NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No.1262 of 2012

Bajaj Allainz Insu. Comp. Limited, Through- Branch Manager, Shivmohan Bhawan, Vidhansabha Marg, Pandri, Raipur C.G..

---- Appellant

Versus

1. Bhejuram Sahu S/o Bhauram Sahu Aged About 45 Years.
2. Smt. Nirmala Devi W/o Bhejuram Sahu Aged About 40 Years.
   Both are R/o In Front Of Krishi Upaj Mandi, Torwa, Distt. Bilaspur C.G.
3. Sanjeev Kumar Kashyap S/o Late Sundar Lal R/o Lal Khadan, Bilaspur C.G.
4. Satya Narayan Agrawal S/o Late K.C. Agrawal R/o Balaji Fuel Point, Korba, Distt. Korba C.G.

---- Respondents

For Appellant	:	Shri Ghanshyam Patel, Advocate
For Respondents No. 1 to 2	:	Shri Vaibhav Kartikeya Agrawal on behalf of Shri Viprasen Agrawal, Advocate.
For Respondent No.3	:	None appears.
For Respondent No.4	:	Shri Sanjay Patel, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

23/08/2019

1. Appellant-Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging impugned award dated 24.09.2012 passed by learned 6th Additional Motor Accident Claims Tribunal, Bilaspur, (for short, 'the Tribunal') in Claim Case No.32/2012 whereby the Tribunal allowed claim application in part, awarded total sum of Rs.2,05,000/- as compensation in a death case along with interest @ 7.5% p.a and fastened liability upon appellant/insurance company to pay amount of compensation to claimants.

2. Brief facts necessary for disposal of this appeal are that on 24.9.2012, deceased- Bhagwat Sahu was travelling on Tanker bearing registration No.CG04/JA/7251 (for short 'offending vehicle') as 'Helper' and going to Korba from Vishrampur Depot. On the way near Madanpur Forest Barrier, offending vehicle dashed against a tree standing on road side and turned turtle, as a result, said Bhagwat Sahu suffered grievous injuries over his person and succumbed to those injuries on spot. Matter was reported to concerned Police Station, based on which, criminal case was registered against driver of offending vehicle ie respondent No.3/Sanjeev Kumar Kashyap.

3. Claimants, who are parents of deceased, filed claim application under Section 166 of the Act of 1988 before the competent Claims Tribunal claiming Rs.9,04,800/- as compensation on the grounds mentioned therein.

4. Non-applicant No.2/respondent no.4, owner of offending vehicle, submitted reply to claim application and denied all adverse averments made in claim application except admitted facts. He pleaded that accident did not occur due to negligent act of driver of offending vehicle, rather deceased himself fell down from the offending vehicle. On the date of accident, vehicle was insured with non-applicant No.3/Insurance Company. There was no violation of any of the conditions of insurance policy, therefore, liability if any, for payment of amount of compensation will be on the Insurance Company.

5. Insurance Company/Appellant herein also submitted reply to claim application and admitted the fact that on the date of accident, offending vehicle was insured with it, but denied rest of the pleadings made in claim application. It was further pleaded that insurance of 'Helper' was not included in the said policy and on the date of accident, offending vehicle was being plied in violation of conditions of insurance policy, therefore, Insurance Company is not liable to indemnify insured.

6. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties held that accident took place due to rash and negligent driving of offending vehicle by its driver and that there was no violation of condition of insurance policy. On the basis of above finding, the Tribunal allowed claim application in part, awarded a total sum of Rs.2,05,000/- as compensation to claimants and fastened liability on Insurance Company.

7. Learned counsel for the appellant/insurance company submits that the Tribunal committed error in holding that there was no violation of the conditions of insurance policy as on the date of accident, driver of offending vehicle was not possessing valid and effective driving license to drive the vehicle loaded with inflammable substance 'Diesel'. He also submits that there is no endorsement on his license authorising him to drive dangerous and hazardous vehicle.

8. On the other hand, learned counsel appearing for claimants/respondent nos. 1 & 2 supported the impugned award.

9. Per contra, learned counsel appearing for respondent no.4/owner of offending vehicle submits that on the date of accident driver of offending vehicle was possessing valid and effective driving license to drive 'Heavy Goods Vehicle'. He also undergone a 'Refresher Course Training' from the authorised Institute of Transporting Dangerous & Hazardous Goods and obtained the certificate, which was renewed from time to time by the concerned institute on yearly basis and lastly it was renewed for a period of one year ie. from 24.5.2008 to 26.5.2009. He further submits that offending vehicle comes within the category of 'Heavy Goods Vehicle/Transport Vehicle' for which, a valid license was possessed by driver of offending vehicle. Though he has undergone the training but inadvertently endorsement on his license could not be made, which is not a substantial breach of conditions of insurance policy and, therefore, as per the law laid down by the Hon'ble Supreme Court in the case of **National Insurance Company v. Swarn Singh**[1], the Tribunal has rightly fastened the liability on the Insurance Company. He also places his reliance on the judgment passed by this Court in the matter of **United India Insurance Company v. A Verlaxmi** reported in **2015 ACJ 132** & **Mukund Dewangan v. Oriental Insurance Company Limited**[2].

