

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A.(C) No. 223 of 2014****Reserved on 07.11.2019****Pronounced on 26.11.2019**

- Reliance General Insurance Co.Ltd. S/o Thru- Manager, Lalganga Shopping Mall- Raipur, At Present Infront Of Dhuppad Petrol Pump, National Corporate Park, G.E. Road, P.S. Azad Chowk, Distt. Raipur C.G.

---- Appellant**Versus**

1. Niki Tiwari W/o Late Bulet Tiwari Aged About 20 Years R/o Pipariya, Post- Aruwa, P.S. Bhagwanpur, Civil & Revenue Distt. Siwan Bihar.Claimants
2. Samar Tiwari S/o Pravesh Tiwari Aged About 45 Years R/o Pipariya, Post- Aruwa, P.S. Bhagwanpur, Civil & Revenue Distt. Siwan Bihar. Claimants
3. Smt. Usha Tiwari W/o Samar Tiwari Aged About 40 Years R/o Pipariya, Post- Aruwa, P.S. Bhagwanpur, Civil & Revenue Distt. Siwan Bihar. Claimants
4. Awtar Singh S/o Kalyan Singh Aged About 57 Years R/o 22, Magi Mandir Line, Kolkatta, 25, P.S. Varna Nagar, 2/2 D Hazra Road, Civil & Revenue, Distt. Kolkatta- 29 W.B. (Driver of veh. No. W-23-B-0552)
5. Subhandip Singh R/o 22, Magimandir Line, Kolkatta 25, P.S. Varna Nagar, 2/2 D Hazra Road, Civil & Revenue Distt. Kolkatta- 29 W.B. (Owner of veh. No. W-23-B-0552)
6. Satish Tiwari S/o R. Tiwari R/o Main Road, Tatibandh, P.S. Amanaka, Civil & Revenue Distt. Raipur C.G., C/o Asam-Gujrat Roadways, Tatibandh, P.S. Amanaka, Civil & Revenue Distt. Raipur C.G. (Driver of veh. No. CG 04 J 3152)
7. Updesh Singh S/o Jaswant Singh R/o Asam-Gujrat Roadways, Tatibandh, P.S. Amanaka, Civil & Revenue Distt. Raipur C.G. (Owner of veh. No. CG 04 J 3152)
8. New India Insu.Co.Ltd. Thru- Divisional Manager, Madina Building, Jail Road, P.S. Maudahapara, Civil & Revenue Distt. Raipur C.G. (Insurer of veh. No. CG 04 J 3152)

---- Respondents

For Appellant:	Shri Rohitashva Singh, Advocate.
For Respondents No. 1 to 7:	None, though served.
For Respondent No.8:	Shri Raj Awasthi, Advocate.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J

CAV Award/Order

1. This Miscellaneous Appeal has been preferred by Non-applicant No.3- Reliance General Insurance Co. Ltd. under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act, 1988') questioning the legality and propriety of the award dated 25.01.2014 passed by Seventh Additional Motor Accident Claims Tribunal, Raipur (C.G.) (hereinafter referred to as 'the Tribunal') in Claim Case No. 187/11, whereby the learned Tribunal while allowing the claim petition in part, has awarded a total amount of compensation to the tune of Rs. 10,73,000/- with 6% interest per annum from the date of filing of the claim petition till its realization while fastening the liability upon the Insurance Company to the extent of 75%. The parties to this appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated the facts of the case are that on 13.01.2010 at about 13:50pm, deceased Bulet Tiwari, helper of the "Truck" bearing registration number CG-04-J-3152 was going to *Raigarh* from *Raipur* while travelling in the said vehicle which was being driven by Non-applicant No.4- Satish Tiwari and as soon as they reached near the village *Birkoni* of District *Mahasamund*, it was hit vehemently from its back side by the offending vehicle, another "Truck", bearing its registration number WB-23-B-0552, which was owned by Non-applicant No.2- Subhandeep Singh, insured with Non-applicant No.3-Reliance General Insurance Co. Ltd. At the relevant time, it was being driven rashly and negligently by its driver, namely, Awtar Singh (Non-applicant No.1). As a result of which, deceased Bulet Tiwari injured badly and expired on the spot giving rise to the institution of the claim petition under Section 166 of the Act, 1988 by his legal

representatives/Claimants, wherein a total amount of compensation to the tune of Rs.16,00,000/- under various heads has been claimed by submitting *inter alia* that the deceased, 22 years old, was a helper (*khalaasi*) by profession and used to earn Rs.5,000/- per month apart from daily wages of Rs.50/-.

3. The owner and the driver of both the vehicles were proceeded *ex parte*, while insurers of it alone have contested the aforesaid claim. Non-applicant No.3 (Appellant), the insurer of the offending vehicle, i.e., "Truck" bearing registration number WB-23-B-0552, resisted the claim mainly on the ground that the driver of it, i.e., Awtar Singh (Non-applicant No.1) was not holding the valid and effective driving licence at the relevant time, and therefore, no liability could be fastened upon it.

4. After considering the evidence led by the parties, it has been held by the Tribunal that the alleged accident occurred due to contributory negligence of the drivers of both the vehicles, i.e., Non-applicant No.1 (Awtar Singh) and Non-applicant No.4 (Satish Tiwari) to the extent of 75% and 25% respectively. It held further while entertaining the issue number 3 that although the driving licence of Awtar Singh, the driver of the offending vehicle, was found to be a fake one, but that by itself would not be sufficient to hold that the insured has committed a wilful default so as to absolve the liability of the insurer as it failed to establish the fact that the owner of the alleged offending vehicle has wilfully committed the terms and conditions of the alleged insurance policy by permitting its vehicle to the said driver (Awtar Singh) despite knowing the fact that he was not holding the valid and effective driving licence. As a consequence, while fastening the liability upon the Insurance Company/Appellant to the extent

of 75% awarded a total amount of compensation to the tune of Rs.10,73,000/- with 6% interest per annum from the date of filing of the claim petition till its realization.

5. Being aggrieved, Non-applicant No.3- Reliance General Insurance Co. Ltd has preferred this appeal. Shri Rohitashva Singh, learned counsel appearing for the Appellant submits that the Tribunal despite holding that the driving licence of the driver of the alleged offending vehicle is a fake one, has committed an illegality in fastening the liability upon the Insurance Company on finding that the Appellant/Insurance Company has failed to establish the fact that the owner of it, i.e., Non-applicant No.2 of the offending vehicle, has violated the alleged condition of the insurance policy wilfully. According to him, the finding of the Tribunal as such even in absence of pleading and/or evidence led by the owner and driver of the alleged offending vehicle is perverse and cannot be held to be sustainable in the eye of law.

6. Shri Raj Awasthi, learned counsel appearing for Respondent No.8 has reiterated the aforesaid contention of Shri Singh.

7. I have heard learned Counsel for the parties and perused the entire record carefully.

8. From perusal of the record, it appears that the Appellant/Insurance Company in order to substantiate its defence has examined the Head Assistant of Public Vehicle Department, Beltola Road Kolkata 20, namely, Sikhrendra Raichoudhary (N.A.W.1). According to him, the alleged driving licence of driver Awtar Singh, marked as Ex.C.1, was not issued from his department and the certificate (Ex.D.2) showing this fact was issued on 30.05.2013. Upon perusal of the statement of the said witness, vis-a-vis,

the said certificate (Ex.D.2), it is evident that the alleged driving licence, being number WB-011989115467, was not issued from the said office in the name of Awtar Singh. The Tribunal has, therefore, not committed any illegality in arriving at a conclusion that the alleged driving licence (Ex.C.1) of Awtar Singh was a fake one and he was not authorized to drive the alleged offending vehicle at the relevant time. However, the finding of the Tribunal, fastening the liability upon the Insurance Company even upon holding as such by observing that since the Appellant/Insurance Company has failed to adduce any evidence in order to establish the fact that the owner of the alleged offending vehicle has committed the alleged violation of the policy wilfully by permitting the said driver (Awtar Singh) to drive his vehicle despite knowing the said fact, appears to be unjustified.

9. As reflected from the record, the owner and driver of the alleged offending vehicle were proceeded *ex parte* and, admittedly have failed to submit their written statements. A very specific defence was taken by the Appellant/Insurance Company in its written statement that the driver (Awtar Singh) of the alleged offending vehicle was not possessing the valid and effective driving licence to drive the same and the said fact has duly been found established as observed herein above.

10. The question would, therefore, arise for determination at this juncture is as to whether the Appellant/Insurance Company could be held liable even upon establishing its defence provided under Section 149(2)(a) (ii) of the Act, 1988?

11. Pertinently, as observed herein above, no plea whatsoever was taken by the insured and has chosen not to participate in the proceeding. It was, however, expected from him that after verifying the driving licence of

the said driver, the vehicle in question was permitted to be driven by him. Surprisingly, no effort as such was taken for the reasons best known to him, though the onus to establish the basic facts of his own knowledge was upon the owner to plead and prove that he authorized the said driver for driving his vehicle after verifying the genuineness of his driving licence and only after that the alleged offending vehicle was permitted to be driven by him. In absence thereof, the basic fact of his own knowledge in this regard could not have been established. Non-disclosure of such a basic fact would, therefore, lead to an irresistible conclusion that the insured was aware regarding the fact that his driver (Awtar Singh) was not holding the valid and effective driving licence to drive the alleged offending vehicle and yet it was permitted to be driven by him.

12. The aforesaid observations of mine is fortified by the decision rendered recently by the Supreme Court in the matter of ***Pappu and others vs. Vinod Kumar Lamba and another*** reported in (2018) 3 SCC 208. That is the case where a vague plea was taken by the insured that the driver of the offending vehicle was authorized to drive the said vehicle without disclosing his name (Joginder Singh). He even did not enter the witness box in order to establish his said defence except to produce the driving licence of said Joginder Singh. In that factual scenario, it has been held that the liability upon the Insurance Company can be fastened only after the basic facts are pleaded and proved by the insured of the offending vehicle that it was driven by an authorized person having a valid driving licence. Paragraphs 12 & 13 are relevant for the purpose, which read as under:-

“12. This Court in *National Insurance Co. Ltd.*((2004) 3 SCC 297) 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.

13. In the present case, respondent 1 owner of the offending vehicle merely raised a vague plea in the written statement that the offending Vehicle 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 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.”

13. By applying the aforesaid principles to the case in hand, the finding of the Tribunal fastening the liability upon the Appellant/Insurance

Company cannot be held to be sustainable. It is, accordingly, set aside and the Appellant/Insurance Company is hereby exonerated from its liability.

14. Now, whether under the facts and circumstances of the case, the Appellant/Insurance Company can be directed to pay the claim amount with liberty to recover the same from the owner of the vehicle in question? This issue is, however, no more *res integra* in view of the principles laid down in the matter of ***National Insurance Co. Ltd. vs. Swaran Singh and others*** reported in (2004) 3 SCC 297. In the said matter, it was contended by the Insurance Company that once the defence taken by the insurer is accepted by the Tribunal, it is bound to discharge the insurer and fix the liability only on the owner and/or the driver of the vehicle. However, it was held that even if the insurer succeeds in establishing its defence, the Tribunal can direct the Insurance Company to pay the award amount to the Claimants and, in turn, recover the same from the owner of the vehicle. At paragraph 107, it was observed as under:-

“107. We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued, despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it had not been able to do so, the insurance company may initiate a separate action therefor against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or

the other, the insurer was not given an opportunity to defend at all. Such a course of action may also be resorted to when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage.”

15. In the present case, the vehicle in question, i.e., “Truck” bearing registration number WB-23-B-0552, is undisputedly insured with the Appellant/Insurance Company. Applying the dictum in ***National Insurance Co. Ltd. vs. Swaran Singh and others*** (Supra), in order to subserve the ends of justice, the Appellant/Insurance Company is hereby directed to pay the claim amount awarded by the Tribunal to the extent of 75%, as held therein, to the Claimants in the first instance, with liberty to recover the same from the owner of the vehicle in question, i.e., Non-applicant No.2- Subhandeep Singh and its driver Awtar Singh (Non-applicant No.1) in accordance with law.

16. Consequently, the appeal is allowed with the aforesaid direction. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
JUDGE