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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 885 of 2018

- Ramesh Kumar Sahu, son of Jeevan Lal Sahu, aged about 35 years, resident of Jangal Para Nagri, Tehsil Nagri, District Dhamtari, Chhattisgarh

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

Versus

1. Anil Yadav, son of Ramesh Yadav, aged about 30 years, resident of Bhandari Para Kanker, Tehsil and Police Station Kanker, District Kanker, Chhattisgarh
   (Applicant/Claimant)

2. Tarachand Sahu, son of Jeevrakhan Sahu, aged about 25 years, resident of Village Sonamagar, Police Station Sihawa, Tehsil Nagri, District Dhamtari, Chhattisgarh
   (Driver/Non-applicant No.1)

3. The Oriental Insurance Company Limited, Divisional Office, Near Aadarsh Ball Mandir Main Road, Dhamtari, District Dhamtari, Chhattisgarh
   (Insurer/Non-applicant No.3)

---- Respondents

And

Miscellaneous Appeal (Civil) No. 882 of 2018

- Ramesh Kumar Sahu, son of Jeevan Lal Sahu, aged about 35 years, resident of Jangal Para Nagri, Tehsil Nagri, District Dhamtari, Chhattisgarh

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

Versus

1. Tarachand Sahu, son of Jeevrakhan Sahu, aged about 25 years, resident of Village Sonamagar, Police Station Sihawa, Tehsil Nagri, District Dhamtari, Chhattisgarh
   (Driver/Non-applicant No.1)
2. The Oriental Insurance Company Limited, Divisional Office, Near Aadarsh Ball Mandir Main Road, Dhamtari, District Dhamtari, Chhattisgarh
   (Insurer/Non-applicant No.3)
3. Smt. Tikeshwari Yadav, wife of Late Rajesh Yadav, aged about 40 years
4. Chataniya Yadav, son of Late Rajesh Yadav, aged about 16 years
5. Vivek Yadav, son of Late Rajesh Yadav, aged about 14 years

   Respondent No. 4 and 5 are being minor through her natural guardian mother Smt. Tikeshwari Yadav, wife of Late Rajesh Yadav

   Respondent No. 3 and 5 are resident of Village Bhandari Para Kanker, Tehsil and District Kanker, Chhattisgarh
   (Applicants/Claimants)

---- Respondents

For Appellant/Owner	:	Shri Kunal Das, Advocate
For Respondent/ Insurance Company	:	Shri Sandeep Shrivastava, Advocate
For Respondent/Driver	:	Shri R.N. Jha, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

10.04.2019

1. As both above appeals arise out of the same accident occurred on 21.01.2014 involving the same vehicle Mahindra Max bearing registration No. CG-04/T/3253 (hereinafter referred to as "offending vehicle"), they are being disposed of by this common judgment.

2. M.A.(C) No. 885 of 2018 arises out of separate award dated 15.02.2018 passed by the Motor Accident Claims Tribunal, North Bastar, Kanker (C.G.) in Claim Case No. 34/2016 awarding compensation in favour of the Claimant/injured-Anil Yadav of Rs.1,99,275/-

3. M.A.(C) No. 882 of 2018 arises out of separate award dated 06.02.2018 passed by the Motor Accident Claims Tribunal, North Bastar, Kanker (C.G.) in Claim Case No. 97/2016 awarding compensation in favour of the Claimants-wife and children of deceased- Rajesh Yadav of Rs.10,10,800/-.

4. In both above claim cases the Tribunal has also awarded interest @ 7.5% per annum from the date of claim applications till realization and has fastened the liability upon non-applicant No. 1/Driver and non-applicant No. 2/owner jointly and severally to pay compensation to the Claimants.

5. In Claim Case No. 34/2016, the Claimant/injured claimed compensation of Rs.2,61,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for injury sustained by him in the motor accident. In Claim Case No. 97/2016, the Claimants, unfortunate wife and children of deceased- Rajesh Yadav, claimed compensation of Rs.20,95,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for the death of Rajesh Yadav in the motor accident.

6. Brief facts necessary for disposal of both appeals are that on the date of accident i.e. 21.01.2014 Claimant/injured- Anil Yadav (in M.A.(C) No. 885 of 2018) and his brother Rajesh Yadav (deceased in M.A.(C) No. 882 of 2018) were coming from Nagri to Kanker by motorcycle, the motorcycle was being ridden by Rajesh Yadav and Anil Yadav was the pillion rider of the said motorcycle. When they reached near Village-Semra, non-applicant No.1- Tarachand Sahu, driver of the offending vehicle, driving the said vehicle in a rash and negligent manner, dashed the motorcycle. As a result thereof, Anil Yadav and Rajesh Yadav sustained grievous injuries and Rajesh Yadav died on the way while being taken to hospital for treatment.

7. Learned counsel for the Appellant submits that on the date of accident the offending vehicle was sold by Ramesh Kumar Sahu/non-applicant No.2 to Tarachand Sahu/non-applicant No.1 and the offending vehicle was insured with non-applicant No.3. He submits that the non-applicant No.1 without knowledge of registered owner/non-applicant No.2 was driving the vehicle without having valid and effective licence, therefore, according to the decision of Hon'ble Supreme in the matter of ***National Insurance Company*** Vs. ***Swarn Singh and others (2004) 3 SCC 297***, the registered owner of the vehicle is not liable for payment of compensation to the Claimants and it is the duty of Insurance Company, but the Tribunal has wrongly exonerated the Insurance Company and has fastened the liability upon the Appellant/Owner.

8. Learned counsel for the Insurance Company opposes the contention made by learned counsel for the Appellant. He submits that it is not in dispute that the Appellant is registered owner of the offending vehicle and on the date of accident, the driver of the offending vehicle was not having a valid and effective licence and the owner/non-applicant No.2 and driver/non-applicant No.1 of the offending vehicle have not produced the driving licence of non-applicant No.1- Tarachand Sahu who was driving the offending vehicle and was the subsequent purchaser of the offending vehicle before the Tribunal. He further submits that Insurance

Company has also filed an application before the Tribunal for obtaining the document from owner and driver of the offending vehicle for producing driving licence but they failed to produce the same. It is a case of specific breach of policy conditions and the offending vehicle was handed over to the non-applicant No.1 by non-applicant No.2 without verifying that non-applicant No.1 was having a valid and effective licence or not, therefore, the Tribunal has rightly exonerated the Insurance Company from its liability.

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

10. It is not disputed by both the parties that at the time of accident, non-applicant No.2 was registered owner of the offending vehicle and it is also not in dispute that after application filed by the Insurance Company under Order 11 Rule 12 of CPC and orders were passed by the Tribunal on 24.10.2017 in both claim cases to produce documents as required by the Insurance Company, no documents have been produced by the owner and driver of the offending vehicle. Charge-sheet was filed against non-applicant No.1 under Sections 3 and 181 of the Motor Vehicle Act for not having driving licence. Therefore, the Tribunal has exonerated the Insurance Company from its liability on the ground that the owner and driver had not produced the driving licence and had also not produced the permit of the offending vehicle.

11. In ***Pappu and Others*** Vs. ***Vinod Kumar Lamba and Another, (2018) 3 SCC 208***, the Hon'ble Supreme Court has held as under:

> "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.
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> In the present case, Respondent no. 1 owner of the offending vehicle merely raised a vague plea in the written statement that the offending vehicile no. 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, Respondent 1 did not enter the witness box or examine any witness in support of this plea. Respondent 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. Respondent 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 Respondent 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 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 license. 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 form his liability. The insurance company would become liable only after such foundational facts are pleaded and proved by the owner of the offending vehicle."

12. It is trite law, under Section 149 of the Act, it is for the respondent/insurance Company to prove the fact that the owner of the vehicle is guilty of willful violation of policy conditions. Three Judges bench of Supreme Court in case of *Swaran Singh* (supra) has held in para 110 (iii) & 110 (iv) as under :

> "(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence 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 condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.
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> (iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefor would be on them."

13. In view of the above ratio laid down by the Hon'ble Supreme Court in the matters of *Pappu* and *Swarn Singh* (supra), it is the duty of registered owner while handing over the vehicle to another person to verify the driving licence of driver whether it is valid and effective and also to take driving test, but no any evidence adduced by non-applicant No.2/owner for the same and the owner did not take due care and precaution before handing over the vehicle to another person and owner of the offending vehicle has not proved that non-applicant No.1 was holding a valid and effective driving licence. The Insurance Company is entitled to take a defence that the offending vehicle was being driven by an unauthorised person or the person driving the vehicle did not have a valid driving licence. Since in both claim cases, owner and driver had not produced the driving licence of the driver/non-applicant No.1 before the Tribunal, therefore, the onus would shift on the owner of the offending vehicle. Further, the Insurance Company has also established the willful breach of policy conditions on part of the owner of the offending vehicle by filing application under Order 11 Rule 12 of CPC for producing driving licence of non-applicant No.1 and permit and driver and owner have failed to prove the same after the order of the Tribunal. This Court is of the opinion that the Tribunal has rightly exonerated the Insurance Company/non-applicant No.3 of its liability of payment of compensation.

14. In the result, the above appeals being without any substance are liable to be dismissed and are accordingly dismissed.

15. No order as to cost.

Sd/-

(Gautam Chourdiya)
Judge

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