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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 286 of 2014

- Bharti Axa General Insurance Co. Ltd. Aged About 33 Years Thru- Its Legal Manager, Devendra Nagar Road, Chawla Complex, Tah. And Distt. Raipur C.G., (Insurer/Respondent No.3) **---- Appellant**

Versus

1. Smt. Kerabai, W/o Late Chandra Shekhar Aged About 27 Years R/o Pachari, Thana- Pithaura, Distt. Mahasamund C.G.,

2. Ku. Motim D/o Late Chandrashekhar Aged About 9 Years Minor, Thru- Mother Smt. Kera Bai, R/o Pachari, Thana- Pithaura, Distt. Mahasamund C.G.,

3. Ku. Reena D/o Late Chandrashekhar Aged About 7 Years Minor, Thru- Mother Smt. Kera Bai, R/o Pachari, Thana- Pithaura, Distt. Mahasamund C.G.,

4. Suraj Kumar S/o Late Chandrashekhar Aged About 5 Years Minor, Thru- Mother Smt. Kera Bai, R/o Pachari, Thana- Pithaura, Distt. Mahasamund C.G.,

5. Smt. Punni Bai W/o Late Budhram Aged About 61 Years R/o Pachari, Thana- Pithaura, Distt. Mahasamund C.G., (Claimants)

6. Narayan S/o Babulal Aged About 44 Years Profession- Driver, Employed By Shri- Rajesh Kant Jha, S/o D.N. Jha, R/o Rajendra Nagar, Jagdalpur, Distt. Bastar C.G., (Driver)

7. Rajesh Kant Jha S/o D.N. Jha Aged About 41 Years R/o Sakin- Rajendra Nagar, Jagdalpur, Distt. Bastar C.G., District : Bastar(Jagdalpur), (Owner)

---- Respondents

For Appellant	:	Shri Bhavesh Acharya, Advocate
For Respondents No.1 to 5	:	None, though served.
For Respondents No.6	:	Shri Praveen Kumar Tulsyan, Advocate

D.B: Hon'ble the Chief Justice &
Hon'ble Shri Justice Sanjay S. Agrawal

Award/Order on Board

Per Sanjay S. Agrawal, J.

16.10.2020

1. Bharti Axa General Insurance Company Limited has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the

Act, 1988) questioning the legality and propriety of the award dated 29.10.2013 passed in claim case No.155/2012, whereby the learned Tribunal, while fastening the liability upon the appellant/insurance company, has allowed the claim in part by awarding a total amount of compensation to the tune of Rs.9,13,500/- with 6% interest per annum from the date of filing of the claim petition till the date of actual payment. The parties to this appeal shall be referred hereinafter as per their description in the Court below.

2. Briefly stated the facts of the case are that on19.02.2012 at 5:00 pm, the deceased Chandrasekhar and Kashiram were going to Chote Urla in a motorcycle of Netram @ Retram as pillion riders. At the relevant time, it was dashed vehemently from its opposite side by the offending vehicle “Truck” bearing registration No.C.G.-17-H-0709 owing to the rash and negligent driving by its driver Narayan, as a result of which, he (Chandrasekhar) and said Netram died while Kashiram sustained grievous injuries, giving rise to the institution of the claim petition by the legal representatives of deceased Chandrasekhar. According to them, the deceased, 28 years old, was labourer by profession and used to earn Rs.300/- per day and thus have claimed compensation of Rs.20,00,000/- under various heads.

3. The Non-applicants have contested the claim petition. According to the appellant/insurance company, the alleged offending vehicle was being driven by its driver without holding the effective and valid driving licence, and therefore, no liability could be fastened upon it.

4. After considering the evidence led by the claimants, it has been held by the Tribunal that the alleged accident occurred due to rash and negligent driving by the driver of the alleged offending vehicle resulting into the sad demise of Netram and Chandrasekhar while Kashiram sustained injuries. It held further while considering the driving licence of the said driver seized vide seizure memo

(Ex.P.4) that he was holding the effective and valid driving licence and in consequence, while disbelieving the defence of the insurer and by considering the income of the deceased to the tune of Rs.3,000/- per month, awarded the aforesaid amount of compensation along with its interest, as mentioned herein above.

5. According to the learned counsel for the appellant, the finding of the Tribunal holding that the driver of the alleged offending vehicle was possessing the effective and valid driving licence is apparently contrary to law.

6. The main contention of the appellant/insurance company herein is that since the driver of the alleged offending vehicle was not possessing the effective and valid driving licence and was being used as such in violation of the policy, and therefore, no liability ought to have been fastened upon it. In order to get its exoneration, the burden to establish the alleged breach was upon the insurance company. However, no evidence was led in order to establish the same. That apart, from perusal of the seizure memo (Ex.P.4), the driving licence of the driver of the alleged offending vehicle was recovered from him, yet no effort was made in order to ascertain its genuineness from the concerned Licensing Authority. In absence thereof, the Tribunal has not committed any illegality in fastening the liability upon the insurance company.

7. In view of above, the appeal, being devoid of merit, is accordingly dismissed. No order as to costs.

Sd/-	Sd/-
(P.R.Ramachandra Menon)	**(Sanjay S. Agrawal)**
Chief Justice	**Judge**

Anjani