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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 505 of 2014

- The New India Assurance Company Limited, Through**-** Divisional Manager, 1st Floor, Jeevan Bhima Nigam Bhawan, Pandri, Raipur (C.G.)

---- Appellant/non-applicant No.3/Insurer

Versus

1. Sunil Sahu, S/o Shri Dujendra Sahu, Aged 23 years, R/o Sanjay Nagar, Raipur, Tahsil & District Raipur (C.G.)

   (Claimant)

2. Mahendra Sona, S/o Shri Harisona, Aged about 19 years, R/o Vandana Auto Ki Gali Ramkund, Raipur (C.G.)

   (Driver/Non-applicant No.1)

3. M/s Ravi Glass Agency R/o C10-11, Rishabh Complex, M.G. Road, Raipur (C.G.)

   (Owner/Non-applicant No.2)

---- Respondents

For Appellant/Insurer	:	Shri Raj Awasthi, Advocate
For Respondent No. 1/Claimant	:	None
For Respondent No. 2/Driver	:	Shri Rajat Agrawal, Advocate
For Respondent No.3/Owner	:	None

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

21.02.2019

1. This appeal has been preferred by the Appellant/non-applicant No.3 under Section 173 of the Motor Vehicles Act, 1988 against the award dated 28.02.2014 passed by the Fourth Additional Motor Accident Claims Tribunal, Riapur (C.G.) in Claim Case No. 124 of 2012 challenging the liability because of non-submission of the driving licence by non-applicants No. 1 & 2/rider and owner of the offending vehicle.

2. The Claimant-Sunil Sahu claimed compensation of Rs.5,80,165/- by filing a claim petition under Section 166 of the Motor Vehicles Act for injuries sustained by him in the motor accident.

3. Facts of the case, in brief, are that on 28.05.2011 Claimant- Sunil Sahu while crossing the road on foot in front of Ramkrishna Care Hospital, non-applicant No.1- Mahendra Sona, rider of the offending vehicle- Hero Honda bearing registration No. CG-04/DC/5260, which was owned by non-applicant No.2 and was insured with Appellant/non-applicant No.3, riding the said Hero Honda in a rash and negligent manner, dashed Sunil Sahu, as a result thereof, Sunil Sahu sustained grievous injuries on his head, legs, elbow and other parts of the body.

4. The learned Tribunal, in the impugned award has awarded a compensation of Rs.45,800/- in favour of the Appellant/Claimant with interest @ 6% per annum from the date of application till its realization and has fastened the liability upon the Insurance Company/Appellant along with non-applicants No. 1 & 2 jointly and severally to pay compensation to the Claimant.

5. Learned counsel for the Appellant/Insurance Company submits that as per Ex.-D/2, a notice was issued by the Insurance Company to submit driving licence of the offending vehicle by non-applicant No.1/rider of the offending vehicle, but non-applicant No.1 has not submitted any document relating to the driving licence of the offending vehicle and has failed to supply copy of the same. He further submits that non-applicants No. 1 & 2 were *ex parte* before the Tribunal. He further submits that as per seizure memo Ex.-P/5, no any document seized by the police regarding driving licence, therefore, non-applicant No.1/the rider of the offending vehicle, was not having a valid and effective driving licence at the time of accident. Therefore, there is specific breach of policy conditions and the Tribunal has wrongly fastened liability on the Insurance Company alongwith non-applicants No.1 & 2 jointly and severally.

6. Learned counsel for Respondent No.2/non-applicant No.1 opposes the contention made by learned counsel for the Appellant/Insurance Company.

