NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 132 of 2012

- The Oriental Insurance Co. Ltd., through Divisional Manager, (Division Number-2), the Oriental Insurance Company Limited Sai Nagar, Devendra Nagar Road, Raipur, District - Raipur (CG) (Insurer of Dumpher Number CG 04-J/5118)

---- Appellant

Versus

1. Choravaram Sahu, age 37 years, S/o Sukhram Sahu, At- Berla Kala (Nayapara) PO Gudheli, District Durg (CG)

2. Tarkeshwar @ Takeshwar S/o Punuram Sahu, Permanent Address- 1 At Surajpura, Anand Gaon, P.S. Anand Gaon, Thana- Berla Dis. Durg C.G

   Address- 2 Through Basant Kumar, S/o Satruhan Lal Chakradhari, Transporter Abhinav Traders, Mahoba Bazar, Raipur (Infront of Pikadali Hotel, GE Road Raipur Thana Amanaka, District - RAipur (CG) (Driver of Dumpher No.CG 04 J/5118)

3. Basant Kumar S/o Satruhan Lal Chakradhari, Trasporter Abhinav Traders, Mohoba Bazar, Raipur, In front Of Pikadali Hotel G.E. Road Raipur Thana Amanaka, Dist- Raipur C.G. (Owner of Dumpher No.CG 04 J/5118)

---- Respondents

For Appellant	:	Shri Sudhir Agrawal, Advocate
For Respondent- 1	:	Shri Amiyakant Tiwari, Advocate
For other Respondents	:	None appears

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

17.01.2019

1. By this appeal, the appellant/Insurance Company assailed the impugned award dated 08.09.2011 passed by the learned 5th Motor Accident Claims Tribunal, Raipur (for short, 'the Tribunal') in Claim Case No.33 of 2011 wherein learned Claims Tribunal has partly allowed the claim application filed by the injured claimant and awarded Rs.68,260/- as compensation. The learned Claims Tribunal taking into consideration that

respondents- 2 and 3 failed to produce driving license, absolved the Insurance Company from its liability and held owner and driver liable for payment of compensation, but at the same time, it was directed that Insurance Company will first satisfy the award and thereafter, granted liberty to Insurance Company to recover the same from respondents- 2 and 3.

2. Brief facts for disposal of this appeal are that on 06.04.2010 at about 10.30 pm when claimant was travelling on motorcycle bearing No.CG-04-8472 along with his friend Meenaram Sahu, at that relevant time, one truck bearing No.CG-04-J 5118 dashed the motorcycle and in the said accident, present appellant sustained grievous injuries over his person, whereas his friend Meenaram Sahu died. The accident was reported to concerned Police Station and crime No.106 of 2010 was registered at Police Station Berla, district Durg.

3. Respondent- 1/ claimant claiming to have sustained monetary loss of Rs.8,64,000/- on account of injury sustained by him in the accident, filed a claim application before competent Claims Tribunal claiming compensation of Rs.13,14,000/- in total against the appellant as well as respondents- 2 and 3, driver and owner of offending vehicle respectively.

4. Respondents- 2 and 3 even after service of notice did not appear and therefore, they were proceeded *ex parte* as recorded by the learned Claims Tribunal. The appellant/ Insurance Company submitted its reply and denied all the pleadings with regard to the accident and claim made by respondent-1/ claimant. Insurance Company further pleaded that income pleaded by respondent- 1 in his claim application is excessive. It has also been pleaded

that driver of motorcycle was driving rashly and negligently and thereby they were contributory negligent in the accident. It has further been pleaded that there is violation of conditions of Insurance Policy as on the date of accident, driver of the offending vehicle truck was not possessing valid and effective driving license and there was no valid permit and fitness certificate also to run the vehicle. The Insurance Company on account of aforementioned facts, sought its exoneration from the liability, if any.

