellant-owner of offending vehicle in MAC No.793/13 i.e. whether the Claims Tribunal was justified in exonerating insurance company from its liability by holding that there was breach of condition of insurance policy, and whether loss of dependency, as calculated by Claims Tribunal, is just and proper in the facts and circumstances of case?

14. So far as the first ground is concerned, perusal of record would show that vide order dated 7.9.2012 one Shri Ashish Kumar Gupta, Advocate was appointed as Commissioner for recording evidence of Licensing Authority, Motor Vehicle Department, Varanasi (UP) on commission. Said Commissioner submitted his report dated 12.12.2012 before the Claims Tribunal specifically mentioning therein that he has shown particulars of license of driving to the Assistant Divisional Transport Officer, Varanasi and it was informed that no license bearing No.4897967/ Varanasi / 97 has been issued on 17.1.2001. Copy of said license has been shown to be received from the Claims Tribunal. Photocopy of license has been marked as Ex.D2-C. The Commissioner appointed by Claims Tribunal for recording evidence of witnesses on behalf of non-applicant No.3 has recorded evidence of one Shri Markandey Prasad

Chourasia, who is In-charge of Licensing Department. His evidence was recorded on 29.11.2012 and title of deposition sheet bears Case No.89/11 & 90/11.

15. Markandey Prasad Chourasia (NAW3-1) could not make specific statement in his evidence as to in whose favour license in question was issued. He stated that in report (Ex.D-1) there is no mention regarding name of holder of License No. 4897967/ Varanasi / 97. He further admitted that register produced before the Commissioner was neither verified by concerned Regional Transport Authority nor there was seal of RTO on each page. Even there was no pagination and this register was rebounded. He admitted that he does not remember name of licensing authority posted on 17.1.2001.

16. Ravi Shrivastava, Advocate-cum-Investigator of Insurance Company, is another witness who was examined on commission. He has stated that he had not got verified and compared license sent to him bearing No. 4897967/ Varanasi / 97 from the registered maintained by concerned licensing authority to ensure that it has been issued in the name of Sunil.

17. From the above evidence available on record it is apparent that Office Assistant of Divisional Transport Office, Varanasi has stated that earlier verification report & particulars of license were issued by the then In-charge of License Department namely Shri Madhuvan Prasad Shastri. Though number mentioned in photocopy license of Sunil Yadav tallies with the number mentioned in the register of Licensing Authority, but as per evidence, license bearing No.4897967/ Varanasi / 97 has been issued in the name of one Govind son of Shobhnath Pandey.

18. Appellant-owner of offending vehicle appeared before the Claims Tribunal and admitted in his cross-examination that

he has seen original driving license of driver and kept one photocopy of the same with him, which was filed by him before the Claims Tribunal. From the evidence of appellant-owner it is clear that he satisfied himself by seeing original driving license produced before him by driver on the date of his engagement as driver of offending vehicle. Perusal of copy of driving license, which is at Page No.66 of the record of Claim Case No.89/11 arising out of same accident, shows that license was issued for light motor vehicle, medium goods vehicle and heavy goods/passenger vehicle i.e. LMV, MGV & HGV. Number of driving license has been mentioned as '4897967'. Date of issuance is mentioned as '17.1.2001' and it also contains an endorsement with respect to validity period of license i.e. from 17.11.2007 to 16.11.2010

19. Prima facie, photocopy of license produced by owner of offending vehicle before the Claims Tribunal appears to be a license authorizing its holder i.e. Sunil Kumar Yadav, to drive light motor vehicle, medium goods vehicle & heavy goods vehicle. However, when this license was sent for verification to the office of Motor Vehicle Department, Varanasi, it was unearthed that this license is not genuine. It is not the case that license available on record, which was issued in the name of driver of offending vehicle, does not bear authorization authorizing him to drive offending vehicle i.e. heavy goods vehicle. This license not only authorizes its holder to drive heavy goods vehicle but also to drive LMV & MGV. In the matter of **United Insurance Company Ltd. Vs. Lehru & ors** reported in **(2003) 3 SCC 338**, the Hon'ble Supreme Court has dealt with issue of fake license and observed thus:-

> "20.When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out

> whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that Insurance Companies expect owners to make enquiries with RTO's, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149 (2) (a) (ii). The Insurance Company would not then be absolved of liability. If it ultimately turns out that the licence was fake the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skandia 's Sohan Lal Passi 's and Kamla 's case. We are in full agreement with the views expressed therein and see no reason to take a different view."

20. A three Judges Bench of Hon'ble Supreme Court while dealing with issue of fake license in the matter of **National Insurance Company Ltd. Vs. Swarn Singh** reported in **(2004) 3 SCC 297** has held thus:-

> "92.It may be true as has been contended on behalf of the petitioner that a fake or forged licence is as good as no licence but the question herein, as noticed herein-before, is whether the insurer must prove that the owner was guilty of the wilful breach of the conditions of the insurance policy or the contract of insurance. In Lehru's case (supra), the matter has been considered at some details. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of law in terms whereof the insurer is to establish wilful breach on the part of the insured and not for the purpose of its dis-entitlement from raising any defence or the owners be absolved from any liability whatsoever. We would be dealing in some details with this aspect of the matter a little later.
>
> 110. The summary of our findings to the various issues as raised in these petitions are 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

(ii) 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 eg. disqualification of driver or invalid driving license of the driver, as contained in sub-section (2)(a (ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving license 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 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 licensed driver or one who was not disqualified to drive at the relevant time.

(iv) xxxxxxx.

(v) xxxxxxx.

(vi) xxxxxx.

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving license 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) xxxxxxxxxxxxxxx

(ix) xxxxxXxxxxxxxxx

(x) xxxxxXxxxxxxxxx

(xi)xxxxxXxxxxxxxxx"

21. Recently, in Pepsu Road Transport Corporation vs. National Insurance Company Ltd. Reported in 2013 AIR SCW 6505 the Hon'ble Supreme Court while considering issue of fake license has held thus:-

"6. The matter was subsequently considered by a three-Judge Bench of this Court in National Insurance Company Limited vs. Swaran Singh & others (2). The said Bench was of the view that in case the insured did not take reasonable and adequate care and caution to verify the genuineness or otherwise of the licence, the liability would still be open-ended and will have to be determined on the basis of facts of each case. The relevant discussions are available at paragraphs 92, 99, 100 and 101, which are extracted below:

> "92. It may be true as has been contended on behalf of the petitioner that a fake or forged licence is as good as no licence but the question herein, as noticed hereinbefore, is whether the insurer must prove that the owner was guilty of the wilful breach of the conditions of the insurance policy or the contract of insurance. In Lehru case, the matter has been considered in some detail. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of the law in terms whereof the insurer is to establish wilful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or for the owners to be absolved from any liability whatsoever."

> "99. So far as the purported conflict in the judgments of Kamla and Lehru is concerned, we may wish to point out that the defence to the effect that the licence held by the person driving the vehicle was a fake one, would be available to the insurance companies, but whether despite the same, the plea of default on the part of the owner has been established or not would be a question which will have to be determined in each case."

> "100. This Court, however, in Lehru must not be read to mean that an owner of a vehicle can under no circumstances have any duty to make any enquiry in this respect. The same, however, would again be a question which would arise for consideration in each individual case."

> "101. The submission of Mr. Salve that in Lehru case, this Court has, for all intent and purport, taken away the right of insurer to raise a defence that the licence is fake does not appear to be correct. Such defence can certainly be raised but it will be for the insurer to prove that the insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver."

7. Swaran Singh's case (supra) was subsequently considered by a two- Judge Bench of this Court in National

Insurance Company Limited vs. Laxmi Narain Dhut [3]. It was explained that:

> "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 duly licensed driver or one who was not disqualified to drive at the relevant time…"

22. In the above quoted judgments, the Hon'ble Supreme Court has observed that it is duty of owner of a vehicle to peruse driving license and satisfy himself that person concerned is licensed to drive his vehicle. If aforesaid fact is pleaded by owner/insured then he satisfies requirement of law so far as it relates to provisions of the Act of 1988. The Supreme Court has also shifted burden on insurer to prove that insured has handed over his vehicle to driver even after having knowledge that driver is not authorized or licensed to drive category of vehicle for which he was engaged.

23. In the case at hand, *prima facie* the license available in record bears license number, seal & signature of licensing authority and also an endorsement authorizing its holder to drive heavy goods vehicle along with other vehicles and therefore a common prudent man cannot be expected to doubt genuineness of such license on a bare look of the same. Though, by way of verification from the office of concerned licensing authority, it has been established by insurance company that license issued in the name of driver of offending vehicle is a fake but it failed to prove that despite having knowledge about the fact that driver engaged by him is not duly authorized to drive offending vehicle, the owner has handed over offending vehicle to him or even after having knowledge that license is not genuine. In case at hand, owner of vehicle not only entered

into witness box but also stated that he looked into license placed before him by driver and also kept copy of the same.

24. For the foregoing discussions and in view of law laid down by Hon'ble Supreme Court in above cited judgements, in the opinion of this Court, the Claims Tribunal committed an error in exonerating insurance company from its liability on the ground of breach of condition of insurance company i.e. on the date of accident, driver of offending vehicle was holding a fake license. This being the position, said finding recorded by Claims Tribunal is not sustainable and is accordingly set aside. The insurance company cannot be absolved from its liability merely on the ground that license was found to be fake on its verification from the department.

25. In view of above finding that owner of offending vehicle is not liable to satisfy impugned award, I am not inclined to deal with other ground raised by appellant-owner of offending vehicle with respect to quantum of compensation.

26. In the appeal filed by Insurance Company it has been urged that the Claims Tribunal committed error in directing insurance company to first pay amount of compensation to claimants and then to recover the same from owner of offending vehicle. Since this Court has set aside exoneration of insurance company itself, this ground has become non-existent. Needles to mention here that the Hon'ble Supreme Court in catena of its decisions has held that in cases where insurer satisfactorily proved his defence in accordance with provisions of Section 149 (2) read with sub-section (7), the Claims Tribunal can direct insurance company to first pay compensation and then recover the same from owner of offending vehicle. Insurance Company is liable to be reimbursed by insured

for the compensation and other amount which it has been compelled to pay third party under the award of Claims Tribunal. The Supreme Court in the matter of **Oriental Insurance Company Limited v. Nanjappan** reported in **AIR 2004 SC 1631** has also laid down the manner in which amount directed to be paid by insurer can be recovered from the insured.

27. In view of above discussions;

- MAC No.467/13 preferred by appellant Insurance Company being sans merit is liable to be and is hereby dismissed.

- MAC No.793/13 filed by appellant owner of offending vehicle is allowed. Impugned award so far as it relates to exoneration of insurance company and direction regarding pay and recover is hereby set aside. Appellant owner of offending vehicle is exonerated from its liability and insurance company is directed to pay entire amount of compensation to the claimants, as awarded by Claims Tribunal, in accordance with terms mentioned in the award. Rests of conditions of impugned award shall remain as it is.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-