

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 561 of 2014**

- Smt. Harvant Kaur Sahni W/o Jagat Singh Sahni Aged About 60 Years R/o Geedam Road, Jagdalpur, P.S. Jagdalpur, Distt. Bastar C.G.

----Appellant**Versus**

1. Smt.Baniharin Bai Sahu W/o Late Nohar Singh Sahu Aged About 50 Years
2. Manbodh Sahu S/o Late Nohar Singh Sahu Aged About 32 Years
3. Kamta Sahu S/o Late Nohar Singh Sahu Aged About 30 Years
4. Yogeshwar Sahu S/o Late Nohar Singh Sahu Aged About 28 Years
5. All are R/o village Kochera, Post- Dhaneli, P.S. And Tahsil Gurur, Distt. Balod C.G.
5. Kamlesh Kumar Sahu S/o Nagendra Sahu Aged About 35 Years R/o Dhaneli, Post- Dhaneli, P.S. And Tah. Gurur, Distt. Balod C.G.
6. National Insurance Company Ltd., Thru- The Divisional Manager, Akash Ganga Parisar, Supela, Bhilai, Tahsil and Distt. Durg C.G.

---- Respondents

For Appellant	Ms. Rajkumari Yadav, Advocate on behalf of Shri Subash Yadav, Advocate. .
For Respondent Nos. 1 to 4	Shri Praveen Dhurandhar, Advocate.
For Respondent No.5	None, though served.
For Respondent No.6	Shri Raj Awasthi, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board**

15/03/2019

1. Heard on admission.
2. The appeal being arguable on merits is admitted for hearing.

3. With the consent of both the parties, the matter is heard finally.
4. This is an appeal by the appellant/owner of the vehicle-non-applicant no.2 under Section 173 of the Motor Vehicle Act against the award dated 29.07.2013 passed by the 2nd Additional Motor Accident Claims Tribunal, Balod, District Balod, C.G. in claim case No. 25/12, whereby the Tribunal in a death case has awarded a total sum of Rs.2,84,000/- with interest at the rate of 6% per annum from the date of application till its realization, fastening the liability on the appellant/owner and Driver-non-applicant no.1, while exonerating the Insurance company/non-applicant no.3 on the ground of breach of policy conditions.
5. As per averments in the claim petition and award, on 18.02.2012 the deceased Nohar Singh, aged about 55 years, earning Rs.3,300/- per month, working as Labour, suffered grievous injuries in the motor vehicular accident caused due to rash and negligent driving of Truck bearing no.CG17-H-3875 by non-applicant No.1 and during treatment he died. At the time of accident, the offending vehicle was owned by non-applicant no.2 and insured with non-applicant no.3.
6. On claim petition being filed by the claimant under Section 163A of the Motor Vehicles Act for compensation to the tune of Rs.8,90,400/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.
7. Learned counsel for the appellant submits that in fact the owner

had appointed one Dhujram Sahu for driving her vehicle but on 17.02.2012 in the evening the said vehicle was stolen by non-applicant no.1 Kamlesh Sahu and while driving the vehicle non-applicant no.1 caused the accident resulting in death of the deceased namely Nohar Singh. Since the offending vehicle was being driven by non-applicant no.1 after committing theft of the same, without knowledge of its driver Dhujram Sahu or the appellant/owner and without obtaining their permission, as the vehicle was duly insured with non-applicant no.3 on the date of accident, the Tribunal was not justified in fastening liability on non-applicants no. 1 & 2 and the same ought to have been fastened upon the Insurance Company/non-applicant no.3.

8. Learned counsel for the respondent nos. 1 to 4 has duly assisted the Court.
9. Learned counsel for the respondent no.6 submits that on the date of accident, the vehicle in question was being driven by Kamlesh Sahu without any valid and effective driving licence which has been duly proved by NAW-2 P.T. Meshram and NAW-4 Satyendra Kumar Soni. This apart, non-applicant no.1 was also in drunken condition at the time of accident, therefore, he was charge sheeted for the offence under Sections 3 read with 181 and 185 of the Motor Vehicles Act. Though, non-applicant no.2 has stated that the offending vehicle was stolen by non-applicant no.1 but no report was lodged by the owner or its driver Dhujram Sahu before the concerned police station in time and the defence was taken subsequently with an oblique motive to avoid the liability. Therefore,

considering the facts and circumstances of the case and the material available on record, the Tribunal has rightly exonerated the Insurance Company and fastened liability upon non-applicant nos. 1 & 2 of satisfying the award.

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

11. It is true that applicant witness no.1 Manoj Sahu and applicant witness no.2 Shanto Lal are not the eyewitness to the accident. NAW-1 Kamlesh sahu was examined before the Tribunal where he has stated that he is the driver of the offending vehicle and on the date of accident he was driving the same. He has denied the suggestion that he had taken the offending vehicle without the knowledge of its owner.

12. NAW-3 Manjeet Singh Sahni is the son of non-applicant no.2 Harvant Kaur Sahni, who runs the Transport Company in the name of Sahni and Sahni at Jagdalpur, he states that one Dhujram was appointed as driver of the offending vehicle but the same was stolen by some unknown person and thereafter the vehicle met with an accident. He states that on 19.02.2012 in the evening he was telephonically informed by Dhujram about the accident but at that time he was outside the State of Chhattisgarh. However, after 8-10 days of the accident he went to police station for lodging report but his report was not lodged by the police saying that it has caused accident and is standing in the police station.

Though, this witness has stated that records concerning the

payment to drivers and their attendance are maintained by them but he has not filed any such record before the Tribunal to prove that Dhujram Sahu was driver of the offending vehicle and not Kamlesh Sahu non-applicant no.1, whereas non-applicant no.1 Kamlesh Sahu has specifically stated in his evidence that he was also working as a driver of the offending vehicle under non-applicant no.2. Further, according to NAW-3 Manjeet Singh Sahni information regarding the accident was received by him on 19.02.2012 itself but no report was lodged by him about the theft of his vehicle in time. As per unrebutted evidence of NAW-4 Satyendra Kumar Soni, Assistant Grade-III in RTO, Durg, on the date of accident non-applicant no.3 Kamlesh Sahu was having a licence for LMV which was valid till 19.06.2011 and renewed on 12.04.2012 having validity till 21.03.2025 for non-transport vehicle. Admittedly, the offending vehicle is a heavy goods vehicle as per Ex.D-12, the accident occurred on 18.02.2012 and as per evidence of NAW-4, on the date of accident, non-applicant no.1 was not having a valid and effective licence to drive the offending vehicle. Therefore, considering the facts and circumstances of the case, the oral and documentary evidence available on record, the conduct of non-applicant no.2 owner NAW-3 Manjeet Singh Sahni and the evidence of Kamlesh Sahu, non-applicant no.1, the terms and conditions of the Insurance Policy, the fact that on the date of accident non-applicant no.1 Kamlesh Sahu was not having valid and effective licence to drive the offending heavy goods vehicle, the Tribunal rightly exonerated the Insurance Company on the ground of breach of policy conditions and fastened the same upon non-applicant nos. 1 & 2 jointly and

severally driver and owner of the vehicle. This Court finds no illegality or infirmity in the findings so recorded by the Tribunal warranting interference by this Court.

13. In the result, the appeal filed by the owner of the vehicle being without substance is liable to be dismissed and is, accordingly, dismissed.

Sd/-
Gautam Chourdiya
Judge

Akhilesh