

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A.(C) No. 1257 of 2010****Reserved on 05.11.2019****Pronounced on 15.11.2019**

1. Mohd. Noore S/o Abdul Haque, aged about 45 years, vehicle owner Rajdhani Bus, Kharsia Naka, Ambikapur, Surguja (C.G.)
 2. Anitar Urao S/o Budhram Urao, aged about 38 years driver Rajdhani Bus No.CG15A/3185, R/o Village Pratappur, Sadakpara, P.S. And Tahsil Sitapur, Dist- Surguja(C.G.)
- Appellants**

Versus

1. Jagni Ram (wrongly mentioned Jagni Bai in the cause title), S/o Late Singala aged about 60 years.
 2. Bakli W/o Jagani Ram, aged about 55 years
- Both are caste Urao, Occupation Cultivator, R/o Village Hardisad, P.S. And Tahsil Sitapur, Dist- Surguja(C.G.)
3. Branch Manager, New India Insurance Company Limited, Transport Nagar, Korba, District Korba (C.G.)
- Respondents**

For Appellants:	Shri Bhupendra Singh, Advocate.
For Respondents No. 1 & 2:	None, though served.
For Respondent No. 3:	Smt. Chitra Shrivastava, Advocate.

Single Bench:Hon'ble Shri Sanjay Agrawal, J**CAV Award/ Order**

1. This Miscellaneous Appeal has been preferred by Non-applicants No.1 & 2 under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act, 1988') questioning the legality and propriety of the award dated 30.10.2010 passed by Third Additional Motor Accident Claims Tribunal, F.T.C., Surguja (Ambikapur) (hereinafter referred to as 'the Claims Tribunal') in Claim Case No. 69/09 by which, the learned Claims Tribunal while allowing the claim in part, has awarded total amount of compensation to the tune of Rs. 2,04,000/- with 6% interest per annum from the date of filing of the claim petition till its realization while

exonerating the insurance company from its liability. The parties to this appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated the facts of the case are that on 15.09.2007 at about 8:00pm, deceased Mukesh Kumar was going to his village *Banaiya* while travelling in the offending vehicle “Rajdhani Bus” bearing its registration number CG-15-A-3185, which was owned by Non-applicant No.1 Mohd. Noore, insured with Non-applicant No.3-New India Insurance Company Limited. At the relevant time, the alleged vehicle was being driven rashly and negligently by its driver, namely, Anitar Urao, Non-applicant No.2. As a result of which, deceased Mukesh Kumar fell down from the said Bus and expired on the spot.

3. A claim petition enumerated under Section 166 of the Act, 1988 has been made by the parents of the deceased claiming compensation to the tune of Rs.6,80,000/- under various heads while alleging *inter alia* that the deceased, who was 27 years old, was an electrician by profession and used to earn Rs. 5,000/- per month.

4. The aforesaid claim has been contested by Non-applicant No.3, the insurer while taking a defence that the driver of the alleged offending vehicle was not possessing the valid and effective driving licence, and therefore, no liability could be fastened upon it.

5. The aforesaid defense was accepted by the Claims Tribunal by holding that the driver of the offending vehicle was not possessing the valid and effective licence to drive the alleged transport vehicle “Bus”, and in consequence, while exonerating the Insurance company from its liability, awarded total sum of Rs.2,04,000/- with 6 % interest from the date of filing

of the claim petition till its realization. The finding of the Tribunal exonerating the Insurance Company, is questioned by way of filing of this appeal.

6. Shri Bhupendra Singh, learned counsel for the Appellants submits that the Claims Tribunal while awarding the amount of compensation has committed an illegality in exonerating the Insurance Company from its liability on finding that the driver of the offending vehicle was not possessing the valid and effective driving licence to drive the alleged transport vehicle while inviting attention to the evidence of one Pawan Kumar Sahu, examined by the Insurance Company, who has admitted regarding the issuance of the driving licence bearing number 2312/2000 from the District Transport Office, Giridih (Jharkhan), yet it has been illegally held that the same is a forged one even without examining of its authenticity by way of any cogent and reliable evidence. It is contended further, while referring to the order sheet dated 20.04.2009, that despite allowing the application dated 28.03.2009 filed by the owner, Non-applicant No.1 under Order 17 Rule 1 of CPC seeking to produce the driving licence, the Tribunal has erred in closing his evidence on the same day itself and, as such the award impugned as passed is without affording sufficient and reasonable opportunity of hearing.

7. On the other hand, Smt Chitra Shrivastava, learned counsel for Respondent No.3 has supported the award impugned.

8. I have heard learned Counsel for the parties and perused the entire record carefully.

9. The main contention of the Appellants herein is that the driver of the offending vehicle was possessing a valid and effective driving licence and

despite permitting the owner of the vehicle in question to furnish the same, yet the Tribunal has erred in passing the award impugned even without getting its verification.

10. In order to substantiate the said contention, the Appellants have produced the particulars of the original driving licence during the pendency of this appeal, which was issued by the District Transport Office, Giridih (Jharkhand). On due consideration of the particulars of the alleged driving licence coupled with the order sheet dated 20.04.2009 whereby the owner of the vehicle in question was permitted to produce the same, I am inclined to allow the said application and the alleged particulars of the said driving licence is, accordingly, taken on record.

11. From perusal of the record, it appears that one Pawan Kumar Sahu (N.A.W.-1), working as Assistant Grade III in Regional Transport Office, Ambikapur, was examined by the insurer in order to establish the fact that the driver of the offending vehicle was not possessing the valid and effective driving licence to drive the alleged transport vehicle. During the course of his examination, the particulars of the alleged driving licence issued by the District Transport Office, Giridih (Jharkhand) was shown to him, who in turn, has admitted regarding the issuance of it. That apart, as visualized from the order sheet dated 20.04.2009, the owner of the vehicle in question was permitted to produce the driving licence of the said driver. It, however, reflected from the said order sheet itself that the evidence of the owner was closed on the same day. It, therefore, appears that in order to prove the authenticity of the alleged driving licence of the driver, sufficient and reasonable opportunity was not provided by the Claims Tribunal, which instead held that the alleged particulars of the driving

licence of the driver were fake. Be that as it may, the verification of the particulars of the driving licence issued by the District Transport Office, Giridih (Jharkhand) was not got verified and even in absence of its verification, it was held to be a forged one. In absence of the verification of the same, particularly, when its issuance was admitted by the said witness (Pawan Kumar Sahu), the Tribunal should have got it verified by way of cogent and reliable evidence before opining as such. In such circumstances, the findings of the Tribunal exonerating the Insurance Company from its liability cannot be held to be sustainable.

12. Consequently, in my opinion, the true facts should come out and that can only be possible if the matter is remitted back to the concerned Tribunal for the determination of the said facts afresh.

13. In view of above, the award impugned passed by the Claims Tribunal in Claim Case No.69/09 is hereby set aside and the matter is remanded to the concerned Claims Tribunal for the limited purpose to examine the authenticity of the particulars of the alleged driving licence issued by the District Transport Office, Giridih (Jharkhand) in accordance with law. Needless to mention here that the parties shall be allowed to amend their pleadings and to adduce further evidence again in this aspect. The parties are directed to remain present before the said authority and/or concerned Claims Tribunal on 20.12.2019 for proper adjudication of the matter.

14. Registry is hereby directed to transmit the entire record forthwith to the concerned Tribunal. No order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE