NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1299 of 2014

- The Oriental Insurance Company Ltd. through its Divisional Manager Branch Office Kutchery Chowk, Madina Manzil Zila Raipur Chhattisgarh
- The Oriental Insurance Company Ltd. through its Divisional Manager, Branch Ambikapur, Surguja, Chhattisgarh

-----Appellants

VERSUS

1. Mohd. Manzur s/o Israil Miya, aged about 33 years, Resident of Bhim Dafai Sonawani, Thana Chirmiri, Tahsil Manendragarh, Zila Korea C.G.

------Claimant

2. Santlal s/o Ramjeevan, aged about 25 years, Caste-Kumhar, Resident of Thana Chiraipani, Tahsil Manendragarh, Zila Korea, C.G.
3. M/s Anil Construction Company through Partner Pradeep Kumar Verma S/o Jagdish Prasad Verma, Resident of Ward No. 21 Manendragarh Zila Korea, C.G.
4. Israil Miya S/o Ali Jan Miya Aged About 60 Years R/o Bhim Dafai, Sonawani, Thana- Chirimiri, Tah. Manendragarh, Distt. Korea C.G.

----Respondents

For Appellants	:	Mrs. Chitra Shrivastava, Advocate
For Respondent 1	:	Mr. Samir Singh, 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.

28/09/2020

1. This appeal filed by the Insurance Company is under Section 173 of the Motor Vehicles Act, 1988 (henceforth “Act of 1988”) challenging the impugned award dated 21-08-2014 passed in claim case no. 92/2014 by learned First Additional Motor Accident Claims Tribunal, Ambikapur, Sarguja C.G. whereby learned Claims Tribunal allowed the claim application in part and awarded compensation of Rs. 55,000/-.

2. Facts relevant for disposal of this appeal are that on 26-08-2005 at about 11:30 a.m. when Respondent 1-claimant while driving Mahindra passenger vehicle bearing registration no. CG 16 0558 (for short “Jeep”) was going to Doman hill (Sonavani) from Manendragarh, on the way, one dumper truck bearing registration no. CG 16ZC 0239 (hereinafter “offending truck”) driven by Respondent 2/ Non-applicant 1 rashly and negligently dashed the jeep. In the said accident, Mohd. Manzur suffered grievous injuries over his person including wrist of left hand and right leg. The accident was reported to concerned police station based upon which, crime was registered against the driver of offending truck.

3. Respondent 1/ claimant filed an application under Section 166 of the Act of 1988 seeking compensation of Rs. 8,81,569/- pleading therein that on the date of accident, he was aged about 25 years and earning Rs. 3,000/- per month. He suffered fracture injuries over his left wrist and fracture injury over his right thigh (femur bone). On account of injuries suffered by him, he became permanently disabled and unable to perform the work of driver.

4. Respondent 2 and 3/ Non-applicant 1 and 2 resisted the claim application by filing separate reply pleading therein that on the date of accident near Nagpur petrol pump, it is the claimant who drove his jeep rashly and negligently, caused accident from front side of the truck. Non-applicant 1/Respondent 2 was possessed with valid and effective driving licence. Offending truck was insured with Appellant 1/ Non-applicant 3-Insurance Company. Claimant has not suffered any permanent disability. Non-applicant 2/ Respondent 3-owner of the offending truck has pleaded that after perusing the driving licence shown by Non-applicant 1/ Respondent 2, he has kept him under his employment.

5. Non-applicant 3-Insurance Company submitted reply to the claim application pleading therein that the claimant drove his vehicle rashly,

negligently and caused accident. Claimant suffered simple injuries and after taking primary treatment he recovered from the injuries. The amount of compensation claimed is highly exaggerated. Non-applicant 1/ Respondent 2 was not possessed with valid and effective driving licence. Jeep of the claimant was being used in breach of conditions of insurance policy as it was being used as passenger vehicle.

6. Non-applicant 4/ Respondent 4 submitted reply to the claim application pleading therein, that it is the Non-applicant 1/ Respondent 2 who drove the offending truck rashly, negligently and dashed the Jeep. At the time of accident, claimant was driving the jeep without any passenger(s) in it.

7. Learned Claims Tribunal, upon appreciation of pleadings and evidence placed on record by the respective parties held that the accident was a result of contributory negligence of drivers of both the vehicles. Claimant suffered permanent disability affecting loss of earning capacity of the claimant to the extent of 5%. Breach of policy conditions of the offending truck was not found to be proved, calculating the total amount of compensation of Rs. 1,10,000/- awarded compensation of Rs. 55,000/- after deducting 50% towards contributory negligence of the claimant himself.

8. Mrs. Chitra Shrivastava, learned counsel for the appellant-Insurance Company submits that learned Claims Tribunal has not considered the entire evidence and material placed on record by the Insurance Company to prove the defence of breach of conditions of insurance policy. She further argued that on the date of accident, Respondent 2-driver of the offending truck was not possessed with valid and effective driving licence. The licence was proved to be fake by Insurance Company by examining one Ajay Pal Gupta (employee of Insurance Company) and Rajesh Kumar Bhargava (employee of RTO). She further argued that the licence placed

on record bears renewal for 5 years, whereas as per the provisions of Section 14(2) of the Act of 1988, validity period of licence for transport vehicle is only 3 years. She further vehemently argued that the Insurance Company by examining the witnesses has proved that the licence in the name of Santlal placed on record was not issued by the competent authority, it is a fake licence. She submits that the Claims Tribunal erred in overlooking the evidence of the witnesses examined by Insurance Company in their support and held that the Insurance Company failed to prove the licence to be fake. The finding recorded with regard to licence is perverse to the evidence available on record.

9. Per contra, Mr. Samir Singh, learned counsel for Respondent 1-claimant submits that learned Claims Tribunal has discussed the issue of licence in detail and after considering the evidence of witness examined by the respective parties has arrived at a finding that the Insurance Company failed to prove that the licence possessed by Respondent 2/ non-applicant 1 driver of the offending truck was fake. He further submits, that fastening of liability upon the Insurance Company is based on the evidence available on record which does not call for any interference. He further submits that the Respondent 1-claimant has filed cross-objection seeking enhancement of the amount of compensation awarded by the Claims Tribunal *vide* impugned award. He submits that learned Claims Tribunal erred in recording a finding that the claimant was also negligent in the accident to the extent of 50%. Learned Claims Tribunal erred in holding that the claimant suffered loss of income to the extent of 5% only, contrary to the disability certificate issued by competent authority mentioning therein that the claimant suffered 18% permanent disability. He submits that the proper amount of compensation be awarded after taking into consideration the disability of the claimant to the extent of 18%. Learned Claims tribunal has assessed the income of the claimant as Rs. 3,000/-

per month which is on lower side and further that the Tribunal has not considered addition of future prospects while computing the amount of compensation. No amount has been awarded towards loss of amenities and joy in life and very meagre amount was awarded under the heads of attendant, transportation, pain and sufferings, special diet etc. and seeks for enhancement of amount of compensation.

10. We have heard learned counsel for the respective parties and also perused the record.

11. Sofar as, the ground raised by the learned counsel for the appellant-Insurance Company that the Claims Tribunal erred in holding that the Insurance Company failed to prove that the licence possessed by Respondent 2/ Non-applicant 1 was a fake licence, the claimant in support of his pleading of fake licence has examined Pradeep Kumar Verma as NAW-2-2 and Rajesh Kumar Bhargava as NAW-3-1. Learned Claims Tribunal has discussed the issue with regard to breach of conditions of insurance policy on the ground that Respondent 2 was not possessed with valid and effective driving licence on the date of accident. In paragraphs 15 to 20 of the impugned award, learned Claims Tribunal has discussed the pleadings of Respondent 3/ Non-applicant 2 owner of the offending truck where it is pleaded that upon perusal of licence satisfying himself to be correct, Respondent 2 was engaged as driver. Pradeep Kumar Verma was examined as NAW-2(2) who has stated that he kept non-applicant 1 in employment of Respondent 2 and at that time, he himself has seen the licence which bears the seal of licencing authority. It was also pleaded that he has taken his driving test. Learned Claims Tribunal, in paragraph 16 of the award, has discussed the evidence of witnesses of Insurance Company by name Rajesh Kumar Bhargava, Employee of RTO, Raipur. Tribunal has taken note of the admission made by this witness with regard to the availability of seal on the licence and torn part of page of the licence

register which is as under.

> “16– ...प्रतिपरीक्षण में इस साक्षी ने यह स्वीकार किया है कि लाइसेंस में लाइसेंस अथॉरिटी रायपुर की सील लगी है। यह भी स्वीकार किया है कि दिनांक 08-01-2001 के बाद लाइसेंस जारी करने के रजिस्टर का पन्ना फटा सिर्फ एक टुकड़ा बाकी है, जिसमे सील एवं तारीख लिखी है, बाकी रिकॉर्ड रजिस्टर में नष्ट है। साक्षी ने अस्वीकार किया है कि सम्बंधित लाइसेंस का रिकॉर्ड भी इसी तरह नष्ट कर दिया गया है। इस साक्षी ने यह स्वीकार किया है कि जिस दिनांक को लाइसेंस जारी करना लिखा गया है, उस दिनांक को वह लाइसेंस शाखा में पदश्थ नहीं था।...”

Learned Claims Tribunal further assigned reason for not accepting the evidence of Rajesh Kumar Bhargava NAW-3(1) in paragraph 17 of the award which is as under.

> “17. अनावेदक क्र.-1 द्वारा ड्राइविंग लाइसेंस का मूल प्रस्तुत किया गया है। ऐसी स्थिति में दिनांक 20-02-2001 को जो आर०टी०ओ० रायपुर में पदश्थ था उसके हस्ताक्षर अर्थात उसके स्वाभाविक हस्ताक्षर और प्रदर्श एन.ए.-1 में मौजूद हस्ताक्षर के सम्बन्ध में हस्तलिपि विशेषज्ञ का साक्ष्य प्रस्तुत करके या एन.ए.-1 में लाइसेंस अथॉरिटी के जो हस्ताक्षर मौजूद है, उसके सम्बन्ध में उस समय पदस्थ लायसेंसी अथॉरिटी का साक्ष्य प्रस्तुत करके बीमा कंपनी अपने अभिवचन को प्रमाणित कर सकती है, परन्तु ऐसा कोई साक्ष्य बीमा कंपनी की ओर से प्रस्तुत नहीं किया गया है। जहाँ तक ड्राइविंग लाइसेंस में सी.जी. 04 नंबर नहीं दिए जाने का प्रश्न है राजेश भार्गव एन.ए.-1 का लाइसेंस जारी करते समय आर०टी०ओ० रायपुर के लाइसेंस शाखा में पदश्थ नहीं था, इसलिए उसके कथन अर्थात उसके व्यक्तिगत ज्ञान का उपयोग प्रस्तुत प्रकरण में नहीं किया जा सकता। इस सम्बन्ध में अच्छा साक्ष्य एन.ए.-1 का लाइसेंस जारी करते समय लाइसेंस शाखा में पदस्थ कर्मचारी, लायसेंसी अथॉरिटी या उक्त तिथि का या उसके आस-पास की तिथि का लाइसेंस रजिस्टर की प्रविष्टि अवश्य सुसंगत एवं महत्वपूर्ण होती, परन्तु अभिलेख नष्ट हो गया है और लाइसेंस जारी करते समय पदश्थ लायसेंसी अथॉरिटी जिसके हस्ताक्षर एन.ए.-1 के लाइसेंस में होना तात्पर्यिक है तथा तत्समय पदश्थ लाइसेंस शाखा के लिपिक का कोई कथन प्रस्तुत प्रकरण में अनावेदक क्र-3 की ओर से नहीं कराया गया है इसलिए यह

> प्रमाणित नहीं है कि एन.ए.-1 में आर०टी०ओ० के हस्ताक्षर फर्जी है या सील फर्जी है।..."

12. Learned Claims Tribunal based upon the detailed discussion of the evidence available on record has given a reasoning for arriving at a finding that the Insurance Company failed to prove the licence Ext. NA1 to be fake. We have gone through the evidence of NAW-3(1) who in his evidence has stated that page of the register is torn and the torn part of the said page is not placed on proper place and pages of licence register is not in sequence. He also admitted that the seal as affixed in the licence that of licencing authority is same as seal affixed in the licence register. He also admitted several corrections/ overwriting in the register.

13. In view of the aforementioned facts and evidence discussed by the learned Claims Tribunal, we are of the view that the Tribunal has given a finding upon the licence upon analyzing the evidence brought on record. The finding recorded with regard to licence cannot be said to be erroneous. The Hon'ble Supreme Court has considered the issue with regard to the fake licence in the case of ***National Insurance Co. Ltd. v. Swarn Singh*** reported in ***(2004) 3 SCC 297***, ***National Insurance Co. Ltd. v. Geeta Bhat*** reported in ***(2008) 12 SCC 426***, ***Pepsu Road Transport Corporation v. National Insurance Company*** reported in ***(2013) 10 SCC 217*** and ***Ram Chandra Singh vs. Rajaram and Others*** reported in ***(2018) 8 SCC 799.*** In the aforementioned judgment, the Hon'ble Supreme Court has held that merely finding the licence of the driver of offending vehicle to be fake upon verification will itself not be a ground to exonerate the Insurance Company. The insurer is required to prove something more that the insured/ owner of the offending vehicle permitted the driver to drive the offending vehicle with fake licence even after getting the knowledge upon verification that the licence is fake. The witness examined

for non-applicant 2, in his statement under Order 18 Rule 4 of CPC in paragraph 6 categorically stated that on the date of appointing non-applicant 1 as driver, he himself has produced the licence of non-applicant 1 which bears the seal of RTO, Raipur and has also taken the driving test of non-applicant 1.

14. In view of the aforementioned facts and circumstances of the case, particularly, the evidence of the employee of RTO and further taking into consideration the law laid down by the Supreme Court with regard to the fake licence in the aforementioned judgments, we do not find any reason to interfere with the finding arrived by the Tribunal that the appellant-Insurance Company failed to prove breach of policy conditions.

15. The appellant-Insurance Company has relied on the case reported in ***2014 ACJ 1688 (Suman and others v. Joga Singh and others), 2013 ACJ 2129 (United India Insurance Company Ltd. v. Sujata Arora and others)***. In view of the aforementioned judgments of the Supreme Court, the case law relied upon by the appellant-Insurance Company do not apply to the present case. The ground raised by the appellant-Insurance Company with regard to the finding recorded by the Claims Tribunal that the appellant-Insurance Company failed to prove breach of policy conditions to be perverse is not sustainable and it is hereby repelled.

16. So far as, the second ground raised by with regard to the use of the offending vehicle contrary to its registration and the policy conditions, we have perused the record. The Tribunal in paragraph 22 of the award wherein the Tribunal has recorded a finding that the appellant-Insurance Company failed to prove that on the date of accident the Jeep was being used for carrying passengers for hire and reward. Mrs. Chitra Shrivastava, learned counsel could not able to point out from the evidence that the finding recorded by the Tribunal in paragraph 22 to be perverse or illegal.

Though, the appellant-Insurance Company has raised a ground with regard to finding of the Tribunal that the Jeep is used as passenger carrying vehicle contrary to the policy conditions but could not able to substantiate it by admissible piece of evidence, hence, the second submission of the appellant-Insurance Company is also not sustainable.

17. Now, we will deal with the cross-objection filed by Respondent 1-claimant for enhancement of the amount of compensation. The first ground raised by Respondent 1-claimant is with regard to the finding arrived by the Tribunal that there was contributory negligence to the extent of 50% of drivers of both the vehicles. Respondent-1/ Claimant along with claim application has filed copy of F.I.R. as Ext. A-27 and MLC report as Ext. A-28 and certificate issued by the Medical Board as Ext. A-29, no other document(s) of criminal case is placed on record like evidence of witnesses recorded under Section 161 of CrPC, spot map, crime detail form. Respondent in support of his claim has examined himself as the witness and no other individual witness was examined to prove the negligence of the driver of offending truck. Non-applicant 1 driver of the offending truck submitted its separate reply pleading the negligence on the part of the claimant-Respondent 1 and further substantiated his pleading by entering into the witness box and stated that the accident took place on account of negligence of the driver of the jeep ie. Respondent 1-claimant. It is not a case that non-applicants ie. the driver, owner and Insurance Company have not led any evidence with regard to manner of accident but driver of the offending truck was examined as NAW-1-1. The accident was a head-on-collision between two vehicles.

18. In view of the aforementioned facts and evidence available on record, particularly, looking to the fact that the claimant has not placed on record the entire documents available with the criminal case except few, no independent witness or occupant of the Jeep was examined as witness to

prove the sole negligence of the driver of the truck and further taking into consideration that non-applicant 1 driver of the offending truck not only submitted reply to claim application but also entered into the witness box, we find no error or infirmity in the finding recorded by the Claims Tribunal with regard to contributory negligence held to the extent of 50% upon Respondent 1-claimant. We affirm the finding recorded by the Claims Tribunal with regard to contributory negligence of the driver of the jeep/ Respondent 1.

19. Other ground raised by the learned counsel for Respondent 1 with regard to quantum of the amount of compensation awarded by the Claims Tribunal. Claimant has placed on record the MLC report and disability certificate issued by the Medical Board Ext. A-29 dated 01-10-2008 mentioning the percentage of disability to the extent of 18%. Dr. A.K. Karan was examined before the Claims Tribunal as AW-2, in his evidence he has admitted that the claimant can drive Light Motor Vehicle (LMV), he further admitted that he could not able to point out that the functional disability mentioned in the disability certificate is for what reason. There is evidence of the expert, particularly, the Doctor who issued disability certificate who himself has stated that the claimant-Respondent 1 can drive LMV and further he could not assign any reason as to how he mentioned that Respondent 1-claimant suffered 18% functional disability.

20. For the foregoing reasons, we are not inclined to disturb the award under the head of loss of earning capacity, as assessed to 5% because it is not challenged by the Insurance Company in their appeal in very specific term. The Tribunal has awarded Rs. 28,800/- towards permanent disability on the basis of the income claimed as Rs. 3,000/- per month, 2,000/- towards attendant cost, Rs. 1,000/- towards transportation, Rs. 5,000/- towards special diet, Rs. 40,000/- towards loss of functional disability, Rs. 22,000/- towards medical expenses. Upon going through the record, the discharge

ticket ext. A-26 would show that claimant-Respondent 1 suffered fracture of shaft femur right, he was admitted in the hospital from 26-08-2005 to 12-09-2005. The Tribunal has awarded only Rs. 10,000/- towards pain and sufferings which in the opinion of this Court appears to be on lower side. Looking to the nature of injury, we find it appropriate to award Rs. 25,000/- against pain and sufferings instead of Rs. 10,000/-. Claimant will also be entitled for loss of earning for a period of 5 months ie. Rs.15,000/- (Rs.3000x5).

21. Cross-objector (claimant) will be entitled for Rs. 15,000/- (pain and sufferings) and Rs. 20,000/- (loss of amenities and joy in life) in addition to what has been awarded by the Claims Tribunal. Total amount of compensation comes to Rs. 1,38,800/- [Rs.22000(medical)+Rs.28800(loss of income)+Rs.2000(attendant)+Rs.1000(transportation)+Rs.25000(pain and sufferings)+Rs.5000(special diet)+Rs.40000(loss of amenities) +Rs.15000(loss of earning during treatment period)]. Claimant was held to be 50% contributory negligent in the accident, hence, the amount of compensation for which the claimant will be entitled is **Rs. 69,400/-** (50% of Rs.1,38,800) instead of Rs. 55,000/- as awarded by learned Claims Tribunal. The aforementioned amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization.

22. In the result:

(i) appeal filed by the Insurance Company is dismissed.

(ii) cross-objection filed by Respondent 1-claimant is allowed in part and the impugned award is hereby modified to the extent as indicated herein above.

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