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HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Appeal (C) No. 970 of 2013**

Bajaj Allianz General Insurance Company Limited Thru- Branch
Manager, Shiv Mohan Bhawan, Vidhan Sabha Marg, Pandri, Raipur,
P.S. Pandri, Tah. And Distt. Raipur C.G., Revenue and Civil District
Raipur PS Pandri, Raipur

---- Appellant

Versus

1. Anand Kumar Kenwat S/o Mehattar Kenwat Aged About 27 Years R/o Sai Saraipali, Post- Pathrala, Thana- Basna, Distt. Mahasamund Chhattisgarh
2. Goutam Mandal S/o Radheshyam Mandal Aged About 25 Years R/o Gole Bazar, Khadagpur West Bengal
3. S.K. Azizul Haque S/o S.K.R. Ali R/o Darjabishanbad, P.O. Naykuri, Thana- Tamluk, Distt. Purna Medinipur W.B., District : Purba Medinipur, West Bengal
4. Niranjana Singh S/o Pradeep Singh Aged About 32 Years R/o Muskan Travels, Pateva, Distt. Mahasamund C.G., District : Mahasamund, Chhattisgarh
5. Ravindra Kumar Yadav S/o Rajendra Kumar Yadav Aged About 26 Years R/o Mahalpara, Saraipali, Distt. Mahasamund C.G., District : Mahasamund, Chhattisgarh
6. Reliance General Insu.Co.Ltd. Ravi Bhawan, Jaistambh Chowk, Raipur C.G., District : Raipur, Chhattisgarh.

---- Respondents

For Appellant	:	Mr. S.S. Rajput, Advocate.
For Respondent No.3	:	Mr. Pawan Shrivastava, Advocate on behalf of Shri Pushkar Sinha, Advocate
For other respondents	:	None.

Hon'ble Shri Justice Parth Prateem Sahu**Order on Board**

17/06/2019

1. The appellant/Insurance Company has challenged the impugned award dated 26.7.2013 passed by the Motor Accidents Claims Tribunal, Mahasamund (CG) (hereinafter the 'Claims Tribunal') allowing the claim application in part and awarded a total sum of Rs. 6,98,000/- as compensation along with interest @ 6 % p.a. from the date of filing of the claim application till its realization in a death case.
2. Brief facts relevant for disposal of this appeal are that on 17.10.2008 respondent No.1/claimant was travelling on a Bus at about 10.30 am and going to Mahasamund for attending the Court case. When the Bus reached near Turidih village at that relevant time, one Truck bearing registration No. WB 29-7709 driven by respondent No.2/non applicant No.1, caused accident due to which respondent No.1/claimant suffered grievous injuries over his right hand. Due to the severe injury, right hand above elbow was amputated and therefore, respondent No.1/claimant filed claim application before the competent Claims Tribunal claiming Rs.18,00,000/- as compensation on the grounds mentioned therein.
3. Respondent No.1 after service of notice appeared before the learned Claims Tribunal, but thereafter, remained absent and therefore, he was proceeded ex-parte. The non-applicant No.2, who is owner of the offending vehicle- Truck bearing registration

No. WB 29-7709, even after service of notice did not appear before the claims tribunal and was proceeded ex-parte. Respondent No.5, who is driver of the Bus (Muskan Travels), also did not appear before the learned claims tribunal and was proceeded ex-parte. Respondent No.3, who is the Insurance Company of the Truck and respondent No.6 who is Insurance Company of the Bus, have submitted their reply to the claim application separately. Respondent No.4, who is owner of the Bus, on which, the claimant/respondent No.1 was travelling had submitted reply to the claim application and pleaded that the accident took place due to negligence of the truck driver. It has also been pleaded that as on the date of accident, the Bus was insured with non-applicant No.6, i.e. Reliance General Insurance Company and therefore, liability if any, would be on the Insurance Company. Non-applicant No.3, also submitted its separate reply to the claim application and denied all the adverse pleadings mentioned in the claim application and further pleaded that the offending vehicle was driven in violation of the conditions of the insurance policy, as on the date of accident driver of the truck was not possessing valid and effective driving licence to drive the offending vehicle and further that there was no valid fitness certificate of the vehicle and therefore, there is violation of the conditions of the insurance policy.

4. Learned claims tribunal on appreciation of the pleadings and evidence available on record held that insurance company failed to prove that on the date of accident, non-applicant No.1/respondent No.2 was not possessing valid and effective driving license and therefore, fastened the liability for payment of the amount of compensation on the appellant/non-applicant No.3, Insurance Company. Learned Claims Tribunal after considering the material and evidence available on record partly allowed claim application and awarded a total sum of Rs.6,98,000/- to respondent No.1/claimant and fastened liability on non-applicants No. 1, 2 and 3 jointly and severally for payment of the amount of compensation.
5. Learned counsel for the appellant submitted that Insurance Company have got the license of respondent No.1 verified through the investigator appointed by the Company from the office of licensing authority Kolkata who said to have issued the license in favour of non-applicant No.1/respondent No.2 and found that the details of DL No.WB 01-743122 is not mentioned in the Register of the licensing authority. He further submitted that the appellant/ Insurance Company have filed document Ex. D4 which is a letter issued by the Insurance Company to Licensing Authority on which there is an endorsement by the licensing authority Kolkata that the details of the driving license mentioned in the letter is not found in the Register of the Motor Vehicles. To prove the endorsement and

license to be fake, the Insurance Company have filed an application under Order 26 Rule 4 of the Code of Civil Procedure, 1908 for examining the licensing authority on commission as he is the Govt. servant posted in a different State which was erroneously dismissed by the learned claims tribunal and thereby the Insurance Company has not been granted proper opportunity to prove their defence that on the date of accident, non-applicant No.1/ respondent 2, driver of the offending truck was not possessing valid and effective driving license which goes to the root of the case.

6. Learned counsel for respondent No.3 supports the impugned award.
7. No one appeared on behalf of other respondents even in the second round.
8. I have heard learned counsel for the appellant and perused the record minutely.
9. Perusal of the records would show that the appellant/Insurance Company have submitted the letter dated 22.10.2009 which is Ex. D2. This is a letter written by Subhasis Saha who is investigator, in which he has specifically mentioned that he visited the office of licensing authority P.V.D Kolkata on 22.10.2009 for verifying the genuineness of the driving license on which, it was found that on verification of the records of the licensing authority Kolkata it was found that the particulars of the driving license which has been

given to him for verification is not found in the Register of the licensing authority. He also submitted the receipt of an amount of Rs.50/- towards fee for verification of the particulars of the driving licence by S. Saha to verify the DL No. WB.01.743122 is Ex. D3.

10. Perusal of document Ex.D3 shows that Investigator S. Subhasis Saha (S. Saha) has been authorized by Jayatu Basu, who is Junior Executive (Claims) in the office of the appellant/insurance company to appear before the licensing authority Kolkata for verification of the DL No. WB-01-743122 which bears endorsement and seal by the licensing authority Kolkata that particulars of the licence mentioned in the letter do not found in the Register of the Motor Vehicle Section of the licensing authority.
11. The appellant/Insurance Company also filed an application on 15.1.2010 under Order 26 Rule 4 read with Section 151 of the Code of Civil Procedure for examining the licensing authority on commission on its own expenses which was dismissed by the learned claims tribunal vide its order dated 9.3.2010. From the aforementioned material available on record it is evident that the appellant/ Insurance Company have made efforts and tried to prove the fact that on the date of accident, the driver of the offending truck was not possessing valid and effective driving license, but the learned claims tribunal have erroneously not granted proper opportunity to prove the document Ex.D4 by dismissing the

application under Order 26 Rule 4 read with Section 151 of the C.P.C.

12. The proceedings under Section 166 of the Motor Vehicles Act, 1988 before the claims tribunal is a summary proceeding, but at the same time it is incumbent upon the learned claims tribunal to initiate proper enquiry and to obtain whatever information and document which may be found necessary from the Police, medical and other authorities while deciding the claim application and passing the award. The provisions of Section 168 of the Motor Vehicles Act reads as under :

168. Award of the Claims Tribunal.- On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation under section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.

13. Perusal of the provisions of Section 168, makes it clear that it is the duty of the claims tribunal to provide proper opportunity of being heard including an injured and hold an enquiry before passing an award. Rule 226 of the Chhattisgarh Motor Vehicles Rules, 1994 also provides the procedure to be followed by the claims tribunal.
14. In the case at hand, the appellant/Insurance Company have produced documentary evidence before the learned claims tribunal to show that the driving license seized by the Police from the possession of the driver of the offending vehicle to be a fake license but the Claims Tribunal erroneously rejected the application to examine licensing authority on commission and thereby have curtailed the opportunity of the Insurance Company to prove their defence and the fact that the license possessed by non-applicant No.1, driver of the offending vehicle was a fake license.
15. In view of the above, the impugned award passed by the learned claims tribunal is set aside. The matter is remitted back to the claims tribunal for decision afresh after allowing the

appellant/insurance company to record the evidence of the licensing authority, Kolkata on commission.

16. Needless to mention that the parties shall be allowed to amend the pleadings, adduce further evidence, filing documents or get the documents verified etc. and thereafter decision shall be taken afresh. The parties shall appear before the claims tribunal on **5th August, 2019**. Records of the Claims Tribunal shall be sent back forthwith. If any amount is deposited by the appellant, the same shall be kept in the fixed deposit in any nationalized bank for a period of six months extendable from time to time, if the said amount is not disbursed to the claimant. However, if the sum or any part of the sum has been paid to the claimant, the same shall not be recovered which may be subject to a fresh decision by the tribunal.
17. The appeal is allowed in part.

Sd /-
(Parth Prateem Sahu)
Judge