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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1145 of 2016

- M/s Chhattisgarh Cement Carrier, Ring Road, No. 2, Bhanpuri, Raipur, Tahsil & District Raipur (C.G.) Through: Rajesh Pande, S/o Bhola Prasad Pande, aged about 51 years

  (Owner)

---- Appellant/Non-applicant No.2

Versus

1. Dinesh Pandey, S/o Prabhu Pandey, Aged about 28 years, R/o Kala Khursi, P.O.- Dhanturrsi, Santdas Nagar, District Bhadohi, (U.P.) Truck Driver-bearing registration No. C.G.-04-J.C./2063
   (Driver)/Non-applicant No.1
2. The National Insurance Company Ltd., Through- Regional Office Modin Mahal, G.E. Road, Raipur, Tahsil & District- Raipur, C.G.
   (Insurer)/Non-applicant No.3
3. E. Satyanarayan Rao, S/o E. Anna Pandaya Rao, Aged about 50 years
4. E. Varlaxmi Rao, W/o E. Satyanarayan Rao, aged about 46 years
   (Claimants)

   Respondents 3 & 4 were the R/o Shivaji Nagar, Near Shishu Park, New Khursipar, Bhilai, Tahsil & District Durg, C.G.

---- Respondents

For Appellant	:	Shri Hemant Gupta, Advocate
For Respondent 1	:	None
For Respondent No.2	:	Shri Shivendu Pandya, Advocate
For Respondents 3 & 4	:	None

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

01.02.2019

1. This appeal has been filed by the Appellant/non-applicant No.2/owner under Section 173 of the Motor Vehicles Act, 1988 against the impugned award dated 22.06.2016, passed by the Motor Accident Claims Tribunal, Durg, District Durg (C.G.) in M.A.C.C. No. 03 of 2015, awarding a sum of Rs.9,13,500/- as compensation along with simple interest @ 6% per annum from the date of the application in favour of the Claimants, parents of deceased- E. Dhananjay Rao, on account of breach of policy condition, holding Appellant- non-applicant No. 2/owner along with non-applicant No.1/driver, as jointly and severally liable to pay the amount of compensation.

2. Brief facts of the case are that on 09.07.2011 deceased- E. Dhananjay Rao along with his friend- Sanjay Kumar was going by motorcycle bearing registration No. CG-04/LD/9742 which was being ridden by Sanjay Kumar and E. Dhananjay Rao was a pillion rider. When they reached Dabrapara culvert, at that time the Truck Trailer bearing registration No. CG-04/JC/2063, which was being driven in a rash and negligent manner by non-applicant No.1- Dinesh Pandey, owned by non-applicant No.2- M/s Chhattisgarh Cement Carrier and insured with non-applicant No.3- Insurance Company, dashed the motorcycle. As a result of this accident E. Dhananjay Rao sustained grievous injuries and died on the spot.

3. The Claimants/dependents, parents of the deceased, filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 claiming total compensation of Rs.48,55,000/-.

4. Learned Claims Tribunal having regard to the facts situation and the evidence on record awarded the total sum of Rs.9,13,500/- as compensation to the Claimants along with simple interest @ 6% per annum from the date of the application, holding non-applicant No. 2/owner along with non-applicant No.1/driver, as jointly and severally liable to pay the amount of compensation and exonerating the non-applicant No.3/Insurance on the ground that the non-applicant No.1 was not having a valid and effective driving licence to drive the offending vehicle at the time of accident. Being aggrieved the Appellant/Owner has filed the instant appeal.

5. Learned counsel for the Appellant submits that the owner/non-applicant No.2 examined Rajesh Kumar Pande as witness No. 2 on its behalf before the Tribunal. Rajesh Kumar Pande stated that prior to accident, he had seen the driving licence of non-applicant No.1 which was of LMV and he after verifying and seeing the driving licence and also testing the skill to drive the vehicle, appointed non-applicant No.1 as driver and handed over the offending vehicle to non-applicant No.1. Therefore, the Tribunal has wrongly exonerated the Insurance Company/non-applicant No.3 from its liability to indemnify the claim of the Claimants. In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of ***United India Insurance Co. Ltd.*** Vs. ***Lehru (2003) 3 SCC 338***; ***National Insurance Company*** Vs. ***Swarn Singh and others (2004) 3 SCC 297*** and the decision of Division Bench of High Court of Chhattisgarh in the matter of ***The Oriental Insurance Co. Ltd.*** Vs. ***Smt. Bhuri Bai & Others, (2012) 402 CBBCLJ***.

6. Learned counsel for Respondent No.2/Insurance Company submits that the driving licence of non-applicant No.1 produced before the Tribunal is fake licence. Therefore, there is no liability cast upon the Insurance Company to pay compensation on account of breach of policy conditions and the Tribunal considering all the relevant aspects of the matter has rightly exonerated the Insurance Company which needs no interference by this Court.

7. Heard learned counsel for the parties and perused the material available on record.

8. As per statement of Rajesh Pande (NAW-1), he specifically stated that he had seen the driving licence of non-applicant No.1 which was of LMV and heavy transport vehicle (HTV) and he after verifying and seeing the driving licence and also testing the skill to drive the vehicle, non-applicant No.1 was appointed as driver by the Company and was handed over the offending vehicle. That statement was uncontroverted. He also stated that HGV licence of non-applicant No.1 has been issued on 28.07.2011 which was valid from 28.07.2011 to 27.07.2014. As per documents Ex.-D/4, D/5, D/6 and D/7, it is clearly proved that Dinesh Pandey/non-applicant No.1, driver of the offending vehicle, at the time of accident i.e. 09.07.2011 had licence of heavy goods vehicle and light motor vehicle and driving licence was renewed by the authority. Insurance Company examined Yashpal Gajbhiye as witness No.1. He proved the document regarding particulars of licence Ex.-D/2, Ex.-D/4, Ex.-D/5, Ex.-D/6 and Ex.-D/7. As per his statement in cross-examination, he admitted the document Ex.D/5, Ex.-D/6 and Ex.-D/7 and licence is valid or not, it is to be proved by transport authority but no transport authority and invesgating officer have been examined by the Insurance Company. Witness No.1-Yashpal Gajbhiye admitted in paras 18, to 21 that the licence issued in favour of Dinesh Pandey/non-applicant No.1 is valid or not, it can be only explained by transport authority and no any witness from Regional Transport Department has been examined by the Insurance Company. Therefore, evidence adduced by both the parties, proved this fact that non-applicant No.2 after seeing the driving licence of non-applicant No.1 and after his driving test was taken, handed over the vehicle to the non-applicant No.1 and the Tribunal has fastened liability on the non-applicant No.2 on the ground of breach of policy conditions and exonerated the Insurance Company from its liability.

9. In the matter ***United India Insurance Co. Ltd.*** Vs. ***Lehru and Others, (2003) 3 SCC 338***, the Hon'ble Supreme Court while considering the liability of the Insurance Company in the case of fake driving license observed as under:

> "In order to avoid liability under Section 149(2)(a)(ii) it must be shown that there was a "breach" on the part of the insured. To hold otherwise would lead to absurd results. The aim and purpose of the provision for compulsory third-party risk is that an insurance company would be available to pay. The business of the company is insurance. In all businesses there is an element of risk. All persons carrying on business must take risks associated with that business. Thus it is equitable that the business which is run for making profits also bears the risk associated with it. At the same time innocent parties must not be made to suffer loss. These provisions meet these requirements. Therefore, it has to be held that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The Insurance company must establish that the breach was on the part of insured."

10. In the case of ***National Insurance Company*** Vs. ***Swarn Singh and others (2004) 3 SCC 297***, the principles laid down in *Lehru* (supra) that the insurer is to establish willful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or for the owners to be absolved from any liability whatsoever. In para 92 of the decision in *Swarn Singh* (supra) Hon'ble Supreme Court held as under:

> "***Where the driver's licence is found to be fake***
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> 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 hereinabove, is whether the insurer must prove that the owner was guilty of the willful breach of the conditions of the insurance policy or the contract of insurance. In *Lehru* case the matter has been considered in some detail. 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 the law in terms whereof the insurer is to establish willful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or for the owners to be absolved from any liability whatsoever. We would be dealing in some detail with this aspect of the matter a little later."

11. Summary of the findings given in clause (iii) in para 110 of the decisions in *Swarn Singh* (supra) is also relevant which is quoted below:

> "(iii) The breach of policy conditions e.g. disqualification of the driver or invalid driving license of the driver, as contained in sub-section (2) (a)(ii) of Section 149, has 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 the 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 conditions of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time."

12. In view of the above ratio laid down by the Hon'ble Supreme Court in the matters of *Lehru* and *Swarn Singh* (supra) and also discussed in the decision of Division Bench of this Court in the matter of *Smt. Bhuri Bai* (supra) and the statement of the owner that he had seen the driving licence produced by the driver, and his driving test was taken before giving him appointment, go to show that the owner had taken precaution before giving employment to the driver and was satisfied that the driver was having a valid driving licence and was perfect in driving. Therefore, there is no scope for the insurer to raise the plea that there was breach of the conditions of the insurance policy that the driver was having a fake licence and was not having a valid and effective driving licence. In the facts and circumstances of the case, the Tribunal has certainly fallen in error in exonerating the Insurance Company/non-applicant No.3 of its liability of payment of compensation and the same is not sustainable in the present case. Therefore, non-applicant No.3/Insurance Company is held liable jointly and severally alongwith non-applicants No. 1 & 2/driver & owner of the offending vehicle to satisfy the award.

13. If any amount has been deposited by non-applicant 1 and 2 (driver and owner of offending vehicle) and disbursed to the Claimants, they are entitled to recover the same from Respondent No.3/Insurance Company.

14. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

15. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

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