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

11. Section 14 of the Act of 1988 provides for currency of license to drive motor vehicles. Sub-section 2(a) of Section 14 provides that effective

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[1] (2004) 3 SCC 297

[2] (2017) 14 SCC 663

period of license for 'Transport Vehicle' will be of three years and the proviso to Sub-section 2 of Section 14 provides that effective period for driving vehicle carrying goods of dangerous or hazardous nature will be of one year, and it will be renewed only when driver undergoes one day 'Refresher Course Training' of the prescribed syllabus. It is not in dispute from the facts of the case that, driver was possessing a license to drive 'Heavy Goods Vehicle' and currency of license is evident from Ex.D-3, which was issued by the Regional Transport Office, Bilaspur wherein, last effective date of licensee has been shown to be from 30.11.2005 to 29.11.2008. The endorsement of 'Heavy Goods Vehicle' on license was made on 13.09.2005.

12. Earlier to this proceeding, appellant has filed the appeal before a Division Bench of this Court challenging award dated 10.02.2009 and said Bench remanded back the case for passing the award afresh on the ground that the Tribunal failed to mention and discuss whether vehicle was carrying goods of dangerous or hazardous nature and whether, on the date of accident driver of offending vehicle was possessing valid and effective driving license because insurance company has not examined any witness in this regard. In support of its contention after remand of the case, respondent no.4/owner of offending vehicle submitted copies of license, fitness certificate, permit & certificate of training of refresher course.

13. Section 3 of the Act of 1988 provides for necessity for driving license. Section 3 (1) reads as under :-

> "No person shall drive a motor vehicle in any public place unless he holds an effective driving license issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than[3] [a motor cab or motor cycle] hired for his own use or rented under any scheme made under Sub-section (2) of Section 75] unless his driving license specifically entitles him so to do."

14. Section 10 of the Act of 1988 provides for form and contents of license to drive, relevant part for consideration would be Sub-section 2 of Section 10 which is reproduced herein below :-

> "A learner's license or, as the case may be, driving license shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely :--
>
> (a) motor cycle without gear;
> (b) motor cycle with gear
> (c) invalid carriage;
> (d) light motor vehicle;
> (e) transport vehicle;
> (i) road-roller;
> (j) motor vehicle of a specified description."

15. Rule 132 of the Central Motor Vehicles Rules 1989 (for short 'the Rules of 1989') provides for responsibility of the transporter or owner of the goods carriage, wherein sub-rule (5) specifically provides that it shall be the duty of the owner to ensure that driver of the goods carriage carrying dangerous or hazardous goods holds a driving license as per the provisions of Rule 9 of these rules.

16. Rule 9 of the Rules of 1989 provides for educational qualifications for drivers of goods carriages carrying dangerous or hazardous goods.

[3] Subs. By Act 54 of 1994, sec 3, for "a motor cab" (w.e.f 14-11-1994)

Rule 9 (3) & Rule 9 (4) are extracted herein below :-

> "(1). xxxxxxx
>
> (2). xxxxxxx
>
> (3) The licensing authority, on receipt of the application referred to in sub-rule (2), shall make an endorsement in the driving license of the applicant to the effect that he is authorised to drive a goods carriage carrying goods of dangerous or hazardous nature to human life.
>
> (4) A licensing authority other than the original licensing authority making any such endorsement shall communicate the fact to the original licensing authority."

17. True it is that licence possessed by respondent no.3-driver of offending vehicle authorised him to drive heavy goods vehicle and that the offending vehicle (Tanker) comes within the purview of heavy goods vehicle, but when it is carrying inflammable substance, it is specifically provided under the Act & the Rules framed by the Central Government under the Rules of 1989, that driver of the vehicle carrying dangerous or hazardous goods should have an endorsement on his license authorising him to drive said type of vehicle. The currency of license of the goods carrying vehicle of dangerous or hazardous goods is only of one year.

18. In view of above admitted fact that currency of license of respondent no.3 driver of offending vehicle, was of three years, there was no endorsement on license of dangerous and hazardous vehicles. In the facts of the case, question arises for consideration that on the count of non-endorsement only insurance company can be exonerated from its liability, when the

vehicle he was driving a 'heavy goods vehicle' and driver was possessing license to drive the said category of vehicle.