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

8. It is not disputed that as per Ex.-P/1, charge-sheet was filed against non-applicant No.1, rider of the offending vehicle, under Sections 279, 337 & 338 IPC and Section 3/181 of the Motor Vehicles Act. As per seizure memo (Ex.-P/5), only offending vehicle, R.C. Book & insurance policy were seized by the police from non-applicant No.1 on 06.06.2011. During investigation, no driving licence has been seized by the police from non-applicant No.1. On 16.01.2014 a notice had been sent to non-applicant No.1/rider of the offending vehicle by the Insurance Company by registered post for submitting driving licence, receipt thereof as Ex.-P/3 and as per acknowledgement (Ex.-D/4), notice was served upon non-applicant No.1, but as demanded by Insurance Company, driving licence has not been submitted by non-applicant No.1. Thereafter, the Insurance Company had sent a notice (Ex.-P/5) to non-applicant No.2, registered owner of the offending vehicle, by registered post and receipt thereof as Ex.-P/6 & acknowledgement (Ex.-D/7) which was duly served upon non-applicant No.2, but no driving licence has been submitted by the owner of the offending vehicle.

9. In the facts and circumstances of the case, it is found that sincere effort has been made by the Insurance Company/non-applicant No.3 to produce the driving licence of non-applicant No.1, rider of the offending vehicle, but rider of the offending vehicle/non-applicant No.1 and the owner/non-applicant No.2 have failed to submit the driving licence and other relevant documents of the offending vehicle as demanded by the Insurance Company. Therefore, it can be presumed that non-applicant No.1/rider of the offending vehicle was not having a valid and effective driving licence at the time of accident which occurred on 28.05.2011 and there is specific breach of policy conditions. As per policy Ex.-D/1, insurance policy, driving licence is mandatory condition for driving the vehicle under Section 3 of the Motor Vehicles Act. In view of the above, there is specific breach of policy condition proved by the Insurance Company/Appellant that the non-appplicant No.1, rider of the offending vehicle, was not having a valid and effective driving licence at the time of accident.

10. Insurance Company/non-applicant No.3 examined Aasharam Nirmalkar as

NAW-1, who specifically stated that non-applicant No.1, rider of the offending vehicle, was not having a valid and effective driving licence at the time of accident. He also stated that as demanded by Insurance Company to submit driving licence and other relevant documents of the offending vehicle from non-applicants no. 1 & 2, they have not submitted the same. Therefore, the Insurance Company has proved this fact that there is a breach of policy conditions. No evidence to the contrary has been adduced by non-applicants No. 1 & 2/rider and owner.

11. Section 134 of the Motor Vehicles Act deals with duty of driver in case of accident and injury to a person. As per Section 134 (c) of the Motor Vehicles Act, insured has to give the following information in writing to the insurer, who has issued the certificates of insurance, about the occurrence of the accident, namely:–

(i) insurance policy number and period of its validity;
(ii) date, time and place of accident;
(iii) particulars of the persons injured or killed in the accident;
(iv) name of the driver and the particulars of his driving licence.

Explanation. – For the purposes of this section the expression "'driver' includes the owner of the vehicle.

But, in the present case, non-applicants No.1 & 2/rider & owner of the offending vehicle have failed to comply with Section 134 of the Motor Vehicles Act. Looking to facts and circumstances of the case and the evidence available on record, non-applicants No.1 & 2 failed to submit or produce the driving licence of non-applicant No.1 after demanding by the Insurance Company and it is clear breach of policy conditions.

12. Considering the facts and circumstances of the case and particularly the fact that it was proved by the Insurance Company that on the date of accident, the rider of the offending vehicle was not having a valid and effective driving licence and the rider and owner of the offending vehicle have not produced any document relating to the offending vehicle which was required by the Insurance Company and the charge-sheet was filed against non-applicant No.1 under Section 3/181 of the Motor Vehicles Act on account of there being a specific breach of policy condition, the finding of the Tribunal regarding fastening of liability on the Appellant/non-applicant No.3 is hereby set aside and driver & owner/non-applicants No. 1 & 2 are held jointly and severally liable to pay compensation to the Claimant.

13. In the matter of ***Manuara Khatun and others*** Vs. ***Rajesh Kumar Singh and others, (2017) 4 SCC 796***, the Supreme Court held as under:

> "13. The only question, which arises for consideration in these appeals, is whether the appellants are entitled for an order against the Insurer of the offending vehicle, i.e., (respondent No.3) to pay the awarded sum to the appellants and then to recover the said amount from the insured (owner of the offending vehicle-Tata Sumo)-respondent No.1 in the same proceedings.
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> 14. The aforesaid question, in our opinion, remains no more res integra. As we notice, it was subject matter of several decisions of this Court rendered by three Judge Bench and two Judge Bench in past, viz., National Insurance Co. Ltd. vs. Baljit Kaur & Ors., (2004) 2 SCC 1, National Insurance Co. Ltd. vs. Challa Upendra Rao & Ors., (2004) 8 SCC 517, National Insurance Co. Ltd. vs. Kaushalaya Devi & Ors., (2008) 8 SCC 246, National Insurance Co. Ltd. vs. Roshan Lal, (2017) 4 SCC 803 and National Insurance Co. Ltd. vs. Parvathneni & Anr., (2009) 8 SCC 785.
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> 15. This question also fell for consideration recently in Manager, National Insurance Company Limited vs. Saju P. Paul & Anr., (2013) 2 SCC 41 wherein this Court took note of entire previous case law on the subject mentioned above and examined the question in the context of Section 147 of the Act. While allowing the appeal filed by the Insurance Company by reversing the judgment of the High Court, it was held on facts that since the victim was travelling in offending vehicle as "gratuitous passenger" and hence, the Insurance Company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, this Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the Insurance Company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of "pay and recover".
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> 16. R.M. Lodha, J. (as His Lordship then was and later became CJI) speaking for the Bench held in paras- 20 and 26 as under: (Saju P. Paul Case)"

> “20. The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the Insurance Company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle (Respondent 2 herein).
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> 26. The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in Baljit Kaur, (2004) 2 SCC 1 and Challa Upendra Rao, (2004) 8 SCC 517 should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, the claimant was 28 years old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to the stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The Insurance Company has already deposited the entire awarded amount pursuant to the order of this Court passed on 1-8-2011 (National Insurance Co. Ltd. vs. Saju P. Paul) and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent No.1) may be allowed to withdraw the amount deposited by the Insurance Company before this Court along with accrued interest. The Insurance Company (the appellant) thereafter may recover the amount so paid from the owner (Respondent 2 herein). The recovery of the amount by the Insurance Company from the owner shall be made by following the procedure as laid down by this Court in Challa Upendra Rao (supra).”

19. We find no merit in any of the submissions. Firstly, as mentioned above, we find marked similarity in the facts of this case and the one involved in Saju P. Paul's Case (supra). Secondly, merely because the compensation has not yet been paid to the claimants though the case is quite old (16 years) like the one in Saju P. Paul's Case (supra), it cannot be a ground to deny the claimants the relief claimed in these appeals. Thirdly, this Court has already considered and rejected the argument regarding not granting of the relief of the nature claimed herein due to pendency of the reference to a larger Bench as would be clear from Para 26 of the

judgment in Saju P. Paul's case (supra). That apart, learned counsel for the appellants stated at the bar that the reference made to the larger Bench has since been disposed of by keeping the issue undecided. It is for this reason also, the argument does not survive any more.

20. It is for all these reasons, we find no good ground to take a different view that the one consistently being taken by this Court in all previous decisions, which are referred supra, in this regard.

21. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Company (respondent No.3) – they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Company-respondent No.3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo)-respondent No.1 in execution proceedings arising in this very case as per the law laid down in Para 26 of Saju P. Paul's case quoted supra."

14. Keeping in view of the decisions of the Hon'ble Supreme Court in the matter of *Manuara Khatun* (supra), the fact that as per Ex.-D/1, insurance policy, the offending vehicle was duly insured with non-applicant No.3 and Claimant was a third party, this Court feels it proper to order for pay and recover in this case. Hence, the Appellant/The New India Assurance Company Limited is directed to pay the awarded sum to the Claimant and then recover the same from non-applicants No. 1 & 2/the driver and owner (Mahendra Sona & M/s Ravi Glass Agency) of the offending vehicle as per law laid down in Manager, National Insurance Company Limited Vs. Saju P. Paul & Anr., (2013) 2 SCC 41.

15. In the result, the appeal is allowed in part. The award is modified to the above extent. Rest of the conditions of the award shall remain intact.

16. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

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