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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No. 672 of 2015

Future Generali India Insurance Co. Ltd., Through Branch Manager, Branch Office Shop No.3, 2nd Floor, Maruti Business Park, Near Rajkumar College, Raipur, P.S. Saraswati Nagar, Civil & Revenue District Raipur, Chhattisgarh (Insurer).

---- Appellant

Versus

1. Smt. Arti Singh Thakur Khangar, W/o Late Umesh Singh Thakur Khangar, Aged About 24 Years, Profession House Wife, R/o Kelkar Para, Near Bhimsen Kirana Shop, Station Road, P.S. Ganj, Civil & Revenue District Raipur, Chhattisgarh (Claimant).

2. Rajeshwar Singh Rajput, S/o Ramswarup Rajput, Indrapara Bazar, Tilda-Neora, P.S. Neora, Tahsil & District Balodabazar, Civil & Revenue District Balodabazar, Chhattisgarh (Owner).

---- Respondents

For Appellant	:	Shri Rohitashva Singh, Advocate.
For Respondent No.1	:	Shri A. L. Singroul, Advocate.
For Respondent No.2	:	None, though served.

AND

Miscellaneous Appeal (C) No. 369 of 2016

Smt. Aarti Singh Thakur Khangar, W/o Late Umesh Singh Thakur Khangar, Aged About 24 Years, Occupation House Wife, R/o

Village Kelakarpara, Near Bhimsen Grassory Shop, Station Road Raipur, Tahsil & District Raipur, Chhattisgarh (Claimant).

---- Appellant

Versus

1. Rajeshwer Singh Khangar, S/o Ram Swaroop Rajput, R/o Indrapara Bazar, Tilda-Newra, Thana Newra Tahsil & District Balodabazar, Chhattisgarh (Driver).

2. Future Generali India Insurance Co. Ltd., Through Branch Manager, Branch Office Shop No.3, 2nd Floor, Maruti Business Park, Near Rajkumar College, Raipur, Chhattisgarh (Insurer).

---- Respondents

For Appellant	:	Shri A. L. Singroul, Advocate.
For Respondent No.1	:	None, though served.
For Respondent No.2	:	Shri Rohitashva Singh, Advocate.

Hon'ble Shri Justice Sanjay Agrawal

Award On Board

03.09.2019

1. Both these Miscellaneous Appeals arise out of common award dated 30.03.2015 passed by the Chief Motor Accident Claims Tribunal (for short 'the Claims Tribunal'), Raipur (C.G.) in Claim Case No.57/2012, by which, the Claims Tribunal while allowing the claim in part, awarded total amount of compensation to the tune of Rs.3,62,600/- with 6% interest

per annum from the date of filing of claim petition till its realisation while fastening the liability upon the Insurance Company, they are being disposed of by this common order. The parties to this Appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Shri Rohitashva Singh, learned counsel for the Appellant in MAC No.672/2015, submits that while passing the award impugned, the Claims Tribunal has committed an illegality in fastening the liability upon the Insurance Company. According to him, the vehicle in question was being driven by the deceased, who was not holding the driving licence and no information as required mandatorily under clause (c) of Section 134 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988') has been furnished by the owner of the vehicle in question. Therefore, no liability as such could be fastened upon the Appellant/Insurance Company. In support, he placed his reliance upon the decision rendered by the Division Bench of this Court in the matter of ***The Oriental Insurance Company Limited*** **Versus** ***Shrikant Singh and Others*** passed in MAC No.1040/2008 on 13.10.2011.

3. On the other hand Shri A. L. Singroul learned counsel for the Appellant/Claimant in MAC No.369/2016, while supporting the award impugned in so far as fastening the liability upon the Insurance Company is concerned, submits that the award impugned as passed by the Claims Tribunal while deducting half of the income of the deceased instead of one-third in

contrary to the provision as prescribed under 2nd Schedule framed under Section 163-A of the Act of 1988 has erred in awarding the meagre amount of compensation to the claimant.

4. I have heard learned counsel for the parties and perused the entire record carefully.

5. A claim enumerated under Section 163-A of the Act of 1988 has been made by the widow of the deceased Umesh Singh Thakur Khangar on account of the accident occurred on 24.01.2010. According to the claim petition, deceased Umesh Singh Thakur was driving the vehicle in question 'pick-up van' bearing its Registration No. C.G. 04 J.B. 5524, which was owned by Non-Applicant No.1 namely, Rajeshwar Singh Khangar and was insured with Non-Applicant No.2/Future Generali India Insurance Company Limited. At the relevant time, deceased was going to Rajim and as soon as he reached near the Gatapara Canal, he lost his control, as a result of which, he injured badly and was admitted into the hospital and during the course of treatment, he expired on 16.02.2010. It is pleaded in the claim petition that the deceased was a driver by profession and used to earn Rs.3,200/- per month apart from daily allowance of Rs.200/- and thus, total amount of compensation to the tune of Rs.15,50,000/- has been claimed.

6. The aforesaid claim has been contested by Non-Applicant No.1/Owner of the vehicle in question by saying that his

alleged vehicle was insured with Non-Applicant No.2/Insurance Company, therefore, in case of liability being fastened, the same could be indemnified by the said Insurance Company. While Non-Applicant No.2/Insurance Company contested the claim mainly on the ground that the vehicle in question was being driven by the deceased, who was not holding the driving licence and the particulars of it required to be furnished by the owner of the vehicle in question as provided under clause (c) of Section 134 of the Act of 1988 has not been complied with. Therefore, on account of the violation of the said statutory provisions, the Insurance Company cannot be held liable. It is contested further on the ground that the deceased was not a third party as he himself was driving the alleged vehicle, therefore, the claim petition as framed is not maintainable and deserves to be dismissed.

7. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 24.01.2010 in which deceased Umesh Singh Thakur, the driver of the offending vehicle was injured badly and expired during the course of his treatment on 16.02.2010. It held further that the driver of the offending vehicle was holding the effective and valid driving licence and the insurer has failed to establish the fact that it was being used in violation of the insurance policy. As a consequence, while fastening the liability upon the Insurance Company and that by assessing the notional income of the deceased of Rs.3,200/- per month,

yearly Rs.38,400/- and that by deducting half of it, towards his personal expenses, and by applying multiplier of 18, awarded total amount of compensation to the tune of Rs.3,62,600/- with 6% interest per annum from the date of filing of the claim petition till its realisation.

8. Being aggrieved, both insurer and the claimant has preferred these appeals. In MAC No.672/2015, preferred by the Insurance Company, wherein it has been contented by learned counsel for the Appellant that in absence of furnishing the particulars of the driving licence by the owner of the vehicle in question as required mandatorily under Section 134 of the Act of 1988, it cannot be held that the deceased, who was driving the vehicle in question, was possessing the driving licence.

9. In order to consider the aforesaid contention of the appellant, I examined the entire record and from perusal of it would show that neither the driving licence of the deceased/Driver of the offending vehicle was seized nor its particulars as required under sub-clause (iv) of clause (c) of Section 134 of the Act of 1988 was furnished by the owner. It, thus, appears that initial burden could not have been discharged by the owner of the offending vehicle in view of the said provision. The said provision is relevant for the purpose is reproduced herein as under:-

> **134. Duty of driver in case of accident and injury to a person.**-When any person is injured or any

property of a third party is damaged, as a result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall-

(a) unless it is not practicable to do so on account of mob fury or any other reason beyond his control, take all reasonable steps to secure medical attention for the injured person, [4][by conveying him to the nearest medical practitioner or hospital, and it shall be the duty of every registered medical practitioner or the doctor on duty in the hospital immediately to attend to the injured person and render medical aid or treatment without waiting for any procedural formalities], unless the injured person or his guardian, in case he is a minor, desires otherwise;

(b) give on demand by a police officer any information required by him, or, if no police officer is present, report the circumstances of the occurrence, including the circumstances, if any, for not taking reasonable steps to secure medical attention as required under clause (a), at the nearest police station as soon as possible, and in any case within twenty-four hours of the occurrence;

[1][(c) 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.]

10. A bare perusal of the aforesaid provision, particularly sub-clause (iv) of clause (c) of it, it is evident that the duty is cast upon the driver, which includes the owner by virtue of Explanation to this provision, to furnish the information in writing to the insurer regarding the particulars of the driving licence. In the instant matter, neither the driving licence was produced nor its particulars were furnished by the owner of the vehicle in question. Non-furnishing of it would, therefore, lead to the breach of the statutory provisions of the Act of 1988 and the Insurance Company cannot be held liable under such circumstances.

11. At this juncture, the principles laid down in the matter of **The Oriental Insurance Company Ltd.** (supra), as relied upon by Shri Singh, are to be seen, where the driver of the offending vehicle has failed to fulfill the requirement provided under sub-clause (iv) of clause (c) of Section 134 of the Act of 1988. In that factual scenario, while interpreting the said provision, it has been held at paragraph 7 as under:-

> 07) Section 134 of the Act, 1988, provides that it is the duty of the driver 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 license.

Further, in the explanation, it has been clarified that for the purposes of this section, the expression "driver" includes the owner of the vehicle. Therefore, sub-clause (iv) of clause (c) of Section 134 imposes a duty upon the owner and driver of the vehicle to disclose the particulars of the driver and his driving licence. Thus, if particulars have not been produced by the owner or driver, there is breach of statutory provisions of the Act, 1988 and for that, the insurance company cannot be held liable.

12. By applying the aforesaid principles to the case in hand and particularly when the aforesaid statutory provision has not been complied with by the owner of vehicle in question by furnishing the particulars of the driving licence of the deceased/driver, it is difficult to hold that he possessed the driving licence.

13. Yet, in the matter of ***Pappu and Others Versus Vinod Kumar Lamba and Another*** **reported in AIR 2018 SC 592** wherein, it has been held by the Supreme Court that the onus would shift upon the Insurance Company only after the owner of the offending vehicle pleads and proves the basic facts of his knowledge that the driver of the offending vehicle was authorized by him to drive the vehicle and was having a valid driving licence at the relevant time. Paragraph 11 of it is relevant for the purpose is reproduced herein as under:-

The question is: whether the fact that the offending vehicle bearing No.DIL-5955 was duly insured by respondent No.2 Insurance Company would per se make the Insurance Company liable? This Court in the case of National Insurance Co. Ltd. (AIR 2004 SC 1531) (supra), has noticed the defences available to the Insurance Company under Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988. The Insurance Company is entitled to take a defence that the offending vehicle was driven by an unauthorised person or the person driving the vehicle did not have a valid driving licence. The onus would shift on the Insurance Company only after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorised by him to drive the vehicle and was having a valid driving licence at the relevant time. In the present case, the respondent No.1 owner of the offending vehicle merely raised a vague plea in the Written Statement that the offending vehicle DIL-5955 was being driven by a person having valid driving licence. He did not disclose the name of the driver and his other details. Besides, the respondent No.1 did not enter the witness box or examine any witness in support of this plea. The respondent No.2 Insurance Company in the Written Statement has plainly refuted that plea and also asserted that the offending vehicle was not driven by an authorised person and having valid driving licence. The respondent No.1 owner of the offending vehicle did not produce any evidence except a driving licence of one Joginder Singh, without any specific stand taken in the pleadings or in the evidence that the same Joginder Singh was, in fact, authorised to drive the vehicle in question at the relevant time. Only then would onus shift, requiring the respondent No.2 Insurance Company to rebut such evidence and to produce other evidence to substantiate its defence. Merely producing a valid insurance certificate in respect of the offending Truck was not enough for the respondent No.1 to make the Insurance Company liable to discharge his liability arising from rash and negligent driving by the driver of his vehicle. The Insurance Company can be fastened with the liability on the basis of a valid insurance policy only after the basic facts are pleaded and established by the owner of the offending vehicle – that the vehicle was not only duly insured but also that it was driven by an authorised person having a valid driving licence. Without disclosing the name of the driver in the Written Statement or producing any evidence to substantiate the fact that the copy of the driving licence produced in support was of a person who, in fact, was authorised to drive the offending vehicle at the relevant time, the owner of the vehicle cannot be said to have extricated himself from his liability. The Insurance Company would become liable only after such foundational facts are pleaded and proved by the owner of the offending vehicle.

14. It is, thus, evident based upon the aforesaid principles that the basic facts within the knowledge of the owner with regard to the driving licence of the driver was not only required to be

pleaded but was required to be proved as well by him and then only the onus would shift upon the Insurance Company. However, a bare perusal of the written statement filed by the owner would reveal that he has neither pleaded anything regarding the particulars of the driving licence nor has produced any of its particulars as evidenced by his statement. In absence of any particulars of the driving licence, it cannot, therefore, be expected from the insurer to establish the fact that the driver of the offending vehicle was possessing the effective and valid driving licence or not. In such an eventuality, it cannot be held that the vehicle in question was being driven by the driver/deceased with a driving licence.

15. Consequently, it is held that the vehicle in question was being driven by the deceased, who was not holding the driving licence at the relevant time and as such the Insurance Company cannot be held liable in relation to the accident occurred on 24.01.2010 for violation of the statutory provisions of the Act of 1988. In consequence, finding of the Claims Tribunal fastening the liability upon the Insurance Company is hereby set aside and the Insurance Company is held to be exonerated from its liability.

16. In so far as the amount of compensation as awarded by the Claims Tribunal while deducting half of the income of the deceased instead of 1/3rd towards his personal expenses, in contravention to the 2nd Schedule framed under Section 163-A of the Act of 1988 and by ignoring to consider the loss of estate are concerned, the same deserves to be modified. In consequence,

while considering the income of the deceased to the tune of Rs.3200/- as assessed by the Claims Tribunal, yearly Rs.38,400/- and by applying the multiplier of 18, it would work out at Rs.6,91,200/- and that by deducting one third of it instead of half as held by the Claims Tribunal, i.e., Rs.2,30,400/-, towards personal expenses of the deceased, the total dependency would be Rs.4,60,800/- (Rs.6,91,200 – Rs.2,30,400). In addition to this, the claimant would be entitled to sum of Rs.9,500/- towards conventional heads instead of Rs.7,000/- as held by the Claims Tribunal by ignoring to consider the loss of estate. The claimant is, thus, entitled to the total amount of compensation to the tune of Rs.4,70,300/- and the enhanced amount of Rs.1,07,700/- (Rs.4,70,300 – Rs.3,62,600) shall carry 6% interest per annum from the date of filing of claim petition till its realisation. The appeal being MAC No.369/2016 preferred by the claimant is accordingly allowed by modifying the award impugned to the extent indicated herein above.

17. At this stage, Shri Singroul, learned counsel for the Appellant/Claimant submits that although the Insurance Company has been exonerated but its involvement was found in the alleged accident, therefore, the Insurance Company may be directed to pay the awarded sum to the claimant while entitling to recover the same from the insured (Non-Applicant No.1) on the principle of pay and recover by placing his reliance upon the principles laid down in the matter of ***Manager, National Insurance Company Limtied Versus Saju P. Paul and another***, reported in **(2013) 2 SCC 41,**

followed in the matter of ***Manuara Khatun and Others* Versus *Rajesh Kumar Singh and Others*** reported in **(2017) 4 SCC 796.**

18. Considering the aforesaid contention based upon the aforesaid principles, it would be just and proper to issue a direction to the Non-Applicant No.2/Insurance Company to first pay the awarded sum to the Claimant while entitling to recover the same from the owner of the vehicle in question, i.e., Non-Applicant No.1. Accordingly, I direct the Non-Applicant No.2/Future Generali India Insurance Company Limited to first pay the awarded sum as observed herein above, to the claimant and then to recover the said sum from the owner of the offending vehicle i.e., Non-Applicant No.1/Rajeshwar Singh Rajput Khangar in execution proceedings arising in this very case.

19. Consequently, both the appeals are allowed with the aforesaid observations. Rest of the conditions as held by the Claims Tribunal, shall remain intact. No order as to costs.

Sd/-
(**Sanjay Agrawal)**
Judge

Deepti Jha