NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 1237 of 2019

- Future Generali India Insurance Company Limited Through Its Legal Manager, Shop No.3, II Floor, Maruti Business Park, G E Road, Raipur, Tahsil And District Raipur Chhattisgarh.

---- Appellant

Versus

1. Roshan Kumar S/o Late Dhanesh Ram Sahu Aged About 20 Years Caste Teli, R/o Village Dihipara Nagri, P O Nagri, Tahsil Nagri, District Dhamtari Chhattisgarh.
2. Rakesh Kumar S/o Late Dhanesh Ram Sahu Aged About 18 Years Caste Teli, R/o Village Dihipara Nagri, P O Nagri, Tahsil Nagri, District Dhamtari Chhattisgarh., District : Dhamtari, Chhattisgarh
3. Ram Raj Singh S/o Ram Lakhan Singh Aged About 24 Years Caste Gond, R/o Village Chakri Pani, P.O. Barambaba Sidhi, Police Station City Kotwali, Sidhi, District Sidhi Madhya Pradesh.
4. Omprakash Sahu S/o Meghraj Sahu Aged About 32 Years Caste Teli, R/o Qr. No. 53, Street No.2, Pradipti Nagar Ward No. 51 Borsi Durg, Police Station City Kotwali Durg, Tahsil And District Durg Chhattisgarh.

---- Respondents

For Appellant:	Shri Sourabh Sharma, Advocate.
For Respondents:	None.

Single Bench:Hon'ble Shri Sanjay Agrawal, J

Order On Board

03.10.2019

1. This Miscellaneous Appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act, 1988') by Non-applicant No. 3/Appellant-Insurance Company questioning the legality and propriety of the award dated 17.05.2019 passed by the Additional Motor Accident Claims Tribunal, District Dhamtari (C.G.) in Claim Case No.86/18, by which, the learned Claims Tribunal while allowing the claim in part, has awarded total amount of compensation to the tune of Rs.

7,47,696/- 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. 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 26.12.2017 at about 9:30 a.m., deceased Satrupa Bai was coming with her husband Dhanesh Ram Sahu by motorcycle bearing registration No. C.G.05/U/7502 from village Diheepara Nagari to Dudhawa and as soon as they reached near Sinhawa main road Dhamtari, it was dashed vehemently by the offending vehicle "Hyva Truck- Tipper" bearing its registration No. C.G.04/LJ/0496, owned by Non-applicant No.2 Omprakash Sahu, insured with Non-applicant No.3 Future Generali India Insurance Company Limited. At the relevant time, the vehicle in question was being driven rashly and negligently by its driver Ram Raj Singh, Non-applicant No.1. As a result of which, the alleged accident occurred, in which, Satrupa Bai and her husband Dhanesh Ram Sahu both expired on the spot.

3. On account of the aforesaid accident, the claimants being legal representatives of the deceased instituted a claim petition enumerated under Section 166 of the Act, 1988 by claiming total amount of compensation to the tune of Rs.41,00,000/- under various heads. The said claim petition was contested by Non-applicant No.1, driver of the offending vehicle by saying that the alleged accident occurred due to rashness and negligent driving of the driver of the motorcycle as he himself came in contact with the offending vehicle and pleaded further that since the vehicle in question was insured with Non-applicant No.3, therefore, in case of any liability being fastened, the same could be indemnified by the

Appellant/Insurance Company.

4. The Appellant/Insurance Company has contested the claim mainly on the ground that the driver of the offending vehicle was not holding the valid and effective driving licence, therefore, no liability could be fastened upon the Insurance Company.

5. After considering the evidence led by the parties, the Claims Tribunal arrived at a conclusion that the alleged accident occurred on 26.12.2017 due to rashness and negligent driving of the driver of the offending vehicle "Hyva Truck- Tipper" resulting into the sad demise of Satrupa Bai and her husband Dhanesh Ram Sahu. It held further that the driver of the offending vehicle was holding the valid and effective driving licence as the Insurance Company has failed to establish the fact that the driver was not holding the valid and effective driving licence. As a consequence, while fastening the liability upon the Insurance Company, the total amount of compensation as mentioned hereinabove has been awarded.

6. Being aggrieved, Non-applicant No.3/Insurance Company has preferred this appeal. Shri Sharma, learned counsel for the Appellant submits that the award impugned as passed by the Claims Tribunal holding that the driver of the offending vehicle was holding the valid and effective driving licence, is apparently contrary to law. He submits further that the driver of the offending vehicle himself has submitted a driving licence bearing No. MP 53R-2016-0145289, which was verified by the concerned Regional Transport Authority and the same was found to be a fake one. However, without considering the said facts in its proper manner, the award impugned has been passed and, therefore, liable to be set

aside and/or modified.

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

8. The main contention of the Appellant/Insurance Company herein is that the driver of the offending vehicle was not holding the valid and effective driving licence, and therefore, no liability could be fastened upon the Insurance Company. In order to establish the said fact, the burden was heavily upon it to prove the same. However, perusal of the record would reveal that the driving licence bearing No. MP53-N/110025254 was seized by virtue of the seizure memo vide Ex.P.9. The said driving licence, which was seized under the said seizure memo, was admittedly not verified by the Insurance Company and Deepak Soni, who was examined by the Insurance Company as Non-applicant Witness No.1 has admitted the said fact also at paragraph 4 of his testimony. It is, thus, evident that the verification of the alleged driving licence seized under Ex.P.9 was not done. No explanation whatsoever has been offered in this regard as to why it was not verified despite knowing the particulars of the same. It is, however, submitted by Shri Sharma, learned counsel for the Appellant/Insurance Company that though the said witness (Deepak Soni) has admitted in his evidence that the particulars of the alleged driving licence seized under Ex.P.9 was not got verified but the particulars of it, i.e., driving licence No. MP53-N/110025254 was also depicted in the particulars of the same driving licence, being Driving Licence No. MP 53R-2016-0145289, furnished by the owner of the vehicle in question in a Claim Form (Ex.D.2c) and, according to its verification from the District Transport Authority, Sidhi, it was found to be not issued, as evidenced by the report

of the said Authority which is also forming the part of said Claim Form (Ex.D.2c). The contention of Shri Sharma is, however, noted to be rejected in view of the specific admission of said witness, coupled with non-examination of any of the witness from the said Transport Authority. It, therefore, appears that the burden to prove the said fact could not have been discharged by the Insurance Company and in absence of any cogent and reliable evidence, it cannot be held that the driver of the offending vehicle was not holding the valid and effective driving licence. The finding of the Claims Tribunal holding that the driver of the alleged offending vehicle was possessing the valid driving licence at the time of the alleged accident, thus, cannot be held to be unjustified.

9. In view of the foregoing discussions, I do not find any substance in this appeal. The appeal being devoid of merits is, accordingly, dismissed at admission stage itself. No order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE

Nikita