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HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 675 of 2015

The Oriental Insurance Company Limited, Branch Office, D-Commercial Complex, T.P. Nagar, Korba (Chhattisgarh). *(Insurer of vehicle)*

---- Appellant

Versus

1. Smt. Santoshi Bai W/o Basant Bareth, Aged About 45 Years
2. Basant Bareth S/o Bahadur Bareth, Aged About 50 Years.
3. Minor Ku. Jyoti Bareth D/o Basant Bareth, Aged About 15 Years.
4. Minor Suresh Kumar Bareth S/o Basant Bareth, Aged About 14 Years.
5. Minor Ku. Arti Bareth D/o Basant Bareth, Aged About 12 Years.
   No. 3 to 5 are minor, through natural guardian mother Smt. Santoshi Bai, aged about 45 years, W/o Basant Bareth, caste Dhobi.
   All are R/o Village Basti Baradwar, Police Station Baradwar, Tahsil Sakti, District Janjgir-Champa Chhattisgarh. *(Claimants)*
6. Baisakhu Bhaina S/o Mangalram Bhaina, Aged About 38 Years, R/o Village Paladikala, Police Station Baradwar, Tahsil Sakti, District Janjgir-Champa Chhattisgarh.*(Driver of vehicle)*
7. Durga Mirdha S/o Jagdish Mirdha, Aged About 44 Years, R/o Plot No. 7, Transport Nagar Korba, Tahsil and District Korba Chhattisgarh and Risdi Basti, Rajgamar, Tahsil and District Korba Chhattisgarh. (*Owner of vehicle*)

---- Respondents

For Appellant	:	Shri Pankaj Agrawal, Advocate
For Respondent No.1 to 5	:	None
For Respondent No.6	:	Shri Pawan Kashyap, Advocate on behalf of
	:	Shri Pushpendra Kumar Patel, Advocate
For Respondent No.7	:	None

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

28.10.2020

1. Appellant/non-applicant No.3/Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated

27.03.2015 passed by the Second Additional Motor Accident Claims Tribunal, Sakti, District Janjgir-Champa, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.04 of 2015 whereby learned Claims Tribunal allowed the claim application filed under Section 166 of the M.V. Act in part and awarded Rs.3,39,000/- as compensation in a death case.

2. Brief facts for disposal of this appeal, are that, on 23.06.2014, Ramesh, Cleaner/Conductor of the Truck bearing No.CG-12/C/1344 (hereinafter referred to as 'offending motorcycle') went over the cabin of Truck to lift the electric wire running over the road, while so, non-applicant No.1/driver of offending vehicle negligently drove the truck, due to which, Ramesh fell down. He suffered grievous injuries over his person and died. The accident was reported to concerned Police Station, based on which, crime was registered against non-applicant No.1 for offence under Section 304A of IPC.

3. Claimants, who are parents and siblings of deceased Ramesh filed an application under Section 166 of the M.V. Act before competent Claims Tribunal seeking compensation of Rs.14,60,000/- pleading therein that on the date of accident, deceased Ramesh was aged about 20 years, working as Cleaner in the offending vehicle and earning Rs.3,000/- per month.

4. Non-applicants No.1 and 2/driver and owner of offending vehicle submitted reply to claim application and denied all the pleadings mentioned therein. It was pleaded that non-applicant No.1 was

possessed with valid and effective licence, deceased suffered accidental injuries on account of his own negligence. It was further pleaded that on the date of accident, offending vehicle was insured with non-applicant/Insurance Company, hence, non-applicants No.1 and 2 are not liable to pay any amount of compensation.

5. Appellant/non-applicant No.3/Insurance Company submitted reply to claim application denying the facts as pleaded therein. It was pleaded that deceased Ramesh was not doing any work nor earning Rs.3,000/- per month. Claim is on false grounds, amount of compensation claimed is highly exaggerated and on the date of accident, non-applicant No.1/driver of offending vehicle was not having valid and effective driving licence, thereby there was breach of policy conditions, hence, Insurance Company is not liable to pay any amount of compensation.

6. Upon appreciation of pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal held that Late Ramesh suffered accidental injuries on account of rash and negligent driving of offending vehicle by non-applicant No.1, breach of policy conditions was not found to be proved and awarded Rs.3,39,000/- as compensation.

7. Shri Pankaj Agrawal, learned counsel for the appellant/Insurance Company submits that deceased was travelling over the cabin of the offending vehicle, which is not the place of sitting, hence, Insurance Company cannot be held liable to satisfy the amount of

compensation as it will lead to breach of policy conditions. He further submits that insurance policy does not cover the risk of deceased as he being a gratuitous passenger in the Goods Vehicle. On the date of accident, non-applicant No.1 was not possessed with valid and effective driving licence because licence authorizing him to drive offending vehicle was expired on 08.06.2013, and thereafter it was renewed only on 30.06.2014 as accident took place on 23.06.2014. It is contended that licence could not be renewed for a period of more than one year, hence, it is a case of driver not having valid and effective driving licence on the date of accident. It is further contended that to prove the fact that on the date of accident, driver of offending vehicle was not having valid and effective licence, copy of extract of licence of non-applicant No.1 is filed along with an application under Order 41 Rule 27 of CPC for taking additional evidence on record. He submits that under column 'C', it is specifically mentioned under the head 'Period of DL Not Valid, if any', in which, period has been shown from 08.06.2013 to 29.06.2014.

8. Per contra, Shri Pawan Kashyap, learned counsel for respondent No.6 submits that the Tribunal taking into entire facts and circumstances of the case has passed the impugned award. The offending vehicle on the date of accident was insured with appellant-Insurance Company, hence, liability to satisfy the amount of compensation is rightly fastened upon the appellant. It is further admitted that respondent No.6 has not filed any reply to the

application Under Order 41 Rule 27 of CPC for taking additional evidence on record.

9. As respondent No.6/driver of offending vehicle is represented by an Advocate by filing *Vakalatnama* on 12.10.2015, has not filed reply to the application under Order 41 Rule 27 of CPC and further taking into consideration that the extract of licence has been obtained from the Transport Department, Government of Chhattisgarh, which is an extract of Government record, I find it appropriate to allow the application under Order 41 Rule 27 of CPC and take additional evidence on record.

10. Notice sent to respondent No.7 was returned back with a note that 'not residing on given address'. In the aforementioned fact, appellant filed an application for service through paper publication. That application was allowed and notice of the case was published for respondent No.7 in Daily Newspaper Nai Duniya, Bilaspur dated 26.03.2019. Even after publication of notice in Daily Newspaper, no one appeared on behalf of respondent No.7.

11. I have heard learned counsel appearing for the respective parties and perused the record carefully.

12. So far as the ground raised by learned counsel for the appellant/Insurance Company that deceased was gratuitous passenger and his risk is not covered under the insurance policy, the claimants in their claim application have very specifically pleaded that deceased was working as Cleaner in the offending vehicle and on the

date of accident, offending vehicle after loading rice, wheat, pulses, salt and sugar from FCI Godown at Baradwar, departed for village Jamdi for unloading goods, on the way, non-applicant No.1 asked the deceased to lift over the electric line crossing the road by means of wooden stick. While deceased was lifting electric wire by means of wooden stick, non-applicant No.1 drove the vehicle rashly and negligently, on account of which, deceased fell down from the cabin of offending vehicle. The finding recorded by learned Claims Tribunal that deceased was working as Helper in the offending vehicle was not challenged by owner of offending vehicle. Learned Claims Tribunal has taken into consideration the evidence of Basant Bareth (AW-1) father of deceased and Mani Kumar Uraon (AW-2), who in their statement specifically stated that deceased was working as Helper in the offending vehicle. Other witnesses examined on behalf of claimants in their evidence stated that deceased was working as Cleaner/Helper in the offending vehicle, in cross-examination, they have denied the suggestion that deceased was not working as Cleaner, but as Loader. It is also stated that crossing of electric wire is obstructing the road, Ramesh went up to lift up the electric wire through wooden stick, due to driving of offending vehicle by non-applicant No.1, he fell down. Further, Baisakhuram Bhaina non-applicant No.1 entered into the witness box as NAW-1, driver of offending vehicle. He in his affidavit under Order 18 Rule 4 of CPC pleaded that deceased was working as Helper in the offending vehicle owned by non-applicant No.2. Even in cross-examination, this witness has denied the suggestion given by counsel for non-applicant No.3/appellant/ Insurance Company that deceased was not working as Helper in the offending vehicle.

13. In view of aforementioned facts available on record, there is no infirmity in the finding recorded by learned Claims Tribunal that deceased was working as Cleaner/Helper in offending vehicle and his risk was covered on the date of accident under the insurance policy. In view of above, first submission made by learned counsel for the appellant that deceased being a gratuitous passenger and his risk is not covered, is not sustainable where the Insurance Company in the policy (Ex.D/4) has accepted the premium of Rs.100/- towards LL-Paid Driver, Conductor, Cleaner-IMT-40.

14. So far as second submission made by learned counsel for the appellant/Insurance Company with regard to non-applicant No.1/driver of offending vehicle was not having valid and effective driving licence on the date of accident is concerned, perusal of extract of driving licence placed on record along with application under Order 41 Rule 27 of CPC would show that it is clearly mentioned in the document Annexure-A that from 08.06.2013 to 29.06.2014 driving licence was not valid. Under column of 'Validity Period', the validity of driving licence for 'Transport Vehicle' has been mentioned from 30.06.2014 to 29.06.2017.

15. The renewal of driving licence is envisaged under Section 15 of the M.V. Act, relevant portion of which is reproduced below for ready reference :

> "**15. Renewal of driving licences.** —(1) Any licensing authority may, on application made to it, renew a driving licence issued under the provisions of this Act with effect from the date of its expiry:
>
> Provided that in any case where the application for the renewal of a licence is made more than thirty days after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal:
>
> Provided further that where the application is for the renewal of a licence to drive a transport vehicle or where in any other case the applicant has attained the age of forty years, the same shall be accompanied by a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8, and the provisions of sub-section (4) of section 8 shall, so far as may be, apply in relation to every such case as they apply in relation to a learner's licence."

16. The first proviso appended to sub-section (1) of Section 15 of M.V. Act very specifically provides that if application for renewal of a licence is made after lapse of period of thirty days from its expiry, then the driving licence shall be renewed with effect from the date of its renewal.

17. Admittedly, licence of non-applicant No.1 expired on 08.06.2013, but it came to be renewed only on 30.06.2014 i.e. after lapse of about more than one year. It is not a case of non-applicant No.1/respondent No.6 that prior to the date of expiry of licence or within a period of one month of expiry of licence, application for renewal of licence is submitted before the Licensing Authority, hence, in absence of any such pleading, averment and submission of learned counsel for respondent No.6, licence will be renewed from the date of its renewal only i.e. 30.06.2014 and it will be effective from the date of its renewal i.e. 30.06.2014.

18. The Hon'ble Supreme Court has considered the issue of renewal of licence in case of **Ram Babu Tiwari v. United India Insurance Company Limited and Others** reported in **2008 AIR SCW 6512** 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 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.

The second proviso appended to sub-section (4) of Section 15 is of no assistance to the appellant. It merely enables the licensing authority to take a further test of competent driving and passing thereof to its satisfaction within the meaning of Sub-section (3) of Section 9. It does not say that the renewal would be automatic. It is, therefore, a case where a breach of the contract of insurance is established. This aspect of the matter has been considered by this Court in *National Insurance Co. Ltd. v. Kusum Rai & Ors. [(2006) 4 SCC 250]* holding :

> "11. It has not been disputed before us that the vehicle was being used as a taxi. It was, therefore, a commercial vehicle. The driver of the said vehicle, thus, was required to hold an appropriate licence therefor. Ram Lal who allegedly was driving the said vehicle at the relevant time, as noticed hereinbefore, was holder of a licence to drive a light motor vehicle only. He did not possess any licence to drive a commercial vehicle. Evidently, therefore, there was a breach of condition of the contract of insurance. The appellant, therefore, could raise the said defence."

It was furthermore held :

> “14. This Court in *National Insurance Co. Ltd. v. Swaran Singh and Others [(2004) 3 SCC* 29] clearly laid down that the liability of the Insurance Company vis-a-vis the owner would depend upon several factors. The owner would be liable for payment of compensation in a case where the driver was not having a licence at all. It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle.”

It was opined :

> “16. In a case of this nature, therefore, the owner of a vehicle cannot contend that he has no liability to verify the fact as to whether the driver of the vehicle possessed a valid licence or not.”

19. The principle laid down in *Kusum Rai* (supra) has been reiterated in *Ishwar Chandra & Ors. v. Oriental Insurance Co. Ltd. & Ors. [(2007) 10 SCC 650]*, referring to sub-section (1) of Section 15 of the Act, this Court stated the law, thus :

> “9. From a bare perusal of the said provision, it would appear that the licence is renewed in terms of the said Act and the rules framed thereunder. The proviso appended to Section 15 (1) of the Act in no uncertain terms states that whereas the original licence granted despite expiry remains valid for a period of 30 days from the date of expiry, if any application for renewal thereof is filed

> thereafter, the same would be renewed from the date of its renewal. The accident took place on 28-4-1995. As on the said date, the renewal application had not been filed, the driver did not have a valid licence on the date when the vehicle met with the accident.”

19. In view of aforementioned specific provisions under M.V. Act, authoritative pronouncement of Hon'ble Supreme Court and in the facts and circumstances of the case where driving licence of driver of offending vehicle expired on 08.06.2013 and renewed on 30.06.2014, on the date of accident, non-applicant No.1/respondent No.6 was not possessed with valid and effective driving licence. It appears that learned Claims Tribunal carried away with the copy of licence placed on record as Ex.D/1 showing validity period of Transport Vehicle till 29.06.2017. In the said document, there is no mention about the earlier period on which, licence to drive Transport Vehicle was in force. This fact has been brought on record to the notice of this Court only from the extract of licence obtained from the Regional Transport Department and filed as Annexure-A.

20. In view of above, I am of the considered view that on the date of accident, non-applicant No.1/respondent No.6 was not having valid and effective driving licence authorizing him to drive 'Transport Vehicle'. Hence, the finding recorded by learned Claims Tribunal that there was no breach of policy conditions is not sustainable and is hereby set aside. I hold that there was breach of policy conditions as

on the date of accident, non-applicant No.1/respondent No.6 was not having valid and effective driving licence to drive offending vehicle.

21. As there is no dispute with regard to insurance policy accepting premium for Driver, Conductor and Cleaner, the risk of deceased is covered under the policy deceased being Cleaner/Helper of the offending vehicle, taking support of ruling of Hon'ble Supreme Court in case of **Shamanna and Another v. Divisional Manager, Oriental Insurance Company Limited and Others** reported in **(2018) 9 SCC 650**, I direct the appellant/Insurance Company to first pay the entire amount of compensation and thereafter to recover the same from non-applicants No.1 and 2/respondents No.6 and 7/driver and owner of offending vehicle.

22. In the result, appeal filed by appellant/Insurance Company is allowed in part and the impugned award passed by learned Claims Tribunal is modified to the extent indicated herein-above.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh