

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1442 of 2018

- Shri Hardev Hardware And Sanitation Prop. Atul Agrawal S/o Late Umashankar Agrawal, R/o Ramsagarpara, Tehsil And District Raipur, Chhattisgarh.....Owner Of The Vehicle.

---- Appellant

Versus

1. Smt. Kunti Dhiwar Wd/o Late Dhananjay Dhiwar Aged About 26 Years
2. Minor Suryakant Dhiwar S/o Late Dhananjay Dhiwar Aged About 3 Years Minor Through Natural Guardian Mother Smt. Kunti Dhiwar, Wd/o Late Dhananjay Dhiwar,
3. Narayan Dhiwar S/o Late Dukalha Dhiwar Aged About 72 Years
4. Smt. Dashmat Dhiwar W/o Narayan Lal Dhiwar Aged About 67 Years

All R/o Village Baraunda, P. O. Begoli, P.S. Kharora, District Raipur, Chhattisgarh.

5. Sewak Ram Yadav S/o Bishat Yadav R/o Village Baraunda, P. S. Kharora, District Raipur, Chhattisgarh. Driver Of Vehicle.
6. United India Insurance Company Ltd., Through Regional Manager, United India Insurance Company Ltd., Kachehri Chowk, Raipur, Chhattisgarh.Insurer.

---- Respondents

For Appellant	:	Shri Raza Ali and Shri Ankur Agrawal, Advocates.
For Respondent Nos.1 to 4	:	None though served.
For Respondent No.5	:	Shri Amit Sahu, Advocate.
For Respondent No.6	:	Shri Sudhir Agrawal, Advocate.

MAC No. 1437 of 2018

- Shri Hardev Hardware And Sanitation Prop, Atul Agrawal S/o Late Umashankar Agrawal, Resident Of Ramsagarpara, Tehsil And District Raipur Chhattisgarh. (Owner Of The Vehicle)

---- Appellant

Versus

1. Pyarelal Dhiwar S/o Jhaggar Dhiwar Aged About 52 Years R/o Village - Baraunda, P.S. Kharora, District Raipur Chhattisgarh. (Claimant)
2. Sewak Ram Yadav S/o Bishat Yadav R/o Village - Baraunda, P.S. Kharora, District Raipur Chhattisgarh. (Driver Vehicle)
3. United India Insurance Company Ltd., Through Regional Manager, United India Insurance Company Ltd., Kachehri Chowk, Raipur Chhattisgarh. (Insurer)

---- Respondents

For Appellant	:	Shri Raza Ali and Shri Ankur Agrawal, Advocates.
For Respondent No.1	:	None though served.
For Respondent No.2	:	Shri Amit Sahu, Advocate.
For Respondent No.3	:	Shri Sudhir Agrawal, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

05/02/2019

As both these appeals filed under Section 173 of the Motor Vehicles Act, 1988 (in short "the Act") by the owner arise out of the same accident occurred on 3.7.2016 involving vehicle No.CG 04/JD/8318 (hereinafter called as "offending vehicle"), they are being disposed of by this common judgment.

02. As per claim petition filed under Section 166 of the Act against the death of Dhananjay Dhivar which was registered as Claim Case No.699/2016, on 3.7.2016 non-applicant No.1 Sevakram Yadav by driving the offending vehicle in a rash and negligent manner entered into the hotel of deceased Dhananjay Dhivar, as a result of which Dhananjay suffered grievous injuries and died during the course of treatment. At the time of accident, the offending vehicle was owned by non-applicant No.2 Shri Hardev Hardware & Sanitation and insured with non-applicant No.3/United India Insurance Co. Ltd.

03. As per claim petition by injured Pyarelal Dhivar under Section 166 of the Act which was registered as Claim Case No.701/2016, in the same accident he also suffered grievous injuries as at the relevant time he was sitting in the said hotel.

04. The Tribunal i.e. 8th Additional Motor Accident Claims Tribunal, Raipur, considering the pleadings of the respective parties and the evidence adduced by them, by the separate awards dated 18.6.2018 awarded compensation of Rs.15,70,122/- in favour of the claimants in claim case No.699/2016 for the death of Dhananjay Dhivar with interest @ 8% per annum from the date of application till realization, and Rs.45,571/- in favour of injured claimant Pyarelal Dhivar in claim case No.701/2016 with interest as above. The Tribunal in both the claim cases has fastened liability jointly and severally on non-applicants No. 1 & 2/driver & owner of the offending vehicle while exonerating the insurance company on the ground of breach of policy conditions as non-applicant No.1 was having a learner's licence for LMV only and at the relevant time was not accompanied by a person having a permanent licence for LMV. However, it has ordered for pay and recover in both the cases, meaning thereby that the insurance company shall first pay the amount of compensation to the respective claimants and then recover the same from the owner and driver. Hence, the owner has filed these appeals challenging the liability part.

05. Learned counsel for the appellant submits that admittedly at the time of accident, the driver/non-applicant No.1 was having a learner's licence for LMV but the Tribunal has exonerating the insurance company on the ground that licence of the person sitting beside the driver was not produced. However, in view of decision of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Swaran Singh and others, (2004) 3 SCC 297*** and ***United India Insurance Co. Ltd. Vs. Lehu and others, (2003) 3 SCC 338***, there is no breach of policy conditions and the insurance company is liable to indemnify the owner.

06. On the other hand, learned counsel for the respondent/insurance company supports the impugned awards and submits that the Tribunal considering all the relevant aspects of the matters has rightly

exonerated the insurance company of its liability and therefore, the impugned awards need no interference by this Court.

07. Learned counsel appearing for the driver-Sewak Ram Yadav has supported the contention made on behalf of the appellant.

08. Heard learned counsel for the parties and perused the material available on record.

09. The Tribunal has recorded a finding that non-applicant No.1 Sevakram Yadav, driver of the offending vehicle, was having a learner's licence for LMV at the time of accident and this finding has not been challenged by the insurance company by filing appeal. Further, Sushmit Bala (NAW-4), examined on behalf of non-applicant No.3/insurance company, has stated that non-applicant No.1 was having a learner's licence as per Ex.D/1 and thereafter, he was issued permanent licence Ex.D/2. Therefore, as per oral and documentary evidence on record, it stands proved that non-applicant No.1 was having a learner's licence for LMV on the date of accident.

10. In the matter of *Swaran Singh* (supra), the Hon'ble Supreme Court while considering the issue of learner's licence held as under;

“93. The [Motor Vehicles Act](#), 1988 provides for grant of learner's licence. [See [Section 4\(3\)](#), [Section 7\(2\)](#), [Section 10\(3\)](#) and [Section 14](#)]. A learner's licence is, thus, also a licence within the meaning of the provisions of the said Act. It cannot, therefore, be said that a vehicle when being driven by a learner subject to the conditions mentioned in the licence, he would not be a person who is not duly licensed resulting in conferring a right on the insurer to avoid the claim of the third party. It cannot be said that a person holding a learner's licence is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's licence, the same would run counter to the provisions of [Section 149\(2\)](#) of the said Act.

94. The provisions contained in the said Act provide also for grant of driving licence which is otherwise a learner's licence. [Section 3\(2\)](#) and [6](#) of the Act provides for the restriction in the matter of grant of driving licence, [Section 7](#) deals with such restrictions on granting of learner's licence. [Section 8](#) and [9](#) provide for the manner and conditions for grant of driving licence. [Section 15](#) provides for renewal of driving licence. Learner's licences are granted under the rules framed by the Central Government or the State Governments in exercise of their rule making power. Conditions are attached to the learner's licences granted in terms of the statute. A person holding learner's licence would, thus, also come within the purview of "duly licensed" as such a licence is also granted in terms of the provisions of the Act and the rules framed thereunder. It is now a well-settled principle of law that rules validly framed become part of the statute. Such rules are, therefore, required to be read as a part of main enactment. It is also well-settled principle of law that for the interpretation of statute an attempt must be made to give effect to all provisions under the rule. No provision should be considered as surplusage.

11. In the matter of *Lehru and others* (supra) the Hon'ble Supreme Court even in the case of there being fake driving licence, held that fake licence of the driver does not constitute breach of policy conditions. In this case, the Hon'ble Supreme Court observed thus:

“When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that Insurance Companies expect owners to make enquiries with RTO's, which are spread all over the country, whether the driving

licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of [Section 149\(2\)\(a\)\(ii\)](#). The Insurance Company would not then be absolved of liability. If it ultimately turns out that the licence was fake the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in *Skandia*, (1987) 2 SCC 654; *Sohan Lal Passi*, (1996) 5 SCC 21; and *Kamla*, (2001) 4 SCC 342 cases. We are in full agreement with the views expressed therein and see no reason to take a different view.”

12. Thus, considering the facts and circumstances of the case, pleadings and evidence of the respective parties, keeping in view the decisions of the Hon'ble Supreme Court in *Swaran Singh* and *Lehru* (supra), this Court is of the opinion that the Tribunal was not justified in exonerating the insurance company of its liability and fastening the same on driver & owner of the offending vehicle.

13. In the result, the appeals are allowed to the extent that non-applicant No.3/United India Insurance Co. Ltd. is held liable jointly and severally along with non-applicants No. 1 & 2/driver & owner of the offending vehicle to pay compensation to the claimants in their respective claim cases as awarded by the Tribunal. The impugned awards stand modified to the above extent. However, rest of the conditions of the impugned awards shall remain intact.

Sd/
(Gautam Chourdiya)
Judge