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HIGH COURT OF CHHATTISGARH, BILASPUR**M.A (C) No. 1313 of 2014**

{Arising out of Award dated 17.09.2014 passed in Motor Accident Claim Case No. 69 of 2013 by the Motor Accident Claims Tribunal, Kabirdham (Kawardha)}

United India Insurance Company Limited, through Branch Manager, Branch Office, Paras Complex Office, SBI Gurudwara Road, Durg, District Durg, Chhattisgarh.

---- Appellant

Versus

1. Rohit Chandrakar S/o Bahorik Chandrakar, aged about 30 years, R/o village Agarikhurd, Police Station Thankhamhariya, District Bemetara, Chhattisgarh.
2. Dharendra @ Dharendra Sahu S/o Shri Musli Sahu, aged about 32 years, R/o village Bilaigaon, Police Station Bemetara, District Bemetara, Chhattisgarh.
3. Satish Kumar Yadu S/o Shri Poshan Lal Yadu, aged about 32 years, R/o H.N. 8/1150, Vikash Nagar, Chhota Ashok Nagar, Gudhiyari, Raipur, District Raipur, Chhattisgarh.

---- Respondents

For Appellant / Insurance :	Shri H.B.Agrawal, Senior Advocate with Shri Pankaj Agrawal, Advocate.
For Respondent No. 1 :	Shri Anurag Dayal Shrivastava and Shri Sanjeev Kumar Sahu, Advocates.
For Respondents No. 2 and 3 :	None

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

Judgment on Board**Per P.R. Ramachandra Menon, Chief Justice****25.08.2020**

1. Appeal is at the instance of the Insurer of the motor-cycle which got involved in a road traffic accident occurred on 19.04.2014. The grievance is against the liability fixed upon the Appellant, despite the clear violation of statutory/policy conditions.
2. Heard Shri H.B. Agrawal, the learned Senior Counsel for the Appellant/Insurance Company and Shri Anurag Dayal Shrivastava, the

learned counsel representing the Respondent-Claimant. Though, service of notice to the 2nd Respondent (Rider of the motor-cycle insured by the Appellant) is complete, he has not turned up. Since the service of notice to the 3rd Respondent-Owner of the motor-cycle was not complete, substituted service of notice, by way of paper publication, was ordered and effected. A copy of the paper publication has been produced. There is no appearance for the 3rd Respondent-Owner of the motor-cycle.

3. The 1st Respondent-Claimant, while proceeding on his bicycle on 19.04.2014, he was knocked down by the offending motor-cycle bearing registration No. CG-04-CN-5100 ridden by the 2nd Respondent and owned by the 3rd Respondent, causing serious injuries which led to the claim petition filed before the Tribunal. The claim was contested by the Respondents on the negligence and quantum. From the part of the Appellant-Insurer of the motor-cycle, it was specifically contended that the rider of the motor-cycle was not having valid driving licence and hence, there was a clear violation of the statutory/policy conditions, and hence, they were not liable to satisfy the claim. On the basis of the pleadings and evidence adduced, the Tribunal rendered a finding that the accident was solely because of the negligence on the part of the rider of the motor-cycle. With reference to the facts and figures brought on record, the total compensation payable was fixed as Rs.2,20,700/- (which includes the medical expense of Rs. 1,89,200/-) and the same was directed to be satisfied within a period of two months failing which it shall carry interest at the rate of 7% per annum from the date of application till its realisation. Observing that the vehicle was covered by a valid policy, the award was directed to be satisfied by the Insurer of the motor-cycle which made them to feel aggrieved, and hence the appeal.

4. The learned counsel for the Appellant points out that the violation of the statutory/policy conditions was substantiated before the Tribunal which unfortunately was given a go-bye by the Tribunal. The motor-cycle was being

ridden by the 2nd Respondent at the relevant time without possessing a valid driving licence and this fact was conceded by him as well when he was examined as DW-1.

5. We have gone through the records. The rider of the motor-cycle, when examined before the Tribunal, admitted that there was no valid driving licence at the relevant date. Copy of the driving licence produced before the Tribunal clearly reveals that it was issued after the date of the accident occurred on 19.04.2014. Section 3(1) of the Motor Vehicles Act, 1988 clearly stipulates that no person shall drive a motor vehicle in any public place unless he holds an effective driving licence. The policy issued by the Appellant-Insurer in respect of the vehicle bearing registration No. CG-04-CN-5100 clearly insists that it is subject to riding/driving of the vehicle in terms of the relevant provisions of law. Admittedly, since the 2nd Respondent-Rider was not having a valid and effective driving licence on the date of accident, the violation of the statutory/policy conditions stands substantiated.

6. It is settled law, by virtue of umpteen number of binding judicial precedents, that in cases involving violation of statutory/policy conditions involving absence of effective driving licence, the third party right is to be protected and the award amount is to be satisfied by the Insurer, wherever there is a valid insurance policy, and the remedy of the Insurer is to get it recovered from the violator *i.e.* the Owner and the Driver, after satisfying the liability towards the Claimants. In the instant case, after fixing the total compensation payable as Rs. 2,20,700/- with interest, the Tribunal has directed the same to be satisfied by the Appellant/Insurer, however omitting to grant the right of recovery after satisfying the amount due to the Claimants. We are of the view that the award passed by the Tribunal in not granting the right of recovery in favour of the Appellant/Insurer, despite proving the violation of the statutory/policy conditions, is not correct and requires to be modified.

7. In the above facts and circumstances, we declare that the Appellant-Insurer is entitled to get the award amount recovered from the 2nd Respondent-Rider and the 3rd Respondent-Owner of the motor-cycle after satisfying the liability to the 1st Respondent-Claimant. It is ordered accordingly.

8. The appeal stands allowed to the said extent.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE