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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 964 of 2014

- National Insurance Company Limited Thru- Branch Manager, Office- G.E. Road, Raipur, Thru- Divisional Manager, National Insu.Co.Ltd., Kosabadi, Korba, Distt. Korba, Chhattisgarh

---- Appellant

Versus

1. Sageer Ahmad, S/o Basir Ahmad Aged About 44 Years

2. Smt. Hajeera Khatun W/o Sageer Ahmad Aged About 40 Years

Both R/o village Purela, P.S. Manghata, Tah. Raniganj, Distt. Pratapgarh U.P., Presently R/o office of Ali Ahmed Bus Near Anand Hotel, Distt. Bilaspur, Chhattisgarh

3. Mehbat S/o Mobin R/o Dharampur Hainsi, P.O. And Thana- Manghata, Distt. Pratapgarh U.P., Thru- Primenet Global Limited, PIL Champa, Distt. Janjgir-Champa, Chhattisgarh

4. Primenet Global Limited PIL Champa, Distt. Janjgir-Champa, Chhattisgarh

---- Respondents

For Appellant	:	Shri Raj Awasthi, Advocate
For Respondents- 1 and 2/ Claimants	:	Shri Shyam Tekchandani, Advocate
For Respondent- 3	:	Shri Viprasen Agrawal, Advocate on behalf of Shri Omprakash Agrawal, Advocate
For Respondent- 4	:	None appears

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

26.06.2019

1. Appellant- Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, 'Act of 1988'), challenging impugned award dated 15.05.2014 passed in claim case No.151/2008 by

Additional Claims Tribunal, Katghora, District Korba (for short, 'Claims Tribunal') whereby learned Claims Tribunal allowed claim application in part and awarded a total sum of Rs.3,44,000/- as compensation in a death case.

2. Brief facts relevant for disposal of this appeal are that on 19.7.2008 Imtiaz was working as helper on a truck bearing No.CG-11-AB-0332 (hereafter referred to as 'offending truck'). Respondent- 3/non-applicant-1, driver of offending truck switched on hydraulic operative system in order to unload ash and while trolley of truck was moving upwards, it came into contact with electric cable, as a result of which Imtiaz died due to electrocution. Matter was reported to concerned Police Station, based on which crime bearing No.142 of 2008 was registered for commission of offence punishable under section 304 A of IPC against respondent- 3.

3. Claimants, who are parents of deceased filed claim application before competent Claims Tribunal claiming Rs.7,50,000/- as compensation on the grounds mentioned therein.

4. Respondent-3/non-applicant 1, who is driver of offending truck, despite service of notice did not appear before learned Claims Tribunal and was proceeded *ex-parte*.

5. Respondent-4/non-applicant 2, who is owner of truck, submitted reply to claim application and pleaded that deceased was not a regular employee of offending truck, and denied the fact of accident. It was further pleaded that on the date of accident, driver of offending truck was possessing valid and effective driving licence to drive vehicle and there was contributory negligence on the part of deceased himself also. Income of deceased as pleaded by the claimants has also been denied.

6. Non-applicant-3/ Insurance Company also submitted reply to claim application and pleaded that accident took place due to self negligence, Electricity department ought to have been impleaded as party because there is involvement of electric cable in the accident and therefore, claim application is not maintainable. Further it was pleaded that on the date of accident driver of offending truck was not possessing valid and effective driving licence to drive vehicle and therefore, there is violation of conditions of Insurance Policy. Non-applicant-2 even after having knowledge that non-applicant 1/driver was not possessing valid and effective driving licence, permitted and handed over offending vehicle to non-applicant 1.

7. On appreciation of pleadings and evidence placed on record by learned counsel for the parties, learned Claims Tribunal held that accident took place due to negligence on the part of respondent-1, who was driver of offending truck which was owned by respondent-4 and insured by appellant/ non-applicant-3. Learned Claims Tribunal held that it could not be proved that the licence possessed by driver was not a valid and effective driving licence and awarded a total sum of Rs.3,44,000/- along with interest @ 6% from the date of filing of claim application and fastened liability upon driver, owner and Insurance Company (non-applicants-1, 2 and 3), jointly and severally.

8. Learned Counsel for appellant/Insurance Company submitted that learned Claims Tribunal committed error in arriving at a finding that Insurance Company failed to prove the fact that on the date of accident driver of offending truck was not having valid and effective driving licence to drive the vehicle. He further submits that two licences were placed on record by claimants. One, which was seized by Police, is said to be issued by the office of Regional Transport Officer, Pratapgarh (UP) and another licence is said to be issued from Regional Transport Office, Allahabad. On verification, the licence, which was seized by Police during the course of investigation, was found to be fake. In another licence, validity period has not been mentioned and therefore, he submits that finding recorded by learned Claims Tribunal with respect to issue No.5 is erroneous and liable to be set aside. The learned counsel also argued that the claim application was not maintainable as the accident was not at public place.

9. Per contra, learned counsel appearing on behalf of respondent-4/non-applicant-2, who is owner of offending truck, submits that it is a Company and in its reply to claim application itself it was specifically pleaded that driver of offending truck was engaged by the Company, after verifying and looking to the licence of driver and satisfying it to be a true, valid and effective driving licence. The driver was tested by making him to drive the motor vehicle. It was also pleaded that on the date of accident deceased was working temporarily on daily wages with non-applicant 1 in the offending truck, and on the date of accident offending truck was insured with non-applicant-3 / Insurance Company. He submits that there is no violation of condition of Insurance Policy and supported the impugned award.

10. Learned counsel appearing on behalf of claimants/respondents- 1 & 2 supported the impugned award.

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

12. Perusal of record would show that driver of offending truck/ non-applicant-1 even after service of notice, did not appear and was proceeded *ex-parte.*

13. Perusal of seizure memo, Ex.P/7 would show that Police seized copy of licence along with other documents in which licence number has been mentioned as 4917/M/14/PR/P10, showing its validity up to 17.09.2010. From perusal of copy of licence which is made available on record it is clear that licence number mentioned in seizure memo is different from licence number mentioned in copy of licence. Last number mentioned in it has been differently mentioned in seizure memo. Perusal of the photocopy of the licence would show that register number of licence is mentioned as 4917/M-14-IPR/P/01 date of issue is 17.03.2001 and validity period is mentioned as 18.09.2007 to 17.09.2010 for a period of 3 years.

14. Non-applicant-2/Company(owner) examined Pravesh Kumar Chaturvedi as NAW-1 who was working as Deputy General Manager with Company. He stated that he was working in the Company since 2003. In his evidence he specifically stated that driver of offending truck was engaged as driver to drive vehicle after looking into his licence and satisfying that it was a valid and effective driving licence; and also looking to the validity period mentioned in it. He also stated that he also took driving test before engagement of non-applicant 1 as driver.

15. Looking to material available on record, particularly Ex.P/7 Seizure Memo by which Police seized licence, there is information with respect to RC Book of offending truck, Insurance Policy having validity up to 15.01.2009, permit having validity up to 19.01.2012 and driving licence bearing No.4917/M/14/PR/P10 (wrongly written the number) having validity up to 17.09.2010 ie for 3 years. Aforementioned documents have been seized by Police when they were submitted before them by one Virendra Singh, who was working in Prakash Industries.

16. In view of above, there is ample material available on record to arrive at a conclusion that licence which was seized was perused by employer and only thereafter engaged non-applicant 1/respondent-3 as driver. Copy of licence was produced by one of the employees of Prakash Industries before the Police Station along with other documents of offending truck. From the contents of seizure memo, it is apparent that the licence was produced by the employee of non-applicant 2. This supports the contention of employer that before engaging, licence of non-aplicant-1 was looked into and prima facie finding it to be correct, driver was engaged.

17. Licence which has been sent for verification by Insurance Company was issued by licensing Authoriy, Pratapgarh, UP.

18. Statement of Pravesh Kumar that licence which he looked into and satisfied was issued from office of Allahabad could not be taken as correct. Statement made by Pravesh Kumar Yadav that licence which he looked into was the licence of Allahabad and when the licence which was submitted by office of Prakash Industries before Police along with other documents of truck that was seized and verified by Insurance Company from the office of licensing authority, Pratapgarh which also bears validity period from 18.09.2007 to 17.09.2010. So far as other licence available on record said to be issued from office of Allahabad is concerned, the said licence is not produced before learned Claims Tribunal by non-applicant-2 but claimants have not made any statement as to how they came into possession of said licence. The licence said to be issued from Allahabad office, details of which were mentioned in Ex.D1 issued from Office of Allahabad. Appellant/Insurance Company has got the licence verified from Office and placed on record as Ex.D1.

19. Appellant/Insurance Company also got examined one Narendra Yadav (AW1), who is an employee of Regional Transport Office, Allahabad to prove the particulars of licence, Ex.D1. They also examined one Jaisingh (AW2) who is Senior Assistant, working in Regional Transport Authority, Pratapgarh (UP), who in his evidence specifically stated that licence bearing No.4917/M-29/PR/P/07 was issued on 27.10.2007 in the name of one Shri Mansur, s/o Musteek. It was not issued in name of driver of offending truck. He further pleaded that from his office, no licence was issued in name of Mehtab Alam, driver of offending truck.

20. Though learned Claims Tribunal while deciding issue- 5, it has taken into consideration the particulars of licence issued by Licensing Authority, Allahabad and evidence of witness namely, Narendra Yadav (AW1), who was examined on behalf of Insurance Company to prove particulars of licence number mentioned in Ex.D1 and held that Insurance Company failed to prove that on the date of accident licence was not valid and effective.

21. To consider argument raised by learned counsel for the appellant that licence, which was seized by Police during investigation of accident, to be taken as licence which driver of offending vehicle was holding at the time of accident, I have perused copy of seizure memo, Ex.P/7 as well as evidence of NAW-2/1 examined on behalf of non-applicant 2 which shows this witness-2 has perused licence details of which are mentioned in Ex.D2 and therefore same was also available with office of non-applicant 2. Even if argument raised by leaned counsel for claimants is accepted, the argument raised by appellant that licence which driver of offending truck was possessing at the time of accident was licence details of which were mentioned in seizure memo as Ex.D2 is concerned, on subsequent verification it was found that the details of the same were not recorded in office record. This by itself will not absolve the Insurance Company from its liability.

22. Issue with respect to liability of Insurance company where driving licence is found to be fake has been considered by Hon'ble Supreme Court in the matter of **National Insurance Company v. Swarn Singh** reported in **(2004) 3 SCC 297** and it has been 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.

99.So far as the purported conflict in the judgments of Kamla (supra) and Lehru (supra) 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.The court, however, in Lehru (supra) must not read that an owner of a vehicle can under no circumstances has 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's case (supra), 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.

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 licence 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 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 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) The insurance companies are, 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 where for 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 by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards 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 insured 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 fulfil the requirements of law or not will have to be determined in each case.

(viii) xxxxxxxxxxxxxxx

(ix) xxxxxXxxxxxxxxx

(x) xxxxxXxxxxxxxxx

(xi)xxxxxXxxxxxxxxx”

23. Hon'ble Supreme Court in the matter of **Pepsu RTC v. National Insurance Company Ltd.** reported in (2013) 10 SCC 217 has again dealt with issue with respect to defence of insurer of holding fake driving licence by driver at the time of accident and held thus:-

“10.In a claim for compensation, it is certainly open to the insurer under

Section 149 (2) (a) (ii) to take a defence that the driver of the vehicle involved in the accident was not duly licenced. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh's case (supra). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation."

24. Recently in **Ramchandra Singh Vs Rajaram & others** reported in 2018 (8) SCC 799 Hon'ble Supreme Court while taking into consideration its earlier decisions in **Swarn Singh** (supra) and also **Pepsu RTC** case (supra) has observed thus:

"11. Suffice it to observe that it is well established that if the owner was aware of the fact that the licence was fake and still permitted the driver to drive the vehicle, then the insurer would stand absolved. However, the mere fact that the driving licence is fake, per se, would not absolve the insurer. Indubitably, the High Court noted that the counsel for the appellant did not dispute that the

> driving licence was found to be fake, but that concession by itself was nto sufficient to absolve the insurer."

25. Hon'ble Supreme Court in aforementioned judgments has held that if there is evidence and material available on record that owner of vehicle has perused licence of driver engaged by him and satisfied that the licence produced before him was genuine and after taking test of driver if he is satisfied that he is able to drive vehicle and thereafter, driver was employed by him, then, he satisfied the conditions of Insurance Policy and in that case, Insurance Company cannot be absolved from its liability to satisfy the impugned award for payment of compensation.

26. In case at hand, evidence of NAW2 Pravesh Kumar Chaturvedi, who is an employee and working as Deputy General Manager with non-applicant 2 clearly shows that employer has taken reasonable care before employing non-applicant 1 as driver and only after verification of copy of licence by Insurance Company from office of licensing authority it revealed that licence was fake.

27. In case at hand there is evidence to show that the employer after looking into licence placed before him by driver satisfied himself that licence was having validity period of three years, which is for transport vehicle, and thereafter, he was authorised to drive the same category of vehicle for which he was holding licence. In the facts and circumstances of the case, Insurance Company cannot be absolved from its liability on the ground that on verification of licence it was found to be fake.

28. The appellant/Insurance Company in reply to claim application has specifically raised only one ground with respect to the licence of driver of offending truck not to be valid and effective. The other grounds which the appellant is raising in this appeal are neither pleaded nor proved Unless the grounds of defence are pleaded before the Claims Tribunal, the appellant cannot be permitted to raise the same before this Court in appeal.

29. In view of aforementioned discussion and the law laid down by Hon'ble Supreme Court, I do not find any good ground to interfere with the impugned order passed by learned Claims Tribunal.

30. In the result, appeal being devoid of merit, is liable to be and it is hereby dismissed.

31. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma