AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1337 of 2014

- Mohan Lal S/o Girdhari Lal Nahta, aged 62 years, R/o Village Umradha, Tahsil and District Balod, C.G.

------Appellant/ Owner

VERSUS

1. Firantin Bai, W/o late Firantaram Sahu, aged 60 years, R/o Village Pasid, Tahsil Gundardehi, District Balod C.G.
2. Pardeshi S/o late Firantaram Sahu, aged 40 years R/o Village Beldongari Mines, Tahsil Par Sivni, District Nagpur Maharastra.
3. Vishnu S/o late Firantaram Sahu, aged 37 years R/o Village Gumgaon Mines Tahsil Savnear, District Nagpur Maharastra

-----Claimants

4. Khileshwar Prasad, S/o Noharlal, aged 28 years, Caste-Gond, R/o village Newrikhurd Tahsil and District Balod C.G. **------Driver**
5. The Oriental Insurance Company Limited, through Branch Manager, Shivnath Complex, G.E. Road, Supela, Bhilai, District Durg C.G.

----Respondents

For Appellant	:	Mr. Malay Shrivastava, Advocate.
For Respondent 1 to 3	:	Mr. Viprasen Agrawal, Advocate.
For Respondent 5	:	Mr. Deepak Gupta, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Parth Prateem Sahu, J.

15/09/2020

1. This is is owner's appeal under section 173 of the Motor Vehicle Act, 1988 (for short "Act of 1988"), challenging the impugned award dated 08-08-2014 passed by learned Motor Accident Claims Tribunal, Balod, District Balod in claim case no. 03/2014, wherein learned Claims Tribunal allowed the claim application in part and awarded Rs. 1,78,000/- as compensation and fastened the liability upon the owner and driver of the offending vehicle (CG 07 CA 2050).

2. Facts of the case in nutshell are that on 10-11-2013 at about 11:00 a.m. when Firantaram was travelling on his TVS XL moped, and going to village Parri from Badgaon, at that relevant time, truck bearing number CG07 CA 2050 (offending vehicle) driven by Respondent 4/ Non-applicant 1 dashed the moped of Firantaram. In the said accident, Firantaram died. Claimants who are widow and children of the deceased Firantaram filed an application under section 166 of the Act of 1988 seeking compensation of Rs. 7,00,000/- pleading therein that deceased was earning Rs. 50,000/- per annum from agricultural work and Rs. 10,000/- per month from the Beatles (Paan) shop.

3. Non applicant 1 and 2 who are driver and owner of the offending vehicle submitted reply to the claim application and denied the fact of accident. It was pleaded that, Respondent 4/ Non-applicant 1 driver of the offending vehicle was falsely implicated in the accident and false and fabricated case was registered against him, the amount of compensation claimed is highly exaggerated; deceased, due to his rash and negligent driving of his vehicle moped, fell down and suffered injuries. It was also pleaded that on the date of accident, offending vehicle was insured with Respondent 5/ non-applicant 3-Insurance Company and the liability, if any, would be upon the Insurance Company.

4. Non-applicant 3/ Respondent 5-Insurance Company submitted reply to the claim application pleading therein that on the date of accident Respondent 4/non-applicant 1 was not possessing valid and effective driving licence, as such, there was breach of conditions of insurance policy.

5. Claims Tribunal based upon the pleadings and evidence placed on record by the respective parties held that deceased Firantaram died on account of motor accidental injuries suffered by him due to rash and negligent driving of the truck by Respondent 4/ Non-applicant 1, there was breach of policy conditions, fastening the liability upon Non-applicant 1 and 2/

Respondent 4 and appellant driver and owner of the offending vehicle to satisfy the amount of compensation awarded Rs. 1,78,000/-.

6. Mr. Malay Shrivastava, learned counsel for the appellant submits that the accident took place on 10-11-2013 whereas the licence of Respondent 4/ non applicant 1 driver was renewed on 11-11-2013 but the Claims Tribunal had not taken into consideration the provisions of Section 15 of the Act of 1988 in its right perspective and held that the Respondent 4/ Non-applicant 1 was not possessing valid and effective driving licence on the date of accident. He further contended that on the date of employment of Respondent 4/ non-applicant 1 driver by the appellant, he was possessing valid and effective driving licence. Upon perusal of the licence and satisfying that he was possessing valid and effective driving licence, he was employed as driver of the offending vehicle. In support of the aforementioned argument, he places his Reliance in case of ***Pepsu Road Transport Corporation v. National Insurance Company*** reported in **(2013) 10 SCC 217** and argued that if the willful breach on the part of the appellant has not been proved by the Insurance Company, it cannot be exonerated from its liability, when the policy has been issued covering the risk of third party. Lastly, he submits that rash and negligent driving of Respondent 4/ non-applicant 1 has not been proved as the Competent Court of criminal jurisdiction acquitted him from the charges levelled against him under Section 279, 304A of IPC.

7. Mr. Deepak Gupta learned counsel for the Respondent 5- Insurance Company submits that the appellant failed to place on record any document to show as to on which date the application for renewal of licence was made. He also points out that the licence of Respondent 4/ non-applicant 1-driver for driving transport vehicle was valid from 26-11-2005 to 30-8 -2012 whereas the licence was renewed only on 11-11-2013 after the period of 11 months and, therefore, no benefit can be extended

under the provisions of Section 15 of the Act 1988. He also points out that the Claims Tribunal based upon the evidence and material available on record has rightly concluded that there was breach of policy conditions which does not call for any interference.

8. Mr. Viprasen Agrawal, learned counsel for Respondent 1 to 3/ claimants supports the award.

9. We have heard learned counsel for the respective parties and also perused the record of the Claim Case and the document filed along with the application for taking additional documents on record.

10. Sofar as, the first ground raised by the learned counsel for the appellant that the Claims Tribunal ought to have considered the provisions of Section 15 of the Act of 1988 is concerned. Section 15 of the Act of 1988 is with regard to the renewal of the driving licence. Proviso to sub section 1 of Section 15 clearly prescribes that when the application for renewal of licence is made more than 30 days after the date of expiry, driving licence shall be renewed from the date with effect from the date of its renewal. Copy of driving licence of Respondent 4/ non-applicant 1 is placed on record as Ext. D2, perusal of which would show that the licence has been shown to be valid from 26-11-2005 to 30-12-2012 and thereafter its renewal has been done on 11-11-2013 valid upto 10-11-2016. The document Ext. D2 does not show that Respondent 4/ non-applicant 1 has filed any application for renewal immediately or prior after 13-12-2012 nor the appellant has filed any document in this regard.

11. In view of the documentary evidence available on record, it is apparent that after 13-12-2012, driving licence for driving the transport vehicle has been renewed only on 11-11-2013 after lapse of about more than 10 months. In view of the provisions of Section 15 of the Act, 1988 which was renewed after lapse of more than 30 days then its renewal will come into force from the date of its renewal.

12. The Hon'ble Supreme Court has considered the effect of filing the renewal of licence after a period of 30 days in the case of ***Rambabu Tiwari v. United India Insurance Co. Ltd.*** reported in **(2008) 8 SCC 165** and held thus.

> "18. It is beyond any doubt or dispute that only in the event an application for renewal of licence is filed within a period of 30 days from the date of expiry thereof, the same would be renewed automatically which means that even if an accident had taken place within the aforementioned period, the driver may be held to be possessing a valid licence. The proviso appended to sub-section (1) of Section 15, however, clearly states that the driving licence shall be renewed with effect from the date of its renewal in the event the application for renewal of a licence is made more than 30 days after the date of its expiry. It is, therefore, evident that as on renewal of the licence on such terms the driver of the vehicle cannot be said to be holding a valid licence, the insurer would not be liable to indemnify the insured."

13. In view of the aforementioned facts and evidence available on record, learned Claims Tribunal has not erred in holding that on the date of accident, Respondent 4/ Non-applicant 1 was not possessing valid and effective driving licence to drive the transport vehicle.

14. Sofar as the second argument raised by the learned counsel for the appellant placing reliance on ***Pepsu Road Transport Corporation (supra)***. Perusal of record would show that the appellant has not entered into the witness box to prove the fact that when Respondent 4/ Non-applicant 1 was employed by him as a driver, he has perused the copy of licence and recorded his satisfaction to be a valid and effective driving licence. It is the burden of the owner of the offending vehicle to prove before the Claims Tribunal that he has taken all the precautions at the time of engagement of driver of the offending vehicle, but in this case, the appellant utterly failed to prove as he did not enter into the witness box to record his statement before the Claims Tribunal. In view of the aforementioned facts of the case, the appellant is not entitled for the

benefit of the judgment passed by the Supreme Court in the case of ***Pepsu Road Transport Corporation (supra)***. From perusal of the reply submitted by the appellant also, it does not reflect that the appellant has made any pleading in this regard.

15. Recently, the Hon'ble Supreme Court in the case of ***<u>Beliram v. Rajinder Kumar and another</u>*** passed in **Civil Appeal No. 7220-7221 of 2011** has again considered the issue of renewal of driving licence and held thus.

> "20. The last judgment is of the Himachal Pradesh High Court in ***National Insurance Co. Ltd. v. Hem Raj & Ors, :2012 ACJ 1891***. This was, once again, a case of an originally valid licence, which had expired, there was no question of a fake licence. It was opined that the conclusions to be drawn from the observations of the judgment in the ***Swarn Singh (National Insurance Co. Ltd. v. Swarn Singh and Ors, 2004 3 SCC 297)*** case of this Court, were that the insurance company can defend an action on the ground that the driver was not duly licenced on the date of the accident, i.e., an expired licence having not been renewed within thirty (30) days of the expiry of the licence as provided in Sections 14 & 15 of the MV Act. In this context it was observed that the ***Swarn Singh (supra)*** case did not deal with the consequence if the licence is not renewed within the period of thirty (30) days. If the driving licence is not renewed within thirty (30) days, it was held, the driver neither had an effective driving licence nor can he said to be duly licenced. The conclusion, thus, was that the driver, who permits his licence to expire and does not get it renewed till after the accident, cannot claim that it should be deemed that the licence is renewed retrospectively.
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> 23. When we turn to the facts of the present case there is almost an identical situation where the appellant has permitted to let the first respondent driver drive the truck with an expired licence for almost three (3) years. It is clearly a case of lack of reasonable care to see that the employee gets his licence renewed, further, if the original licence is verified, certainly the employer would know when the licence expires. And here it was a commercial vehicle being a truck. The appellant has to, thus, bear responsibility and consequent liability of permitting the driver to drive with an expired licence over a period of three (3) years. The only thing we note is that fortunately there has been no accident with a third party claimant but the person who has caused the sufferance and sufferer are one and the same person, i.e., the first respondent driver. We are, however, dealing with

> the determination under the Compensation Act and those provisions are for the benefit of the workmen like the first respondent, even though he may be at fault, by determining a small amount payable to provide succor at the relevant stage when the larger issue could be debated in other proceedings.
>
> The only exception is in the provisos to Section 3 of the Compensation Act, which is not the factual situation in the present case. The relevant provision reads as under:
>
> **"3. Employer's liability for compensation.-**
>
> (1) if personal injury is caused to a workman by accident arising out of an in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:
>
> Provided that the employer shall not be so liable--
>
> (a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding [four] days;
>
> (b) in respect of any [injury, not resulting in death, caused by] an accident which is directly attributable to--
>
> (i) the workman having been at the time thereof under the influence of drink or drugs, or
>
> (ii) the wilful disobedience of the workman to an order expressly given or to a rule expressly framed, for the purpose of securing the safety of workmen, or
>
> (iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen."
>
> We are not aware whether any other proceedings have been initiated or not, at least, none that have been brought to our notice. The aforesaid findings of the initial lack of care by the first respondent in not renewing the driving licence would be present, but the lack of care of the appellant as the employer would also arise. We have penned down the aforesaid views as such a situation is quite likely to arise in proceedings under the MV Act where a third party is claiming the amount. Proceedings here being under the Compensation Act, the consequences are not flowing to the first respondent as the initial negligent person."

16. For the foregoing reasons and in the light of the ruling of Hon'ble Supreme Court in the case of **Beli Ram (supra)**, appellant is not entitled for any benefit of the judgment of **Pepsu Road Transport Corporation (supra).**

17. Sofar as, the last ground raised by the learned counsel for the appellant that Respondent 4/ Non-applicant 1 was acquitted in the criminal case and, therefore, the rash and negligent act of driver of offending vehicle cannot be said to be proved, claim application is required to be decided on the basis of the pleadings and evidence placed on record by the respective parties. The evidence recorded in a criminal case cannot be read as an evidence in Civil case. Proof(s) in criminal case should be beyond reasonable doubt, but for deciding claim cases, evidence is to be tested on touchstone of preponderance of probabilities. The judgment of acquittal placed on record by the learned counsel for the appellant would show that Respondent 4/ Non-applicant 1 was acquitted by granting benefit of doubt. Learned magistrate has recorded that the prosecution failed to prove the case against Respondent 4/ Non-applicant 1 driver of the offending vehicle beyond reasonable doubt.

18. Respondent 4 and the appellant/ Non-applicant 1 and 2 driver and owner of the offending vehicle have not entered the witness box to record their evidence in support of their pleadings made in the reply to claim application that it is the deceased himself who was negligent and, therefore, it cannot be said that Respondent 4/ Non-applicant 1 has proved that he was not driving his vehicle rashly and negligently.

19. For the foregoing discussions, we do not find any merit in this appeal. Appeal being devoid of any substance which is liable to be and is hereby dismissed accordingly.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	Judge

Pawan