NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1133 of 2014

1. Ram Prasiddh Singh, S/o Late Devnandan Singh, aged about 50 years, Occupation Vehicle Owner R/o Kondatarai Tah. Raigarh Civil & Revenue Distt. Raigarh (CG)
2. (A). Savita Mahant, W/o late Dharmendra Das Mahant, aged about 46 years.

   (B). Satish Das Mahant, S/o Late Dharmendra Das Mahant, aged about 25 years.

   (C). Ku. Sheetal Mahant, D/o Late Dharmendra Das Mahant, aged about 22 years.

   (D). Ku. Preeti Mahant, D/o Late Dharmendra Das Mahant, aged about 20 years.

   All are resident of Village Bhalwahi, Post Pratapganj, Tahsil Sarangarh, District Raigarh (CG)

---- Appellants

Versus

1. Mu. Yogavali Devi, widow of Late Krishna Pandey, aged about 43 years, Occupation-Housewife.
2. Avinash Pandey, son of Late Krishna Pandey aged about 16 years
3. Abhishek Pandey son of Late Krishna Pandey, aged about 13 years.
4. Ku. Rekha Pandey, D/o Late Krishna Pandey, aged about 9 years.
5. Ku. Rakhi Pandey, D/o Late Krishna Pandey, aged about 5 years.

   No.2 to 5 are minors through their legal guardian Mother Smt. Yogavali (Appellant No.1) widow of Late Krishna Pandey All R/o Jutmil Sushri Hotel, Raigarh Civil and Revenue Distt. Raigarh.
6. Abhimanyu Pandey, son of Late Krishna Pandey, aged about 28 years. R/o village Basunpura, Post Mohammadpakadi, P.S. Amnaura, District Chhapara (Bihar), at present Jutmill Sushri Hotel, Raigarh Distt. Raigarh (CG)
7. The Oriental Insurance Company Limited, through Branch Manager, Itwari Bazar, Raigarh Tahsil and District Raigarh (CG)

---- Respondents

For Appellants	:	Mr. R. Pradhan, Advocate
For Respondent No.1 to 6	:	None.
For Respondent No.7	:	Mr. Pankaj Agrawal, Advocate

Hon'ble Shri P. R. Ramachandra Menon, CJ

Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Per Parth Prateem Sahu, J

25/11/2020

1. Appellants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') against the award dated 06.8.2014 passed by the learned Motor Accident Claims Tribunal, Raigarh (for short 'the Claims Tribunal') in Claim Case No.118/07 allowing claim application in part; awarded Rs.5,80,000/- as compensation. While exonerating the Insurance Company, fastened liability upon driver & owner to satisfy the awarded amount of compensation.

2. Facts relevant for disposal of this appeal, in brief, are that Krishna Pandey was under the employment of non-applicant No.2 as Driver. On 30.7.2007 at about 1.00 p.m. he was driving bus bearing registration number CG13-A-8091 and going to Raigarh from Lailunga. When bus driven by Krishna Gupta reached near village Amrapali, non-applicant No.1 while driving bus bearing registration number CG13-A-3060 (for short 'offending vehicle') rashly and negligently, dashed the bus driven by Krishna Pandey. In the said accident, Krisha Pandey suffered grievous injuries over his person and died during the course of treatment. Accident was reported to the concerned police station based upon which crime was registered against non-applicant No.1 for offence under Section 304-A of Indian

Penal Code.

3. Claimants, who are widow and children of deceased Krishna Pandey, have filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.13,18,000/- pleading therein that on the date of accident, deceased was aged about 46 years, he was working as driver under the employment of non-applicant No.2 and earning Rs.7,500/- per month.
4. Non-applicant Nos.1 & 2 submitted reply to claim application denying entire pleadings made therein. It was pleaded that on the date of accident offending vehicle was insured with non-applicant No.3, therefore, liability, if any, to pay amount of compensation would be upon non-applicant No.3.
5. Non-applicant No.3 Insurance Company also filed its reply to claim application and denied the pleadings regarding name, age, occupation and income of the deceased. It was also denied that the deceased died on account of motor accidental injuries, non-applicant Nos.1 & 2 are the driver & owner of the offending vehicle. It was pleaded that there was no valid permit of the offending vehicle, its driver was not possessed of valid and effective driving license at the time of accident, thus, there was breach of conditions of insurance policy, therefore, insurance company is not liable to indemnify the insured.
6. Claims Tribunal initially allowed application vide award dated 20.3.2009, awarded Rs.5,25,000/- as compensation, exonerated the insurance company and held the driver & owner of offending vehicle liable to make payment of entire amount of

compensation. This award was challenged by appellant No.1-owner of offending vehicle before the High Court by filing MAC No.819/2009, which came to be decided vide order dated 24.1.2012. A Division Bench of this Court after taking into consideration the submissions made by learned counsel for appellant therein with regard to exoneration of insurance company to be without any admissible piece of evidence, has remitted back the case to the Claims Tribunal for deciding claim application afresh after providing opportunity to the parties therein to amend their pleadings, adduce further evidence and file additional documents.

7. The Claims Tribunal thereafter decided the claim case afresh vide impugned award and arrived at a finding that on the date of accident, non-applicant No.1-driver was not possessing valid and effective driving license to drive offending vehicle; awarded Rs.5,80,000/- as compensation; exonerated insurance company from its liability and held non-applicant No.1 & 2 i.e. appellants herein, liable to satisfy the amount of compensation. The Claims Tribunal however issued direction of pay and recover against non-applicant No.3 Insurance company.

8. Mr. Pradhan, learned counsel for appellants submits that the Claims Tribunal decided the claim case without considering the observations made by a Division Bench of this Court in Para-6 of its order. He submits that Division Bench in Para-6 of the order dated 24.1.2009 has categorically observed that in absence of examination of employee/clerk of RTO concerned,

document Ex.D-2 cannot be said to be proved. He further contended that the Claims Tribunal has taken into consideration document Ex.D-4, which is the particulars of license issued by the Regional Transport Office, Raipur, but the said document was not proved by Insurance Company in accordance with law i.e. by examining its author. Burden to prove the license available on record to be "not valid" and "effective" is upon the Insurance Company, who is required to prove the same by adducing cogent and reliable piece of evidence. He further contended that appellant No.1 had perused the license of non-applicant No.1 before engaging him as Driver and only after satisfying himself that the license produced before him is genuine, had engaged non-applicant No.1 as Driver. Thus, appellant No.1 had taken all due care and precaution before engaging non-applicant No.1 as Driver, however, if upon verification, his license is found to be fake, the insurance company cannot be exonerated from its liability.

9. Per contra, Mr. Pankaj Agrawal, learned counsel representing respondents No.3 Insurance Company submits that insurance company has discharged its burden by placing verification report (Ex.D-4) on record wherein it is specifically mentioned that license in question has not been issued from the RTO, Raipur. He contended that mere non-examination of any employee of RTO, Raipur will not make the document Ex.D-4 inadmissible in evidence. He submits that on an appeal filed by appellant No.1 herein, the case was remanded back to the

Claims Tribunal for deciding it afresh, but appellant No.1 failed to adduce any evidence in support of his defence. It is further contended that burden to prove the fact that on the date of accident, driver was possessing valid and effective driving license is always upon the owner, but in case at hand, appellant No.1-owner has not placed on record any admissible piece of evidence with regard to license and thereby failed to discharge his burden. However, the Insurance Company has placed on record verification report in which it is clearly mentioned that license possessed by non-applicant No.1, said to be issued by RTO, Raipur, has not been issued by the office of RTO, Raipur. Mere renewal of license subsequently from the RTO, Durg-Bhilai will not make the license to be valid and effective on the date of accident. He submits that finding recorded by the Claims Tribunal, that non-applicant No.1 was not possessing valid and effective driving license is based on proper appreciation of evidence available on record, which cannot be said to be erroneous.

10. We have heard learned counsel for the parties and perused the record of claim case.

11. So far as first submission made by learned counsel for appellant with regard to valid and effective driving license is concerned, the law in this regard is now well settled that initial burden to prove that offending vehicle was being driven by a person holding valid and effective driving license is upon the owner and driver of offending vehicle. If they place on record a

copy of driving license, then the burden shifts upon insurance company to prove that license placed on record is invalid or fake for one reason or other. In case at hand, copy of license possessed by non-applicant No.1-driver has been placed on record as Ex.D-5. Document Ex.D-2 is a verification report issued by the office of Licensing Authority, Durg-Bhilai who renewed license of non-applicant No.1. In this verification report / particulars of license it is specifically mentioned that non-applicant No.1 is authorized to drive light motor vehicles & heavy goods vehicles.

12. Perusal of both the aforementioned documents would show that there was material available on record to show that non-applicant No.1-driver was possessed with a driving license, but it was a valid & effective or not is to be proved by the party who asserts the same. In case at hand, it is Insurance Company who asserted that license possessed by non-applicant No.1 on the date of accident was not valid and effective. In earlier round of litigation, a Division Bench of this Court vide order dated 24.1.2012 passed in MAC No.819/2009 has clearly observed in Para-6 that employee of RTO was not examined to prove the particulars of license (Ex.D-2). Para-6 is extracted below;-

> "6.From perusal of the records of the Claims Tribunal, it appears that the driving license was renewed from 31.05.2005 to 30.05.2008 and from perusal of document Ex.D-2 produced by Mr. Atul Athley, Administrative Officer of respondent No.8 / Insurance Company who has been examined as NAW-1, it appears that the driver of the offending vehicle was having a valid and effective driving license on the date

> of accident and he was authorized to drive LMV and HGV. On cross-examination on behalf of the applicants/claimants, this witness has stated that no separate licence for driving a bus is required and the person holding LMV and HGV license can drive a bus. However, no official from the R.T.O. which has issued the said driving licence Ex.D-2 has been examined on behalf of the Insurance Company. The driver of offending vehicle has also not entered into the witness box. It appears that the Claims Tribunal has not conducted proper enquiry to ascertain the genuineness of the driving licence Ex.D-2 which the Tribunal ought to have conducted."

13. From the aforementioned observation made by Division Bench of this High Court, it is clear that Division Bench has not accepted the license particulars issued by the RTO concerned for want of examination of any official of the RTO concerned as a witness before the Claims Tribunal to prove the same. In earlier round of litigation also, the insurance company was represented by an advocate and even after remand of the case and clear-cut observation made by Division Bench in remand order, the insurance company has not examined any witness to prove the documents Ex.D-2 & Ex.D-5. As per settled law, the liability to prove breach of conditions of insurance policy is upon the insurance company. While deciding Issue No.2, the Claims Tribunal has not taken into consideration the observation made by Division Bench of this Court in Para-6 of its order and arrived at erroneous finding only on the basis of document Ex.D-4. Whereas, Division Bench of this Court has already observed in the same proceeding that no official from RTO concerned, who had issued Ex.D-2, has been examined on behalf of the insurance

company and remitted back the case for deciding afresh after affording opportunity to all the parties to lead fresh evidence, then the Claims Tribunal is required to see whether insurance company has examined any witness to prove documents issued by RTO concerned or not. Admittedly, the insurance company has not examined any of the officials of RTO concerned as witness to prove the documents placed on record by it and in absence thereof, the documents exhibited by insurance company, which are said to be issued from the RTO, Raipur, cannot be said to have been proved in accordance with law. Finding recorded by the Claims Tribunal with regard to Issue No.2 that on the date of accident driver was possessed with fake driving license and its subsequent renewal will not make it valid and effective on the date of accident, is not sustainable, particularly when the Claims Tribunal itself has recorded that non-applicant No.3-Insurance Company has not examined any of the officials of RTO concerned as witness before it. It is ordered accordingly.

14. For the foregoing reasons, finding with regard to Issue No.2 is set aside. We hold that respondent No.7 failed to prove that on the date of accident, driver of offending vehicle was not possessed with valid & effective driving license.

15. Another aspect of the case is that copy of license is available on record. Insurance Company has placed on record particulars of license issued by the RTO, Bhilai - Durg, who had renewed license of non-applicant No.1. Appellant No.1-

owner of offending vehicle entered into witness box and stated that he has perused copy of license at the time of engaging non-applicant No.1 as driver. License was renewed from RTO, Bhilai-Durg. Appellant No.1 has not avoided proceeding pending before the Claims Tribunal, rather he entered into witness box and specifically stated that he has perused copy of license before engaging non-applicant No.1 as driver of offending vehicle and only after satisfying himself that it is a genuine license duly renewed by Licensing Authority, Bhilai-Durg, he had engaged him as driver. Particulars of license issued by RTO would also show that non-applicant No.1 was authorized to drive light motor vehicles & heavy goods vehicle. Non-applicant No.1 was driving bus with license having endorsement of HGV, but then he was driving the vehicle of same category i.e. Heavy Public Service Vehicle. As per amendment brought in the year 1994, HGV & HPSV have been included into transport vehicles.

16. Issue with regard to fake license has been considered by Hon'ble Supreme Court in the case of **National Insurance Company Ltd. Vs. Swaran Singh** reported in **(2004) 3 SCC 297** wherein it was held that insurer has to prove that owner was guilty of wilful breach of conditions of insurance policy. Relevant portion of Para-110 of Swaran Singh's case (supra) is extracted below:-

> “(iii)The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured

for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv)The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/ are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149 (2) of the Act."

17. Hon'ble Supreme Court in its another decision in case of **Pepsu Road Transport Corporation vs. National Insurance Company Ltd.** reported in **(2013) 10 SCC 217** has dealt with the issue with regard to valid & effective driving license on the date of accident and held thus;-

"10.In a claim for compensation, it is certainly open to the insurer under Section 149 (2) (a) (ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh's case (supra). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation."

18. Recently, in case of **Ram Chandra Singh vs. Rajaram & ors** reported in **(2018) 8 SCC 799** Hon'ble Supreme Court after taking into consideration its earlier decisions on the issue has held thus;-

"11. Suffice it to observe that it is well established that if the owner was aware of the fact that the licence was fake and still permitted the driver to drive the vehicle,

> then the insurer would stand absolved. However, the mere fact that the driving licence is fake, *per se*, would not absolve the insurer. Indubitably, the High Court noted that the counsel for the appellant did not dispute that the driving licence was found to be fake, but that concession by itself was not sufficient to absolve the insurer"

19. In the light of above law laid down by Hon'ble Supreme Court, if the facts of present case are taken into consideration, it is clear that copy of license is placed on record, there was renewal of license from RTO, Bhilai-Durg, as is evident from Ex.D-2 placed on record by insurance company, authorizing non-applicant No.1 to drive light motor vehicles & heavy goods vehicles; further owner of offending vehicle entered into witness box and stated in categorical terms that he had perused copy of license issued by the RTO, Bhilai-Durg and only thereafter engaged non-applicant No.1 as driver. In these circumstances, we are of view that case of appellants is squarely covered by the law laid down by Hon'ble Supreme Court in aforementioned cases. Merely on the basis of license if found to be fake upon its verification subsequently, the insurance company cannot be absolved from its liability.

20. In view of discussion made in preceding paragraphs, we are of the view that the Claims Tribunal erred in exonerating the insurance company from its liability by holding that on the date of accident, driver of offending vehicle was not possessing valid and effective driving license. The impugned award so far as it relates to fastening of liability upon appellants is hereby set aside. Now liability to satisfy the amount of compensation will be upon respondent No.7-Insurance Company.

21. In the result, the appeal is allowed and impugned award is modify to the extent indicated above. Appellants shall be at liberty to recover back amount of compensation so deposited by them in pursuance of the impugned award from the amount of compensation to be deposited by the Insurance Company.

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

roshan/-