

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A.(C) No.1107 of 2014****Reserved on 29.11.2019****Pronounced on 13.12.2019**

National Insurance Company Limited Branch Office, Pipri, Post- Turra, Distt. Sonbhadra M.P., Thru- Chief Manager, National Insu.Co.Ltd., Vyapar Vihar Road, Bilaspur C.G., Chhattisgarh

---- Appellant**Versus**

1. Smt. Anita Bai, W/o Late Ayodhya Kachhi Aged About 40 Years R/o Village-Tulsaghat, Lormi, Tah. Lormi, Distt. Bilaspur C.G.
2. Shiv Kumar S/o Late Ayodhya Kachhi Aged About 28 Years R/o Village-Tulsaghat, Lormi, Tah. Lormi, Distt. Bilaspur C.G.
3. Raj Kumar S/o Late Ayodhya Kachhi Aged About 19 Years R/o Village-Tulsaghat, Lormi, Tah. Lormi, Distt. Bilaspur C.G.
4. Ku. Lalita D/o Late Ayodhya Kachhi Aged About 16 Years Minor, Thru- Mother Smt. Anita Bai, R/o Village- Tulsaghat, Lormi, Tah. Lormi, Distt. Bilaspur C.G.,
5. Amit Kumar Gupta S/o R.B. Gupta Sarveswari Masala Company, Ambikapur, Distt. Surguja Chhattisgarh.

---- Respondents

For Appellant:	Shri BN Nande, Advocate.
For Respondents No.1 to 4:	Shri Basant Dewangan, Advocate.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**C A V Award**

1. This Miscellaneous Appeal has been preferred by Non-Applicant No.2- National Insurance Company Limited under Section 10 of the Employee's Compensation Act, 1923 (for short 'the Act of 1923') questioning the legality and propriety of the award dated 10.06.2014 passed by the Commissioner for Employee's Compensation, Labour Court, Bilaspur (for short 'the Commissioner') in Case No.53/W.C Act/2009 Fatal whereby, the learned Commissioner, while fastening the liability upon the Insurance Company, has awarded a total amount of compensation to the tune of Rs.3,26,140/- by imposing further amount of Rs.1,63,070/- as penalty. The parties to this Appeal shall be referred hereinafter as per their description in the trial Court.

2. Briefly stated, the facts of the case are that on 30.05.2007, deceased Ayodhya Kachhi, who was the employee of Non-Applicant No.1-Amit Kumar Gupta went to village Salgi while carrying bolders (*gitti*) on the offending vehicle "truck" bearing Registration No.CG-17/C-1203, which was insured with Non-Applicant No.2-National Insurance Company Limited. On the fateful day, when he was returning while driving the alleged vehicle, a door of it was abruptly opened, as a result of which, he came under the wheel of the said truck and died on the spot giving rise to the institution of the claim under Section 22 of the Act of 1923, whereby, a total amount of compensation to the tune of Rs.3,64,800/- has been claimed by his legal representatives by submitting *inter alia* that the deceased, a 47 years old, was an employee of said Amit Kumar, where he used to earn Rs.4,000/- per month apart from the daily allowance of Rs.50/-, while working as a driver of him.

3. Non-Applicant No.1-the employer of the deceased was proceeded *ex parte*, while Non-Applicant No.2, the insurer of the alleged offending vehicle refuted the claim mainly on the ground that the deceased, who was authorized to drive the Light Motor Vehicle was not holding the valid and effective driving license to drive the alleged offending vehicle i.e. Heavy Goods Vehicle at the relevant time, therefore, no liability could be fastened upon it.

4. After considering the evidence led by the parties, it has been held by the Commissioner that the deceased died during the course of his employment as a driver of said Amit Kumar Gupta where, he used to earn Rs.4,000/- per month. It held further while considering the driving license (Ex.P-3) of the deceased that he was authorized to drive the alleged Heavy Goods Vehicle and that by considering the age of the deceased as 47 and that by applying the relevant factor of 163.07, awarded total amount of

compensation to the tune of Rs.3,26,140/- while fastening the liability upon the Insurance Company. It observed further that since the amount of compensation has not been tried to be paid within a month from the date of the occurrence of the alleged accident i.e. 30.05.2007, an amount of Rs.1,63,070/- by way of penalty has been imposed upon the Insurance Company.

5. Being aggrieved, Non-Applicant No.2-National Insurance Company Limited has preferred this Appeal, which has been admitted for hearing vide order dated 12.11.2014 on the following substantial questions of law:-

1.	“whether the imposition of liability of payment of penalty can be saddled upon the Insurance Company?”
2.	Whether the driver of the offending vehicle was driving the vehicle without proper and valid driving license and as such there was a breach of policy conditions?”

6. Shri BN Nande, learned Counsel for the Appellant/Insurance Company, while referring to the driving license (Ex.P-3) of the deceased, submits that he was authorized to drive the Light Motor Vehicle only. According to him, although there was an endorsement authorizing him to drive the alleged Heavy Goods Vehicle, but that authorization issued on 29.06.1989 was only for the period of three years as per the provisions prescribed under Section 14 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988'), which expired by efflux of time on 28.06.1992. Since it was not renewed, therefore, he was not entitled to drive the same on the date of the accident, which occurred on 30.05.2005. It is contended further while referring to the

provisions prescribed under clause(a) of sub-section (3) of Section 4-A of the Act of 1923, that the imposition of sum of Rs.1,63,070/- by way of penalty has wrongly been placed upon the Insurance Company. In support, he placed his reliance upon the decision rendered in the matter of Ved Prakash Garg vs. Premi Devi And Others reported in **(1997) 8 Supreme Court Cases 1.**

7. Countering the aforesaid contention, Shri Basant Dewangan, learned Counsel appearing for the Claimants No.1 to 4 submits that the Commissioner, while placing his reliance upon the alleged driving license (Ex.P-3) of the deceased and the endorsement as made therein authorizing him to drive the Heavy Goods Vehicle as well, has not committed any illegality in passing the award impugned.

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

9. As far as the first substantial question of law is concerned, it however, remains no more *res integra* in view of the principles laid down by the Supreme Court in the matter of Ved Prakash Garg vs. Premi Devi And Others (supra) wherein, it has been held that the imposition of penalty as per the provision prescribed under Section 4-A(3)(b) of the Act of 1923 is upon the insured as it is on account of his personal fault and he will have to bear the entire burden of it and the Insurance Company cannot be held liable to reimburse that part of the penalty amount. Paragraphs 14 and 19 are relevant for the purpose which read as under:-

“14.....On the aforesaid interpretation of these two statutory schemes, therefore, the conclusion becomes inevitable that when an employee suffers from a motor accident injury while on duty on the motor vehicle belonging to the insured employer, the claim for compensation payable under the Compensation Act along with interest thereon, if any, as imposed by the Commissioner, Sections 3 and 4-A(3)(a) of the Compensation Act will have to be made good by the insurance company jointly with the insured employer. But so far as the amount of penalty imposed on the insured employer under contingencies contemplated by Section 4-A(3)(b) is concerned as that is on account of personal fault of the insured not backed up by any justifiable cause,

the insurance company cannot be made liable to reimburse that part of the penalty amount imposed on the employer. The latter because of his own fault and negligence will have to bear the entire burden of the said penalty amount with proportionate interest thereon if imposed by the Workmen's Commissioner.

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“19.So far as additional amount of compensation by way of penalty imposed on the insured employer by the Workmen's Commissioner under Section 4-A(3)(b) is concerned, however, the insurance company would not remain liable to reimburse the said claim and it would be the liability of the insured employer alone.”

10. Applying the aforesaid principles of law, the imposition of penalty upon the Appellant/Insurance Company cannot be held to be sustainable in the eye of law. The substantial questions of law as framed, thus, answered in negative and it is held that the amount of penalty of Rs.1,63,070/- as imposed upon the Appellant-Insurance Company by the Commissioner is hereby set aside and the same shall now be incurred by the owner of the vehicle in question.

11. Now, in order to consider the second substantial question of law as framed, for which, I examined the entire oral and documentary evidence adduced by the parties. Perusal of the record would show that the vehicle in question (truck) was a Heavy Goods Vehicle which was insured as a “Goods Carrying commercial Vehicle” vide Ex.D-1. The vehicle in question, thus, could be driven by a person, who was authorized to drive the Heavy Goods Vehicle The deceased who was driving the alleged vehicle was however, authorized to drive the Light Motor Vehicle only as evidenced by his driving license marked as Ex.P-3. A close scrutiny of it would show that on 29.06.1989, he was permitted by the Prescribed Authority (RTO) Bhagalpur (Bihar) to drive the Heavy Goods Vehicle. However, by virtue clause (a) of sub-section (2) of Section 14 of the Act of 1988, he was entitled to drive the same only for the period of three years. The said provision is relevant for the purpose, which reads as under:

14. Currency of licences to drive motor vehicles._

1. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

- (2) A driving licence issued or renewed under this Act shall,--
(a) in the case of a licence to drive a transport vehicle, be effective for a period of three years:

[Provided that in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus; and]

(b) XXXX XXXX XXXX

12. By virtue of the aforesaid provision, it is clear that the effective period of a driving license to drive a transport vehicle is three years. Perusal of deceased's license (Ex.P-3) would however demonstrate the fact that although he was permitted and authorized to drive the alleged goods vehicle by the concerned Prescribed Authority on 29.06.1989, but he was entitled to drive the same only for the period of 3 years i.e. upto 28.06.1992 in view of the aforesaid provision. The alleged authorization was not renewed thereafter by the Prescribed Authority and in order to establish the said fact, the alleged driving license of the deceased Ayodhya Kachhi being License No.7239/89/F/BGP (previous License No.A-7584/88/Bilaspur) has got verified by the Appellant-Insurane Company from the District Transport Office, Bhagalpur as evidenced by its verification report (Ex.D-4). The alleged report was duly proved by his witness Shri JK Verma, the Administrative Officer of the Insurance Company. The evidence of the said witness could not have been rebutted in his cross examination. A combined reading of the deceased's driving license (Ex.P-3) and the verification report (Ex.D-4) would lead to an irresistible conclusion that the deceased was authorized to drive the alleged transport vehicle (Heavy Goods Vehicle) only for a period of three

years, commencing w.e.f 29.06.1989 upto 28.06.1992, which was, however, never renewed thereafter. The deceased was therefore not entitled to drive the alleged offending vehicle on 30.05.2007 when the alleged accident occurred.

13. Consequently, the substantial question of law framed in this regard is answered in positive and it is accordingly held that the alleged transport vehicle was being used in violation of the breach of the terms and conditions of the insurance policy (Ex.D-1). The Insurance Company is thus, entitled to be and 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 No:CG-17C-1203 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 i.e. Rs.3,26,140/- as awarded by the Commissioner 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.1- Amit Kumar Gupta in accordance with law.
16. The Appeal is accordingly allowed with the aforesaid direction. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
Judge