NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 911 of 2013

1. M/s Salasar Roadlines, through authorized officer, M/s Salasar Roadlines, Nevra, P.O. Nevra, P.S. Nevra, Distt. Raipur C.G.

---- Appellant

Versus

1. Arundhati Bai, W/o Late Rewaram Verma, aged about 34 years.
2. Ku. Sarswati, D/o Late Shri Rewaram Verma, aged about 15 years.
3. Ku. Ishwari, D/o Late Shri Rewaram Verma, aged about 13 years.
4. Ku. Deepa, D/o Late Shri Rewaram Verma, aged about 11 years.
5. Master Amit, S/o Late Rewaram Verma, aged about 9 years

   Res. No. 2 to 5 are Minors, through Mother Arundhati Bai, W/o Late Shri Rewaram Verma.
6. Mohanlal, S/o Remcharan Verma, aged about 66 years,
7. Shukwaro Bai, W/o Mohanlal Verma, aged about 61 years

   Respondents No.1 to 7 residing at C/o Shankar Verma (Head Constable), P.S. Khamtarai, behind Police Quarters, Tehsil Raipur, Distt. Raipur (C.G)
8. Bajaj Allianz General Insurance Company Ltd., Branch Office- Shivmohan Bhavan, Pandri, Raipur, Distt. Raipur (CG).
9. Ramesh Kumar, S/o Santram, R/o Maulipara, Nevra, P.O. Nevr, P.S. Nevra, Distt. Raipur (CG)

---- Respondents

MAC No. 912 of 2013

1. M/s Salasar Roadlines, through authorized officer, M/s Salasar Roadlines, Nevra, P.O. Nevra, P.S. Nevra, Distt. Raipur C.G.

---- Appellant

Versus

1. Amit Kumar, S/o Late Rewaram Verma, aged about 9 years, (Minor), through Mother Arundhati Bai, W/o Late Rewaram

Verma, residing at C/o Shankar Verma (Head Constable), P.S. Khamtarao, behind Police Quarters, Tehsil Raipur, Distt. Raipur (CG).

2. Bajaj Allianz General Insurance Company Ltd., Branch Office-Shivmohan Bhavan, Pandri, Raipur, Distt. Raipur (CG).

3. Ramesh Kumar, S/o Santram, R/o Maulipara, Nevra, P.O. Nevr, P.S. Nevra, Distt. Raipur (CG)

---- Respondents

MAC No.911/2013

For Appellant	:	Shri Pravesh Sharma, Advocate
For Respondent No.1 to 7.	:	Shri Amiyakant Tiwari, Advocate
For Respondent No.8	:	Shri Shokie Yadav, Advocate on behalf of Shri NK Thakur, Adv.
For Respondent No.9	:	None

&

MAC No.912/2013

For Appellant	:	Shri Pravesh Sharma, Advocate
For Respondent No.1	:	Shri Amiyakant Tiwari, Advocate
For Respondent No.8	:	Shri Shokie Yadav, Advocate on behalf of Shri NK Thakur, Adv.
For Respondent No.9	:	None

Order On Board By Hon'ble Shri Justice Parth Prateem Sahu

17/09/2019

1. As both the above appeals arise out of the same accident and common question of law is involved, therefore, the same are being heard together and decided by this common award.

2. Appellant-owner of truck bearing registration number CG04-JA-4073 (for short 'the offending vehicle') has filed the above appeals against the award dated 10.9.2013 passed by learned 2nd Additional Motor Accident Claims Tribunal, Raipur in Claim Cases No.116/12 & 117/12 whereby the Claims Tribunal allowed claim applications in part and awarded Rs.11,46,600/- & Rs.58,000/- as compensation, respectively.

3. Brief facts relevant for disposal of these appeals are that on 21.1.2009 Rewaram Verma (since deceased) along with his minor son Amit Kumar Verma was travelling on motorcycle bearing registration No.CG04/8939 and when they reached near Khartora Chowk, the offending vehicle dashed their motorcycle as a result of which Rewaram Verma & Amit Kumar Verma sustained grievous injuries. Rewaram was admitted in Ramkrishna Hospital, Raipur where he succumbed to his injuries during the course of treatment. Report of accident was lodged in the police station concerned based on which offence under Section 279, 337, 338 & 304A of IPC was registered against driver of offending vehicle.

4. Legal representative of deceased Rewaram filed claim application bearing No.116/12, claiming total compensation of Rs.24,80,000/- under different heads. Whereas, injured Amit Kumar Verma filed Claim Case No.117/13 claiming an amount of Rs.3,25,000/- as compensation stating that he had suffered permanent disability on account of fracture injury sustained by him in the accident.

5. Non-applicant Nos.1 & 2, driver & owner of offending vehicle, filed their reply to claim applications and denied the fact of accident. It was pleaded that on the date of accident, driver of offending vehicle i.e. non-applicant No.1, was having valid & effective driving license; the offending vehicle was having valid permit & fitness certificate and it was also covered by a valid insurance policy. Therefore, the insurance company would be

liable to indemnify the insured.

6. Non-applicant No.3- Insurance Company also filed its reply to claim application and pleaded that insurance company has not been informed about any accident by the offending vehicle. It was also pleaded that accident took place due to negligence on the part of driver of offending vehicle and that on the date of accident, the driver of offending vehicle was neither possessing valid & effective driving license nor there was valid permit and fitness certificate of offending vehicle. Thus the offending vehicle was driven on road in violation of conditions of insurance policy and therefore the insurance company is not liable to indemnify the insured.

7. Learned Claims Tribunal while appreciating pleadings and evidence of respective parties has held that accident took place due to rash and negligent driving by driver of offending vehicle i.e. non-applicant No.1, and that the deceased succumbed to injuries sustained by him in the road accident. The Claims Tribunal further held that injured Amit Kumar Verma also suffered injuries in the said accident. The Claims Tribunal also held that there was violation of condition of insurance company as on the date of accident, non-applicant No.1-driver was not possessing valid and effective driving license to drive offending vehicle. On the basis of aforesaid findings, the Claims Tribunal allowed both the claim cases in part; awarded Rs.11,46,000/- (against death of Rewaram) & Rs.56,000/- as compensation, respectively and fastened liablity upon the appellant herein to satisfy the impugned

award.

8. Learned counsel for appellant submits that driving license was seized from the possession of non-applicant No.1 on 27.1.2009 vide Ex.P-11, which is a seizure memo prepared by the police along with other documents of offending vehicle. He also submits that the Insurance Company had examined one Shri Rajesh Bhargava, who was working as 'License Clerk' in Regional Transport Office, Raipur, and he specifically stated in his statement that document Ex.P-16 was issued by his office and person named therein i.e. non-applicant Ramesh Kumar, was authorized to drive motorcycle, light motor vehicles & heavy goods vehicles. He further submits that this witness (NAW3-1) has specifically stated in his statement that on the date of accident, the license was within the validity period for which it has been renewed. He further submits that the Claims Tribunal has not taken into consideration statement of Rajesh Bhargava (NAW3-1) in its entirety and erroneously held that driving license was not issued from the office of Licensing Authority concerned and it is a fake license, which is not sustainable. He further submits that the question of validity of license possessed by non-applicant No.1-Ramesh Kumar has been considered by the co-ordinate Bench of this Court in MAC No.675/2011 filed by insurance company challenging its liability arising out of another accident caused by offending vehicle herein and it has been held that license of non-applicant No.1-driver is valid and effective.

9. Per contra, learned counsel appearing on behalf of respondent-

Insurance Company submits that the Claims Tribunal has rightly arrived at a conclusion that license placed on record, which is said to have been issued in favour non-applicant No.1-driver, has not been issued in his favour by the Licensing Authority concerned and therefore subsequent renewal of said license will also not change its nature to be fake.

10. Learned counsel appearing on behalf of claimants in both the appeals, has supported the impugned award.

11. I have heard learned counsel for the parties and perused the record of the Claims Tribunal.

12. The only point raised for consideration of this Court is whether license possessed by respondent-driver Ramesh Kumar was valid and effective on the date of accident?

13. Perusal of statement of Rajesh Bhargava (NAW3-1) would show that in the entire statement this witness has nowhere stated that license placed on record bearing No.S/5620/R/97 has not been issued from the Regional Transport Office, Raipur. On the contrary, he has specifically stated that sometimes due to pressing of wrong key, wrong number of license is displayed. In Para-17 of cross-examination, he has admitted in categorical term that in case of issuance of two licenses of same number or series of license, the same is recorded in 'miscellaneous register'. In this paragraph itself he has stated that as per Ex. D-9, license has been duly issued in the name of Ramesh Kumar. It is also not in dispute that license issued in the name of respondent Ramesh Kumar has been renewed from time to time

after its issuance on 24.3.1999. Thus, when the Clerk of concerned Licensing Authority has stated in categorical term that license issued in the name of respondent Ramesh Kumar is genuine and has been duly issued by the concerned licensing authority, however, due to some clerical error, the license has been issued in another number.

14. The Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. v. Swarn Singh & ors** reported in **2004 ACJ 1** has considered the issue of fake license and held as under:-

> “102 The summary of our findings to the various issues as raised in these petitions are as follows:
>
> (i) xxxxx
>
> (ii) xxxxx
>
> (iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, have 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 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 condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.”

15. In the instant case, though the witness examined by insurance company, who is Clerk in the office of Licensing Authority concerned, has not stated that the license was not issued from

his office. Even if it is accepted that on verification from the concerned Licensing Authority, the license possessed by respondent Ramesh Kumar was found to be fake, then also the burden will be upon the insurance company to prove that the owner has acted negligently and had not exercised reasonable care in fulfilling the conditions of policy regarding use of vehicle by a duly licensed driver. In the case at hand, the Clerk of Regional Transport Office examined before the Claims Tribunal in very specific term stated that license was issued from their office and secondly, the insurance company not brought any evidence to prove that the appellant did not took proper precaution before engaging the driver in employment.

16. By way of cross objection, the Insurance Company has challenged the award of the Claims Tribunal directing for pay and recover on the ground that the license was not issued in the name of respondent No.3, driver of truck. The grounds raised by the Insurance Company in cross-objection do not stand in view of the discussions made in preceding paragraphs. Witness No.1 of non-applicant No.3 in Para-6, 7 & 17 has categorically stated that the license was issued in the name of respondent No.3-Ramesh Kumar with endorsement to drive motorcycle, light motor vehicle and heavy motor vehicle. Hence, the cross-objection is liable to be dismissed and is hereby dismissed.

17. Other aspect of the case is that respondent insurance company filed an appeal bearing MAC No.675/2011 before this High Court challenging the award passed by learned 3rd Additional Motor

Accident Claims Tribunal (FTC), Surguja, District Ambikapur in Claim Case No.71/09 arising out of the accident caused by the same offending vehicle driven by respondent Ramesh Kumar herein, on the ground that the Tribunal concerned has wrongly held driving license of driver to be a genuine. This Court while considering the grounds raised by respondent Insurance Company dismissed the appeal by holding thus;-

> "5. Having heard the contentions of the counsel for the appellant and on perusal of the statement of the officer of the R.T.O. it would reflect that, the witness has not said that the license which the respondent No.4 was possessing was not issued from the office of R.T.O., Raipur. It only refers to the fact that, the original license number which is reflected in the license of respondent No.4 was perhaps issued to some Sushma Mishra and the documents and the registers during that period were not available in the office of R.T.O., Raipur.
>
> 6.Further what is also reflected is that, there is being due renewal of the license which the respondent No.4 was having from the office of R.T.O., Raipur in as much as the license to drive the heavy vehicles was valid initially from 07/01/2005 to 06/01/2008 and thereafter from 06/01/2008 to 07/01/2011 i.e. the period during which the accident had occurred.
>
> 7. Once when the witness from the office of the R.T.O. has admitted the fact that, the license was issued from the office of R.T.O. and that it was renewed periodically, this Court does not find any fault on part of the owner. It is settled position of law that, the owner cannot go deep into the verification aspect of the license which the driver has possessed. From perusal of the record it shows that, the license had also been periodically renewed from the office of R.T.O. from time to time which was bonafidely accepted by the owner. Therefore, he cannot be found fault with and the Insurance Company cannot be absolved of its liability indemnifying the owner."

18. On a specific query put to learned counsel appearing for respondent Insurance Company whether any appeal has been preferred against the order dated 4.1.2018 passed in MAC No.675/11 affirming award dated 7.2.2011 passed in Claim Case No.71/09 or the award has been satisfied, learned counsel, on instructions, submits that the award dated 7.2.2011 has not been put to further challenge and insurance company has satisfied the impugned award. When respondent Insurance Company has already satisfied the liability fastened on it in another claim case arising out of the accident caused by the offending vehicle also involved in the accident in question, in the same facts and circumstances of the case and same nature of evidence, as stated by Rajesh Bhargava (NAW3-1) in that case also, in the opinion of this Court there is nothing in this case to take a different view from that already taken by the coordinate Bench of this Court in MAC No.675/2011.

19. From the facts & circumstances emerging in record, the finding recorded by the Claims Tribunal that driver was not possessing valid and effective driving license is not sustainable, which is liable to be set aside and is hereby set aside.

20. In the result;

- both the miscellaneous appeals filed by the appellant owner are allowed, appellant-owner of offending vehicle is exonerated from its liability and it is held that respondent Insurance Company is liable to pay the amount of compensation as awarded by the Claims Tribunal in Claim

Cases No.116/12 & 117/12.

- Cross objection filed by the Insurance Company stands dismissed.
- Other conditions imposed by the Claims Tribunal in both the claim cases shall remain as it is.
- On deposit of entire amount of compensation by insurance company before the Claims Tribunal, the appellant will be at liberty to take steps in accordance with law for refund/ recovery of the amount paid to the claimants by it.

21. Impugned award stands modified to the extent indicated above.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-