NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 325 of 2013

- The New India Assurance Company Limited Thru- Branch Manager, Branch Baloda Bazar, Distt. Raipur C.G., Chhattisgarh

---- Appellant

Versus

1. Smt. Sonmat, W/o Late Dilesh Ratrey, aged about 22 years
2. Deepak Kumar Ratrey S/o Late Dilesh Ratrey Aged About 3 Years
3. Dipasu Kumar Ratrey S/o Late Dilesh Ratrey Aged About 9 months

   No.2 & 3 are minors through natural guardian Mother Smt. Sonmat,

   All are R/o Arjuni, P.S. Akaltara, Tahsil Akaltara, District Janjgir-Champa (CG)
4. Narad Lal Chouhan S/o Dulesh Chouhan Aged About 29 Years R/o Okhar, Police Chowki- Pachpedi, P.S. And Tahsil Masturi, District Bilaspur (CG)
5. Rampyare S/o Kapil Aged About 56 Years R/o Arjuni, P.S. & Tahsil Akaltara, District Janjgir-Champa (CG)

---- Respondents

For Appellant	:	Mr. Raj Awasthi, Advocate
For Respondent No.1 to 3	:	Mr. Ravi Maheshwari, Advocate.
For Respondent No.4	:	Ms. Upasana Mehta, Advocate appears under the authority of Mr. Dharmesh Shrivastava, Advocate.

Order On Board By Hon'ble Shri Justice Parth Prateem Sahu

30/01/2019

1. This appeal filed by the appellant Insurance Company arises out of the award dated 14.12.2012 passed by the Motor Accident Claims Tribunal, Bilaspur (henceforth 'the Claims Tribunal') in Claim Case No.38/10 thereby awarding compensation of Rs.5,33,500/- along with interest @ 6% p.a. to the claimants and saddling liability upon the appellant Insurance Company to pay the amount of compensation to the claimants.

2. Facts of the case, in brief are that on 15.11.2008 deceased Dilesh Ratre was going on his motorcycle to Masturi from village Sargawan and when he reached near Tahsil Office, Masturi, the offending motorcycle bearing registration No.CG10-ED-5628, which was being driven by respondent No.4 herein in a rash and negligent manner, came from the opposite direction and dashed with the motorcycle of deceased Dilesh Ratre as a result of which he suffered grievous injuries on various parts of his body including head. He was taken to the Medical College Hospital, Raipur where he died during the course of treatment on 24.11.2008. Report of the said accident was lodged with the concerned police station with brief narration as to how accident had taken place. A claim case was filed by the claimants/appellants, who are unfortunate wife and children of deceased, claiming compensation to the tune of Rs.22,45,000/- under various heads, *inter alia,* pleading that at the time of accident the deceased was aged about 25 years and was working as driver and thereby getting salary of Rs.5,000/- per month. They were dependent on him and on account of his untimely death a loss of income has occasioned to them.

3. Appellant-Insurance Company contested the claim case by filing its reply and denied its liability on the ground that there was breach of condition of insurance policy as on the date of accident the driver of ill-fated motorcycle was not having valid and effective driving license to drive the same. As per documents produced during the course of investigation, he was having learner's license only and the person holding learner's license is not authorized to drive the vehicle on public road. It has further been mentioned that the claim made by the claimants is exaggerated.

4. Respondents No.4-driver of offending motorcycle did not appear before the Claims Tribunal and therefore he has proceeded ex-parte.

5. Non-applicant No.3/respondent No.5 herein also filed his reply to the claim application and stated that being the father of deceased he is also entitled to compensation. At the time of accident, he was residing with his deceased son and only with intent to harass and cause loss to him he has not been arrayed as one of the claimants in the claim application.

6. After appreciating the entire evidence (oral and documentary) on record and pleadings of the respective parties, the Claims Tribunal by the impugned award awarded total compensation Rs.5,33,500/- to the claimants/respondents No.1 to 3 under various heads such as loss of income, loss of estate & funeral expenses, along with interest @ 6% p.a. For the purpose of calculating the compensation, the Claims Tribunal has taken the notional monthly income of the deceased as Rs.3,000/-. The Claims Tribunal applied the multiplier of 18 on the basis of age of deceased i.e. 34 years. After making necessary deduction towards personal expenditure of the deceased and after adding towards the loss of love and affection & funeral expenses, the compensation, as mentioned above, was awarded. While partly allowing the claim application and fastening liablity on the insurance company, the Claims Tribunal has recorded a categorical finding that on the date of accident the driver was having driving license and one of the conditions mentioned in the insurance policy itself says that a person holding learner's license may also drive the vehicle.

7. Learned counsel for the appellants submits that the Claims Tribunal committed error in accepting that on the date of accident respondent

No.1-driver was having valid and effective driving learner's license in his name without considering the document Ex.D-1, which is the particulars of driving license issued by the Regional Transport Office, Janjgir-Champa. He further argued that even if a person is driving a motorcycle with learner's license then there should be strict compliance of Rule 3 of the Central Motor Vehicles Rules, 1989 (for short 'the Rules, 1989'), which is lacking in this case and this fact was also not considered by the Claims Tribunal. He submitted that there is specific condition to this effect in the policy also. He further argued that as there was no license of any nature with respondent No.1-driver of motorcycle, there was violation of the condition of insurance policy and as such, no liability could be fastened upon the appellant Insurance Company. He further argued that learned Claims Tribunal further committed an error by deducting one-fifth instead of one-fourth towards the personal expenditure of the deceased because the claimants are three in numbers and even if the father of deceased is also treated as one of the dependants then also deduction towards personal expenses cannot be more than one-fourth.

8. Learned counsel appearing on behalf of respondent No.4-driver /owner of ill-fated motorcycle argued that the respondent No.4 was possessing learner's license and as per condition mentioned in the Insurance Policy itself, he was authorized to drive the motorcycle. In this situation, the Claims Tribunal has rightly fastened the liability for payment of compensation on the insurance company which do not call for any interference in appellate jurisdiction.

9. On the other hand, learned counsel for the respondents No.1 to 3 have supported the arguments advanced on behalf of the respondent no.4.

10. I have heard learned counsel for the parties and perused the record of the Claims Tribunal including impugned award.

11. Perusal of the record would show that one Tarun Kumar Mishra, Senior Assistant, RTO, Janjgir Champa has been examined as AW-3 who has proved the document Ex.D-1 i.e. particulars of the learner's license No.DL96/08. He has categorically stated that learner's license has been issued by the Regional Transport Office, Janjgir in favour of Ashok Kumar son of Darasram. Perusal of Ex.D-1 also demonstrates that learner's license No.96/08 has not been issued in favour of Narad Chouhan son of Dulesh Chouhan. Another document which has been produced as Ex.P-1C i.e. permanent license issued in the name of Nandelal Chouhan and relied upon by the claimants to show that respondent No.1 was having valid and effective driving license to drive the offending motorcycle. However, a bare look of Ex.P-1C shows that this license was issued on 29.6.2009 i.e. much after the accident had taken place i.e. on 15.11.2008.

12. From the above evidence available on record it is clear that on the date of accident i.e. 15.11.2008, the respondent No.1 driver was not possessing any kind of driving license to drive any motorcycle. Except the above two documents, nothing has been brought on record to show that on the date of accident the respondent no.1-driver was having learner's license in his name. Tarun Kumar Mishra (AW-3) is a government servant and his evidence cannot be disbelieved. Moreover, the document of Ex.D-1 has been issued after verification of the records maintained in RTO.

13. In view of the above, this Court has no hesitation in holding that on the date of accident the respondent No.1 was not possessing any driving license of any nature to drive any vehicle much less the offending vehicle

and therefore the finding recorded by the Claims Tribunal to that effect is liable to be set aside. Even otherwise, the finding with respect to competency of the driver to drive the motorcycle with learner's license based on the condition mentioned in the insurance policy is also not sustainable because the condition mentioned in the policy itself very clearly envisages thus:-

> “Any person including Insured provided that a person driving holds an effective driving license at the time of the accident and is not disqualified from holding or obtaining such a license. Provided also that the person holding an effective driving Learner's License may also drive the vehicle and such a person satisfies the requirements of Rule 3 of Central Motor Vehicle Rule, 1989.”

A bare look of the above quoted condition would indicate that any person having learner's license holder can drive the motorcycle subject to satisfaction of the requirements of Rule 3 of the Rules, 1989. Rule 3 of the Rules, 1989 reads thus:-

> "3. General.-- The provisions of sub-section (1) of section 3 shall not apply to a person while receiving instructions or gaining experience in driving with the object of presenting himself for a test of competence to drive, so long as--
>
> (a) such person is the holder of an effective learner's licence issued to him in Form 3 to drive the vehicle;
>
> (b) such person is accompanied by an instructor holding an effective driving licence to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle; and (C) there is painted, in the front and the rear of the vehicle or on a plate or card affixed to the front and the rear, the letter "L" in red on a while background as under Note:.-- The painting on the vehicle or on the plate or card shall not be less than 18 centimetres squares and the letter "L" shall not be less

> than 10 Centimetres high, 2 centimetres thick and 9 centimetres wide at the bottom:
>
> Provided that a person, while receiving instructions or gaining experience in driving a motor cycle(with or without a side-car attached), shall not carry any other person on the motor cycle except for the purpose and in the manner referred to in clause(b)."

14. Keeping in mind the above quoted provision, if we consider the facts of present case, it is not in dispute that at the time of accident the respondent No.1 was driving the motorcycle but there is nothing on record to suggest that any instructor was accompanied with the driver and further that the letter 'L' in red colour has been highlighted in the front or rear of the motorcycle. Thus, it is apparent that there was non-compliance of the provisions of Rule 3 of the Rules, 1989 and being so, the finding recorded by the Claims Tribunal that there was no breach of any of the conditions of the insurance policy is not sustainable and liable to be set aside.

15. So far as the other submissions with respect to deduction of one-fifth towards personal expenditure of deceased is concerned, though the Claims Tribunal has erred in making deduction towards personal expenses of the deceased from the monthly income but looking to the quantum of compensation awarded and considering the fact that no amount towards future prospect was awarded and further the amount awarded under other conventional heads is also on lower side, I am not inclined to interfere with the quantum of the award as awarded by the Claims Tribunal.

16. Now the question arises for consideration is whether in the present case the insurer can be directed to pay compensation to the claimants and recover the same subsequently from the insured i.e. owner of offending

vehicle. The doctrine of “pay and recover” has been considered by the Hon'ble Supreme Court in several decisions. In the case of C**halla Bharathamma** (supra) there was breach of condition of insurance policy as the vehicle was plied on road without a permit and in this situation, keeping in the mind the beneficial object of the Act, 1988, the Hon'ble Apex Court has directed the insurer to first pay the amount to the claimants and then to recover the same from the insured. Para-13 of the said judgment reads thus:-

> “13.The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured. In the instant case considering the quantum involved we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured.”

17. Recently, in the matter of Amrit Paul's case (supra) the Hon'ble Supreme Court while dealing with the similar issue has held thus:-

> “We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh (supra) and Lakhmi Chand (supra) in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question

> had no permit. It does not require the wisdom of the "Tripitaka", that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the tribunal as well as the High Court had directed the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh (supra) and other cases pertaining to pay and recover principle

18. Considering the ratio laid down in the above decisions of the Hon'ble Supreme Court, the beneficial object of the Act, 1988 and further considering the fact that payment of compensation by owner & driver is merely a possibility but payment by an insurance company is a certainty, this Court is of the view that it would be proper to direct the insurer to first the pay the amount of compensation to the claimants, though in law it has no liability, and then recover it from the insured i.e. owner of offending vehicle in accordance with law.

19. For the foregoing discussions, the appeal is allowed and the impugned award of the Claims Tribunal fixing liability on the insurance company to pay compensation to the claimants is hereby set aside. Appellant Insurance Company is though exonerated from its liability to pay compensation to the claimants, but keeping in mind the beneficial object of the Act, 1988 as also the dictum of Hon'ble Supreme Court in the above matters, this Court directs the insurer of the offending vehicle viz., appellant herein, to first compensate the claimants/appellants and have the said sum recovered form the respondent-owner of the offending vehicle in accordance with the law.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-