

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 320 of 2014**

- The Oriental Insurance Company Ltd., through Divisional Manager, The Oriental Insurance Co. Ltd. Divisional Office, Geetanjali Bhawan, Korba, Tahsil and District Korba C.G.

-----Appellant**VERSUS**

1. Kanhaiyalal S/o Jhumuklal aged about 51 years
2. Smt. Alagmati W/o Shri Kanhaiyalal, aged about 48 years
3. Purnima Bai D/o Shri Kanhaiyalal, aged about 17 years
4. Anil Kumar S/o Kanhaiyalal, aged about 15 years
5. Ku. Sunita D/o Kanhaiyalal, aged about 13 years

No. 3 to 5 being minor through natural guardian father Kanhaiyalal S/o Jhumuklal

All are R/o 1 number Dafai, Ward No. 48 Bhairothal, Surakachar, P.S. Bankimongra, Tahsil Katghora, District Korba, C.G.

6. Vijay Kumar Verma S/o Shri Vipin Kumar Verma, R/o Gurhdewa Colony, P.S. Bankimongra, Tahsil Katghora, District Korba, C.G. **----Owner**

----Respondents

For Appellant	:	Mr. Raj Awasthi, Advocate.
For Respondent No. 1 to 5	:	Mr. Amiykant Tiwari, Advocate.
For Respondent 6	:	Mr. Vikash Pandey, 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.****28/08/2020**

1. Challenge in this appeal is to the impugned judgment/ award dated 26-12-2013 passed in Case No. 26/ WC Act./ 2011 / Fatal, by Commissioner, Employees Compensation Act, Labour Court, Korba, Chhattisgarh (henceforth "the Commissioner") whereby learned Commissioner allowed the application filed under Section 22(3) of Workmen Compensation Act, 1923 and awarded a sum of Rs. 3,32,055/-, fastening the liability upon the owner and Insurance Company

of the vehicle jointly.

2. Facts of the case in nutshell are that Respondent 6/ Non-applicant 1 is the registered owner of the truck bearing registration No. CG 04ZC 0657 and was insured with appellant/ Non-applicant 2. Santosh Kumar (now deceased) was engaged as driver in the truck. On 17-11-2008, Deceased along with helper Deepak Kumar was returning from Raipur to Bakimongra loaded with iron bars, on the way, some unknown persons have stopped the truck and looted cash and other articles and after committing murder of deceased Santosh Kumar, they thrown his body in agriculture field situated on the road side near Village Dhhekna. On 21-11-2008, body was seen by some agricultural labours who went their for harvesting crops. Claimants who are parents and siblings of the deceased filed an application under Section 22(3) of the Workmen Compensation Act, 1923 seeking compensation on account of untimely death of Santosh Kumar which was arising out of and during the course of his employment.
3. Non-applicant 1/ Respondent 6 owner of the truck and employer of deceased submitted reply to the application and admitted that the deceased was engaged by him as driver in the truck and on the date of accident he was returning from Raipur. He refuted other part of claim application. It was also pleaded that deceased was engaged temporarily for driving the truck for which he was paying him Rs. 2,000/- per month and Rs. 60/- daily allowance, the vehicle on which deceased was engaged as driver was insured with Non-applicant 2-Insurance Company.
4. Non-applicant 2/ Appellant-Insurance Company denied the entire pleadings made in the claim application and It was pleaded that deceased was not engaged in the employment of Non-applicant 1/ owner, on the date of accident, there was no valid and effective driving licence with the deceased causing breach of conditions of insurance policy.

5. Learned Commissioner based upon the pleadings made by the respective parties has formulated as many as nine issues for consideration including the issue with regard to whether on the date of accident, deceased Santosh Kumar was possessing valid and effective driving licence or not, and held that death of Santosh Kumar was arising out of and during the course of his employment. Upon perusal of the records of the criminal case, learned Commissioner has also recorded that both the driver and cleaner (helper) were murdered by the unknown persons when truck was returning from Raipur to Bakimongra; assessing the income of the deceased as Rs. 3,000/- per month awarded a sum of Rs. 3,32,055/- as compensation.

6. This appeal was admitted on the following substantial question of law.

“Whether the Commissioner was justified in not issuing any direction for discovery of driving licence on an application filed under Order 11 Rule 12 of CPC to owner of the vehicle; in absence of copy of licence on record before the Commissioner, in view of the statutory provision under Section 3 of the Motor Vehicles Act, 1988 and fastening liability upon the appellant?

7. Copy of application filed under Order 11 Rule 12 of CPC by the appellant- Insurance Company for discovery of documents under the provisions of CPC and the order passed by the Commissioner on that application was not disputed by the parties. Admittedly, no particulars/ details of licence was produced on the part of the parties i.e. the claimants/ Respondent 1 to 5 and Respondent 6/ owner of the truck. For the purpose of fastening the liability under the policy, claimants or the owner are required to prove that there was no breach of conditions of insurance policy, the truck was having valid permit, fitness, registration apart from insurance and also the driver of the truck was possessing valid and effective driving licence. If all the aforementioned requirements are fulfilled then only the Insurance Company can be held liable to satisfy the amount of compensation. If any one of the above requirements with regard to registration, permit, fitness

and licence is not proved then the liability cannot be fastened upon the Insurance Company, but the liability would be upon the owner of the truck/ employer.

8. In the case at hand, copy of licence was not placed on record by any of the parties. The Insurance Company was not in a position to verify or examine the licence whether the driver, on the date of accident, was possessing valid and effective driving licence or not. The Insurance Company filed an application under Order 11 Rule 12 of CPC for discovery of the documents mentioned in the application including the copy of licence. The learned Commissioner has not considered the application with regard to the documents mentioned at Serial No. 1 to 3 of the application filed under Order 11 Rule 12 of CPC mentioning that the documents were already received by the Insurance Company. For the purpose of licence, it is recorded that as the applicants therein are not having the means and possession of driving licence, therefore, the applicants could not be directed to discover and produce the copy of licence and disposed of the application on that ground that there is no requirement of issuance of direction for production of documents mentioned in the application. The Commissioner could have issued direction to Respondent 6/ Non-applicant 1-owner of the truck for production of copy of licence because it is the duty of the owner of the vehicle to permit the person for driving the vehicle who is possessing valid and effective driving licence.
9. Looking to the fact that the deceased was employed as driver of the motor vehicle by non-applicant 6, comes within the definition of workman under Section 2 of the Workmens Compensation Act, for the purpose of fastening liability upon the Insurance Company, the Commissioner has to arrive at a finding that there was no breach of policy conditions, deceased was possessed with valid and effective driving licence. Under the policy,

insured will be indemnified only when the insured has engaged the driver to drive the vehicle having valid and effective driving licence.

10. In the aforementioned facts and circumstances of the case, we decide the question of law in favour of the appellant-Insurance Company. The application filed under Order 11 Rule 12 with regard to driving licence, is allowed and the order/ award passed by the learned Commissioner is hereby set aside. The matter is **remitted back** to the Commissioner for deciding the case afresh after providing opportunity to all the parties concerned to prove their cases, particularly, proving the possession of valid and effective driving licence with the deceased driver of the truck. It goes without saying that the parties will be at liberty to amend their pleadings, led further evidence and thereafter the Commissioner to decide the application of the Non-applicants/ Respondents in accordance with law as expeditiously as possible preferably within a period of 4 months from the date of production of copy of this order.

11. The present appeal filed under Section 30 of the Employees Compensation Act is allowed in part.

12. Records of the case be sent back to the concerned Commissioner, Workmen Compensation cum Labour Court forthwith.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge