NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 116 of 2014

1. Smt. Lakshmi Chimnani W/o Laxmichand Chimnani aged about 40 years, Tejbahadur Nagar, New Puraina, P.O. & P.S. New Rajendra Nagar, Raipur C.G.
2. Ajay Kumar S/o Nanak Ram aged about 46 years, R/o New Puraina, P.O. & P.S. New Rajendra Nagar, Raipur C.G.

   (Both appellant through its power of attorney holder Laxmichand Chimnani S/o Shrichand Chimnani, aged 46 years, R/o Tejbahadur Nagar, New Puraina, P.O. & P.S. New Rajendra Nagar, Raipur C.G.

------Appellants

VERSUS

1. Smt. Sevatibai Yadav W/o Late Narottam Yadav, aged 32 years
2. Pankaj Kumar Yadav Gupta S/o Late Narottam Yadav, aged 12 years
3. Ku. Sonam Yadav D/o Late Narottam Yadav, aged 10 years
4. Ku. Minakshi Yadav D/o Late Narottam Yadav, aged 08 years

   Respondent No. 2 to 4 being minor through their natural guardina mother Smt. Sevatibai Yadav. All respondents are R/o Village Khudmudi, P.S. and Tahsil Patan, District Durg, C.G.

(Claimants)

5. National Insurance Company Limited, through its regional officer National Insurance Company Limited, G.E. Raod, Raipur District Raipur .C.G.
6. Ajit Kumar Netam S/o Parmanand Netam Aged About 24 Years R/o village Khudmudi, Thana- Patan, Distt. Durg C.G.

----Respondents

For Appellants	:	Mr. Kshitij Sharma, Advocate.
For Respondent No. 5	:	Mr. Qamrul Aziz, 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.

25/08/2020

1. This is owners' appeal under Section 173 of the Motor Vehicles Act, 1988 questioning the legality and validity of the impugned award dated 30-09-2013 passed in claim case no. 89/2011 by learned Chief Motor

Accident Claims Tribunal, Raipur C.G. whereby Claims Tribunal allowed the claim application in part and awarded a sum of Rs. 5,84,000/- as compensation in a death case and fastened liability to satisfy the amount of compensation upon the appellants.

2. Facts of the case in nutshell are that on 09-01-2011 at about 06:30 am, when Narottam Yadav was traveling on his bicycle returning to his house, while so, at village Khudmudi near Radhakrishan temple one Tractor bearing Registration no. CG 04D 6741 and Trolley No. CG 04D 5331 (hereinafter referred to as "offending vehicle") driven by Respondent 6/ Non-applicant 1 knocked down Narottam Yadav in which he suffered grievous injuries and died on spot. Claimants who are widow and children of late Narottam Yadav filed an application under Section 166 and 140 of the Motor Vehicles Act, claiming Rs. 9,00,000/- as total compensation pleading therein that on the date of accident, deceased was an able-bodied person aged 39 years and earning Rs. 6,000/- per month from the work of Mason.

3. Non-applicant 1/ Respondent 6 driver of the offending vehicle even after service of notice did not choose to appear before the Claims Tribunal and was proceeded *ex parte*.

4. Non-applicant 2 and 3/ Appellants who are owner of the offending vehicle submitted reply to the claim application and denied the fact of accident and further pleaded that the amount of compensation claimed is highly exaggerated, the driver on the date of accident was possessing valid and effective driving licence and the vehicle was insured with Non-applicant 4/ Respondent 5, the liability, if any, would be upon the Insurance Company to satisfy the amount of compensation.

5. Non-applicant 4/ Respondent 5-Insurance Company submitted reply to

the claim application and denied entire pleadings made in the claim application. It was pleaded that the amount claimed is highly exaggerated, there was breach of conditions of insurance policy.

6. Learned Claims Tribunal based upon the pleadings made by the respective parties has formulated as many as four issues for consideration including the issue with regard to whether Respondent 6/ Non-applicant 1 -driver, on the date of accident, was possessing valid and effective driving licence or not.

7. Learned Claims Tribunal upon appreciation of pleadings and evidence placed on record by the respective parties held that deceased Narottam Yadav died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by Respondent 6/ Non-applicant 1; valid and effective driving licence with Respondent 6/ Non-applicant 1 was not found to be proved causing breach of conditions of insurance policy and awarded Rs. 5,84,000/- as total compensation along with interest and fastened the liability to satisfy the amount of compensation upon the appellants.

8. Mr. Kshitij Sharma, learned counsel appearing on behalf of appellants submits that the appellants engaged Respondent 6 as driver after inspecting his licence. He submits that the learned Claims Tribunal erred in not considering that it is the burden upon the Insurance Company to prove whether the driver of the offending vehicle, on the date of accident, was possessing valid and effective driving licence or not but the Tribunal passed the impugned order considering that it is the burden upon the appellants to prove the fact of valid and effective driving licence with the driver. He submits that in reply to the claim application, appellants have very clearly pleaded that after perusal of the licence of Respondent 6-driver they have engaged him and the driver became *ex parte*. He submits that the Insurance Company has

not led any evidence to prove the fact of breach of conditions of insurance policy on account of driver of the offending vehicle was not possessing valid and effective driving licence on the date of accident. He places his reliance upon the case law of ***National Insurance Company v. Swarn Singh*** reported in **(2004) 3 SCC 297** and ***Lal Chand v. Oriental Insurance Company limited*** reported in **(2006) 7 SCC 318** to buttress his submissions. His main contention is that the liability to prove the licence is of the Insurance Company in which they failed.

9. To appreciate the submission made by the learned counsel for the appellants, we have perused the record of the claim case.

10. Perusal of reply filed by the owner of the offending vehicle would reveal that Appellant No. 2, by name Ajay Kumar, has filed reply to claim application in which apart from other pleadings, it is mentioned that the vehicle was insured and was being driven by Respondent 6- driver holding valid and effective driving licence. There is no such pleading as submitted by the learned counsel for the appellants that they have examined the licence before engaging Respondent 6 as driver. In evidence, Appellant 2, in paragraph 3 of his affidavit has stated that when Respondent 6-driver came to him for the purpose of work, he has shown his licence authorising him to drive Heavy Goods Vehicle; on the date of accident, driver lost his driving licence and, therefore it has not been produced on record. Respondents 1 to 4/ Claimants have placed on record seizer memo as Ext. P-3 and P-4. In Ext. P-3, documents with regard to tractor (offending vehicle), RC book and insurance have been seized from the possession of Appellant 2-Ajay Kumar but the copy of licence has not been produced before the police authorities investigating the crime.

11. From the above, it is clear that it is the case of appellants themselves

that on the date of accident, the licence was lost and it was not seized and, therefore, they failed to produce the same before the Claims Tribunal.

12. Learned counsel for the appellants has also raised an argument with regard to evidence available on record on behalf of the Insurance Company as NAW-4-1, who at the time of his examination was working as Deputy Manager with National Insurance Company Limited, Raipur. Referring to some portion of the evidence the learned counsel for the appellants tries to make out a case that the witness examined on behalf of the Insurance Company has admitted that Respondent 6-driver of the offending vehicle was possessing the licence to drive Heavy Goods Vehicle and person holding the licence cannot drive the vehicle involved in the accident. Further referring to some portion of evidence, it was argued that they have verified the licence but have not produced. Sofar as, the first submission referring to the evidence of the witness examined on behalf of the Insurance Company, the portion of the evidence on which the learned counsel for the appellants relied upon to make his submission is the answer by witness on the suggestion given to him. Second part of the submission with regard to investigation/ enquiry report was not submitted by the Insurance Company is not with regard to the licence, but it refers to the investigation/ enquiry about the accident.

13. From the pleadings, documents and evidence available on record, it is clear that the appellants/ Non-applicant 2 and 3 have not produced the copy of licence either before the police authorities during the course of investigation or before the Claims Tribunal. In these facts of the case when the copy of licence itself has not been produced before the Claims Tribunal, the submission of the learned counsel for the appellants that it is the burden upon the Insurance Company to prove

that on the date of accident, the driver of the offending vehicle was not possessing valid and effective driving licence is not sustainable.

14. Here, it is the case of 'no licence' and not a case that driver was not possessing valid and effective driving licence to drive the vehicle which he was driving on the date of accident or a fake licence. In cases of not possessing valid and effective driving licence to drive the offending vehicle or fake licence, the burden would be upon the Insurance Company to prove the ground of breach of conditions of Insurance Policy on the ground that the driver was not possessing valid and effective driving licence but in case where copy of licence itself is not placed on record, it cannot be said that the Insurance Company failed to prove the breach of conditions of insurance policy, but it will be deemed that on the date of accident, driver of the offending vehicle was not possessing licence which the learned Claims Tribunal has rightly held.

15. Sofar as, the case law relied upon by the learned counsel for the appellants i.e. **Swarn Singh (supra)** and **Lal Chand (supra)** is of no help to the appellants. The case law of Hon'ble Supreme Court in **Lal Chand (supra)** is a case of fake licence and the case law of **Swarn Singh (supra)** in paragraph 84 of its judgment the Supreme Court has dealt with the issue of 'no licence' and held thus:

> “84. We have analysed the relevant provisions of the said Act in terms whereof a motor vehicle must be driven by a person having a driving licence. The owner of a motor vehicle in terms of Section 5 of the Act has a responsibility to see that no vehicle is driven except by a person who does not satisfy the provisions of Section 3 or 4 of the Act. In a case, therefore, where the driver of the vehicle, admittedly, did not hold any licence and the same was allowed consciously to be driven by the owner of the vehicle by such person, the insurer is entitled to succeed in its defence and avoid liability. ...”

16. As discussed in the preceding paragraph that the burden to place copy of licence on record is upon the owner and driver of the offending vehicle and once it is placed, if the Insurance Company pleads that the licence is not valid and effective then the burden will shift upon the Insurance Company to prove the same.

17. For the foregoing reasons, we do not find any merit in this appeal the same is liable to be and is hereby dismissed accordingly. No order as to costs.

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

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