5. Learned Claims Tribunal after evaluating the pleadings and evidence (oral and documentary), allowed the claim application in part and awarded the compensation to the tune of Rs.68,260/-. It was held that there is violation of conditions of Insurance Policy as driver and owner of the offending vehicle Truck failed to produce effective driving license before the Claims Tribunal or before any other forum and absolved the Insurance Company from payment of compensation. But learned Claims Tribunal directed that first the amount of award is to be satisfied by the Insurance Company and thereafter granted liberty to recover the same from driver and owner of the offending vehicle, ie respondents- 2 and 3.

6. Learned counsel appearing for the appellant/Insurance Company submitted that when once the learned Claims Tribunal categorically recorded a finding that there is violation of conditions of Insurance Policy on account of driver not possessing valid and effective driving license on the date of accident, therefore, looking to the statutes of Policy, the Claim Tribunal ought not to have directed the appellant/Insurance Company to first satisfy the awarded amount and then to recover the same from respondents- 2 and 3 ie driver and owner of the offending vehicle. He further submitted that in another

connected appeal arising out of the same accident, this Hon'ble Court has considered the same question and while holding that as there is violation of conditions of Insurance Policy on account of not holding valid and effective driving license by the driver on the date of accident, the Insurance Company cannot be directed to satisfy the award on the first instance. This Court set aside the order/direction issued by learned Claims Tribunal to appellant with regard to pay and recover.

7. Learned counsel appearing for respondent- 1/ claimant would oppose the argument raised by learned counsel for the appellant/Insurance Company and submits that once the Insurance Company accepted the amount of premium and issued policy, then the Company would have first liability to satisfy the award and thereafter to recover the same from the driver and owner of the vehicle, particularly in the cases where the claim is by the third party.

8. I have heard learned counsel for the parties and perused the records along with records of MAC-1250 of 2011. The case in hand is a case of no licence which is violative to the conditions of Insurance Policy on the one hand and it may be the reason of the cause of accident. In another appeal arising out of same accident (number of which is mentioned above) preferred by the Insurance Company before High Court, it was held as under:

> "8. So far as legality and propriety of the direction given to the appellant to first pay the amount of compensation to the respondents No.1 to 5 (claimants) and then to recover the same from respondents No.6 & 7 (driver and owner of the offending vehicle respectively) is concerned, no doubt the deceased was a third party in respect of offending vehicle

which was insured with the appellant on the date of accident but since the appellant is not liable to pay the amount of compensation, therefore, it could not have been directed to first pay the amount of compensation to the respondents No.1 to 5 and then to recover it from respondents No.6 & 7 jointly and severally which is against the law laid down in the case of **National insurance Co. Ltd. Vs Parvathneni and another** (supra) in which the correctness of such direction has been doubted and the matter has been referred to larger Bench. In view of this, the Claims Tribunal has certainly committed manifest error of law in directing the appellant to pay the amount of compensation to the respondents No.1 to 5 and then to recover the same from respondents No.6 & 7 which is liable to be and is hereby set aside."

9. In view of categorical finding recorded by a Division Bench of this Court in MAC-1250 of 2011 decided on 06.09.2012, and also considering that driver of offending vehicle was not possessing any driving licence to drive any kind of vehicle, this Court is not inclined to take any other view than the view taken by Division Bench of this Court in MAC- 1250 of 2011.

10. Accordingly, this appeal is allowed and the direction issued to the Insurance Company to pay and recover the amount of compensation is set aside. Respondent- 1/claimant will be entitled to recover the amount of compensation from respondents 2 and 3 jointly and severally. If any amount is deposited by the appellant/Insurance Company, that has not been disbursed to respondent- 1, then, the said amount shall be refunded to the appellant/Insurance Company and in case the deposited amount or any part thereof is disbursed, appellant/Insurance Company will be at liberty to recover

the same from respondents- 2 and 3 ie driver and owner of the offending vehicle- truck.

11. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma