NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1627 of 2015

- National Insurance Company Limited, Through Its Branch Manager, Branch Office-Near Main Post Office, Jagdalpur, Distt.- Bastar, Chhattisgarh ....Non-Applicant No.2,

---- Appellant

Versus

1. Smt. Jande Bai, Wd/o Late Fagnu, Aged About 40 Years Caste- Madia, R/o Vill.- Toyar, Sirhapara, P.S.- Mardum, Distt. Bastar, Chhattisgarh ....Applicant,

2. Lachhin Podiyami ,S/o Fotka Podiyami, Aged About 40 Years R/o Vill.- Taragaon, Solapara, P.S.- Lohandiguda, Distt.- Bastar, Chhattisgarh ....Non-Applicant No.1,

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate
For Respondents	:	None, though served.

Hon'ble Shri Justice Sanjay Agrawal

Award On Board

02.08.2019

1. This Miscellaneous Appeal has been preferred by Non-applicant No.2/National Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988) questioning the legality and propriety of the Award dated 06.10.2015 passed by the 2nd Additional Motor Accidents Claims Tribunal, Bastar place at Jagdalpur in Claim Case No.39/2015, by which, the Claims Tribunal, while allowing the claim in part, has awarded a total sum of Rs.3,61,000/- with 9% interest per annum from the date of filing of Claim Petition till its realisation 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 19.11.2014 at 04:30 PM when Fagnuram, applicant's husband, was returning by an Auto-rickshaw bearing its registration No. CG-17-KG-2910 from village Alnar market to his home at Toyar Sirhapara, the said vehicle (Autorickshaw), which was being driven rashly and negligently by its owner-cum-driver Lachhin Podiyami has lost its control, resulting into the sad demise of Fagnuram on account of injuries sustained on his head. According to the Claim Petition, the deceased was a labourer and used to earn Rs.150-200/- per day, and therefore, a total amount of compensation to the tune of Rs.09,98,000/- has been claimed by the Applicant/Claimant by filing an application under Section 166 of the Act of 1988.

3. The aforesaid claim has been contested by non-applicant No. 1, the driver-cum-owner of the offending vehicle, by saying that the alleged accident occurred as the deceased jumped out of the Auto-rickshaw abruptly before its stopping, therefore, non-applicant No.1 cannot be held liable for the alleged accident. It is pleaded further that since the vehicle in question, insured with non-applicant No.2, was being driven by him with valid and effective driving licence, therefore, in case of any liability being fastened, the same could be indemnified by the insurer/non-applicant No.2.

4. The Non-applicant No.2/insurance company contested the claim on the ground that the deceased himself was responsible for the alleged accident as he jumped out of the said vehicle in a drunken condition, and therefore, the insurance company cannot be held liable. It is contested further on the ground that the driver of the offending vehicle was not holding the valid and effective driving licence and as the alleged vehicle was being driven without any valid permit, therefore, the insurance company cannot be held liable for the alleged accident occurred on 19.11.2014.

5. After considering the evidence led by the parties, the Claims Tribunal, by its award impugned, arrived at a conclusion that the alleged accident occurred on 19.11.2014 at 04:30 PM on account of rashness and negligent driving of the driver of the offending vehicle (Auto-rickshaw), namely, Lachhin Podiyami, resulting into the sad demise of deceased Fagnuram. It held further that at the relevant time, the driver was holding the effective and valid driving licence and the insurer has failed to prove that it was being used without any valid permit and in consequence while fastening the liability upon the insurance company, awarded total amount of compensation to the tune of Rs.3,61,000/- with 9% interest per annum from the date of filing of Claim Petition till its realisation while fastening the liability upon the said insurance company.

6. Being aggrieved, Non-applicant No.2 has preferred this appeal. Shri Dashrath Gupta, learned counsel for non-applicant No.2 (appellant herein) submits that the vehicle in question was being used without any valid permit, and therefore, the insurance company cannot be held liable. He submits further while inviting attention to paragraph 13 of the statement of the owner, namely, Lachhin Podiyami, that he himself had admitted the fact that there was no permit of his vehicle on the date of alleged incident, yet the Claims Tribunal has fastened the liability upon it. The award impugned is, therefore, liable to be set aside and/or modified by exonerating the insurance company from its liability.

7. I have heard learned counsel for the appellant and perused the entire record carefully.

8. The main contention of Non-applicant No.2/insurance company herein is that since the vehicle in question was being used on 19.11.2014 without any

valid permit, therefore, the insurance company cannot be held liable.

9. In order to establish the aforesaid fact, the burden was heavily upon the insurance company to prove that it was being used without any valid permit. It is true, as submitted by Shri Gupta, that the owner-cum-driver of the vehicle in question, namely, Lachhin Podiyami (N.A.W.4) had admitted in his evidence at paragraph 13 that on the date of accident, there was no valid permit of his alleged vehicle. However, that by itself would not be sufficient to hold that the vehicle in question was being used without permit as the employee of the Regional Transport Authority, Jagdalpur, namely, Ku. Purnima Kashyap, examined as N.A.W.3 by the insurer, has stated very specifically that the permit was issued for the alleged offending vehicle, though it was stated by her that it was not in existence at the relevant time. Based upon her statement, it cannot be said that there was no permit of the alleged offending vehicle at the relevant time. The question which, therefore, arises for determination is as to whether the permit of the alleged offending vehicle was in existence at the relevant time or not. In order to prove this fact, the insurer has examined said witness (N.A.W.3), who was the employee of Regional Transport Authority, Jagdalpur and working there as Assistant Grade-2. According to this witness, who had come along with the Auto T.P. Register for the period commencing with effect from 05.05.2012 upto 30.03.2015, permit of the alleged offending vehicle was not in existence as on 19.11.2014 and has produced the part of the said Register, i.e., pertaining to two dates of it only, i.e., 31.10.2014 and 21.11.2014 showing endorsements regarding the issuance of permits on those days. It was marked as Ex.N.A.5. Pertinently to be observed here that although she came along with the said Auto T.P. Register showing issuance of permits from 05.05.2012 upto 30.03.2015, but the entries for

issuance of permits for the relevant date, i.e.,19.11.2014, when the alleged accident occurred, was not produced and no explanation whatsoever has been offered either by the said witness or by the insurer that under what circumstances, it was not produced. In absence of its production, it is difficult to hold that the permit of the alleged offending vehicle was not in existence as on 19.11.2014, as contended by the learned counsel for Non-applicant No.2. As such, the insurer has failed to establish the fact that the vehicle in question was being driven without valid permit. Consequently, findings recorded by the Claims Tribunal holding that the permit of the alleged offending vehicle was in existence at the relevant time deserve to be and are hereby affirmed.

10. In view of the foregoing discussions, I do not find any substance in this appeal. The appeal, being devoid of merit, is hereby dismissed. No order as to costs.

Sd/-

(**Sanjay Agrawal)**
Judge

Anjani