19. In the matter of **Swaran Singh** (supra) the Hon'ble Supreme Court while considering the issue with regard to the driving licence has held as under :-

> "90. We have construed and determined the scope of sub-clause (ii) of sub-section (2) of Section 149 of the Act. Minor breaches of license conditions, such as want of medical fitness certificate, requirement about age of the driver and the like not found to have been the direct cause of the accident, would be treated as minor breaches of inconsequential deviation in the matter of use of vehicles. Such minor and inconsequential deviations with regard to licensing conditions would not constitute sufficient ground to deny the benefit of coverage of insurance to the third parties.
>
> **Learner's License**
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> 93. The Motor Vehicles Act, 1988 provides for grant of learner's licence. [See Section 4(3), Section 7(2), Section 10(3) and Section 14]. A learner's license is, thus, also a license within the meaning of the provisions of the said Act. It cannot, therefore, be said that when a vehicle is being driven by a learner subject to the conditions mentioned in the license, he would not be a person who is not "duly licensed" resulting in conferring a right on the insurer to avoid the claim of the third party. It cannot be said the person holding a learner's license is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by

a person holding a learner's license, the same would run counter to the provisions of Section 149 (2) of the said Act."

110. The summary of our findings to the various issues as raised in these petitions is as follows :

(i) xxxxxxxxx

(ii) xxxxxxxxx

(iii) xxxxxxxx

(iv) xxxxxxxx

(v) xxxxxxxx

(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 licence 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 insurer under section 149 (2) of the Act."

20. The Hon'ble Supreme Court has taken into consideration sub-clause (ii) of sub-section (2) of Section 149 of the Act and held that minor and inconsequential deviation with regard to licensing condition would not constitute sufficient ground to deny benefit of coverage of insurance to the third party.

21. In case at hand, after remand of the case, owner of offending vehicle has brought on record the certificate issued by training institute, certifying that Sanjeev Kumar Kashyap (driver of offending vehicle) had undergone three days' training from 25th to 27th May 2006. This certificate was thereafter renewed on 05.05.2007 and 24.05.2008. The aforementioned documents have not been verified by the appellant/Insurance company.

22. The co-ordinate Bench of this Court in the matter of **A Verlaxmi** (supra) while taking into consideration the law laid down by the Hon'ble Supreme Court in the matter of **Swaran Singh** (supra) has held as under :-

> "14. Thus, the crux of the matter would be whether such a breach, that is to say not having obtained necessary endorsement as required under sub-rule (3) of rule 9 of the Rules, the accident occurred due to that non-endorsement has been discussed herein-above. Any driver who has held a driving license to drive a tanker would be entitled to have this endorsement subject to fulfilling of other conditions as contemplated in sub-rule (3) of the rule 9, but they do not deal with the professional skill of driving. With regard to professional skill of driving, he has already been certified by the Licensing Authority at the time of granting of license to him. It is not the case of the appellant that his driving license was not obtained properly."

23. As regards the judgments relied upon by learned counsel for the appellant/insurance company in the matter of **Rajesh Singh & Anr v. Hardeep Singh & Anr** reported in **2017 SCC Online Punjab & Haryana 3261** and **Nagamani & Anr v. Singarvelu & Anr** reported in **2009 (2) TN MAC 77.**

24. In the matter of **Rajesh Singh** (supra), the Punjab & Haryana Court has not taken into consideration the judgment of **Swaran Singh** (supra), whereas in the case of **Nagamani & Anr** (supra), the High Court has taken into consideration with respect to issue dealing with the driver possessing no license. In para -11 relied upon by the High Court of Madras itself, the Hon'ble Supreme Court has held :-

> *"the matter, however, may be different where a disputed question of fact arises as to whether the driver had a valid license or where the owner of the vehicle committed a breach of terms of contract of insurance......"*

25. Other ground raised by learned counsel for the appellant/insurance company that there was no valid permit with offending vehicle to carrying 'dangerous or hazardous goods' is concerned, copy of permit is also placed on record, but insurance company has not proved by verifying the said permit that it does not mention for carrying of products, which was to be carried in offending vehicle. Though the insurance company examined one of the witness from the Regional Transport Office, but no specific question has been put to him with respect to the issuance of permit for carrying dangerous or hazardous goods in offending vehicle.

26. The Insurance Company also failed to prove the fact whether the Tanker was carrying inflammable substance on the date of accident.

27. Undisputedly, driver of offending vehicle was possessing license to drive Heavy Goods Vehicle and the vehicle which he was driving comes within the category of heavy vehicle. Learned counsel for appellant on query

being made that, whether under license in question, driver can drive the tanker carrying other products except dangerous and hazardous one, he answered in affirmative.

28. The appellant could not able to make out a case that there was any substantial breach like no license or having license to drive Light Goods Vehicle and driving Heavy Goods Vehicle except to show that there is no additional endorsement to drive vehicle carrying dangerous and hazardous goods. Though endorsement is required to drive such vehicle but the breach is not so fundamental breach as are not found to have contributed to accident. No such evidence was brought on record by the appellant/Company.

29. In view of above, discussions and law laid down by Hon'ble Supreme Court in case of **Swarn Singh** (supra) in the considered opinion of this Court the Tribunal has not committed any illegality in saddling liability upon appellant/ insurance company for payment of amount of compensation to the claimants.

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

Sd/-

(Parth Prateem Sahu)
Judge

Jamal