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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1052 of 2013

1. ICICI Lombard, General Insurance Com. Ltd. Regd. Office ICICI Bank Towers, Bandra Kurla Complex, Mumbai, 400051, Thru- Its Legal Manager, ICICI Lombard General Insu. Co. Ltd., Ground Floor, Vanijya Bhawan, Devendra Nagar Road, Raipur, Chhattisgarh

---- Appellant

Versus

1. Surendra Kumar Sethi, s/o Babulal Ji Sethi, aged about 50 years
2. Smt Sushma, w/o Surendra Kumar Sethi, aged about 48 years

   Both are R/o 17 Mahavir Marg Khategaon, District Dewas (MP) Presently R/o Jain Gali, Durg, Tahsil & District Durg (CG)
3. Ranjit Nihal Udiya S/o Mannu Nihal Udiya Aged About 38 Years R/o Ward No. 33, New Khursipar Bhilai, Tahsil and District : Durg, Chhattisgarh (Driver)
4. Quality Construction Limited Thru- The Manager, Prop. G.D. Jaswani, S/o N.D. Jaswani, Age- 35 Yrs, R/o 9/3, Nehru Nagar (West) Bhilai, Tah. And Distt. Durg, Chhattisgarh (Owner)

----Respondents

For Appellant	:	Shri Sourabh Sharma, Advocate
For Respondent-4/Owner	:	Ms Ruchi Nagar, Advocate on behalf of Shri Rahul Tamaskar, Advocate

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Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
18.06.2020

1. Fastening of liability upon appellant/Insurance Company and awarding penal interest to the claimant is the subject matter of this appeal filed by the Insurance Company, challenging the impugned award dated 06.09.2013 passed in Claim Case No.95 of 2013 by the 5th Additional Motor Accident Claims Tribunal, Durg (for short, 'Claims Tribunal').

2. Facts of the case in a nutshell are that, on 20.01.2011 at about 11 am, Gaurav Sethi was travelling on his Motorcycle bearing No.CG 07-LR-6912 along with Durgesh Rao as pillion and going to Dhamdha from Durg. On the way, one Truck bearing No.CG-07-LR-4022 (for short, 'offending vehicle') driven by respondent-3/NA-1 dashed the Motorcycle. In the said accident, Gaurav Sethi suffered grievous injuries over his person and he was taken to Sector-9 hospital at Bhilai, where he was declared to be dead. Claimants, who are parents of deceased Gaurav Sethi filed claim application claiming Rs.19,48,000/- as compensation.

3. Respondent-3/driver of offending vehicle remained *ex-parte* before the learned Claims Tribunal.

4. Respondents-3 and 4/NA-1 and 2, driver and owner respectively, submitted reply to claim application and denied all adverse pleadings made against them in claim application. They pleaded that offending vehicle was running with a limited speed but Motorcycle was driven negligently and rashly came in front of the offending vehicle and met with an accident; there was no negligence on the part of driver of offending vehicle, there was no license with deceased Gaurav Sethi to drive Motorcycle on the date of accident. Offending vehicle was insured with NA-3/Insurance Company, as such they are not liable for payment of any amount of compensation.

5. Appellant/Insurance Company submitted reply to claim application stating therein that intimation of accident was not forwarded to the Company. On the date of accident ie 20.01.2011, driver of offending vehicle was not possessing valid and effective driving license. It was also

pleaded that as there was accident between two motor vehicles, there will be contributory negligence on the part of driver of Motorcycle also. Accident is on account of negligence on the part of deceased-Gaurav Seth, driver of Motorcycle. There was no valid permit and fitness of offending vehicle and prayed for exoneration of Insurance Company from paying amount of compensation.

6. Learned Claims Tribunal based upon pleadings of respective parties, formulated as many as 9 issues for consideration, including the issue with regard to contributory negligence and also whether on the date of accident, respondent-3/NA-1/ driver of offending vehicle was not possessing valid and effective driving license.

7. Learned Claims Tribunal on appreciation of pleading and evidence, has held that contributory negligence was found not to be proved and the issue with regard to the valid and effective driving license with driver of offending vehicle/NA-1 has been found to be proved. Learned Claims Tribunal after recording findings with regard to other issues, held that Insurance Company failed to prove any failure on the part of owner of offending vehicle in taking proper care while engaging NA-1 to drive the offending vehicle; and held the Insurance Company liable for satisfying amount of compensation. Learned Claims Tribunal after calculating total amount of compensation of Rs.5,01,000/- to be awarded to the claimants, awarded 7% interest from the date of filing of claim application and further interest of 11%, in case Insurance Company failed to satisfy the amount of compensation within a period of 30 days from the date of passing of award.

8. Shri Saurabh Sharma, learned counsel for the appellant/Insurance Company submitted that learned Claims Tribunal erred in not exonerating the Insurance Company even after recording a finding that driver of offending vehicle was not possessing valid and effective driving license on the date of accident. He further submits that learned Claims Tribunal further erred in awarding default interest @ 11% as there is no such provision under the Motor Vehicle Act, 1988 to award default interest, which is penal in nature.

9. Ms Ruchi Nagar, learned counsel appearing on behalf of Shri Rahul Tamaskar, learned counsel for respondent-4/Owner of offending vehicle supports the award passed by the learned Claims Tribunal.

10. We have heard learned counsel for the appellant and also perused record of the case along with record of claim case.

11. To appreciate the 1st submission of learned counsel for the appellant/Insurance Company that in the facts and circumstances of the case when learned Claims Tribunal held that driver of offending vehicle was not possessing valid and effective driving license, liability to satisfy the compensation could not be fastened upon the appellant/Insurance Company, we have gone through the pleadings made by the respective parties. In reply to claim application submitted by driver and owner of offending vehicle before learned Claims Tribunal, they have pleaded that driving license was shown by driver of offending vehicle to its owner and it has also been looked into by the owner. Only after satisfying with the driving license possessed by driver, *bona fidely* engaged respondent-3 to

drive offending vehicle, NA-2/Owner cannot be held liable for breach of conditions of Insurance Policy.

12. Appellant/Insurance Company pleaded that license possessed by driver of offending vehicle was found to be fake on its verification from the RTO Office, Raipur and on that basis, it was pleaded that there was breach of conditions of Insurance Policy.

13. Owner of offending vehicle entered into witness box before the Tribunal as NAW-2/2 and in paragraph-2 of his evidence, in his examination-in-chief, he has very categorically stated that driver of offending vehicle was driving the vehicle since last many years prior to his engagement as driver of offending vehicle, he has seen driving license and after being satisfied, he engaged NA-1 as driver of offending vehicle. It was also stated in his evidence that on perusal of license, it did not appear in any manner that it requires verification from the RTO Office.

14. Above witness was extensively cross-examined by learned counsel for the appellant/Insurance Company before the Tribunal. The suggestion put to this witness in cross-examination that he had not seen the license before engaging respondent-2 was denied. In cross-examination, this witness has not stated anything contrary to his evidence in examination-in-chief and pleading.

15. Appellant/Insurance Company also examined Sameer Babbar, Legal Manager, Insurance Company as NAW-2/3. This witness in his cross-examination, admitted that if the license was not put for verification, then, it could not have been revealed that the said license was fake. He also stated that only after verification of license from Regional Transport

Officer, Raipur, it is found that driver of offending vehicle was not possessing valid and effective driving license.

16. In view of the pleadings and evidence available on record, at this juncture, we find it relevant to discuss the case laws of Hon'ble Supreme Court on the issue.

17. Hon'ble Supreme Court in the matter of **National Insurance Company v. Swarn Singh** reported in **(2004) 3 SCC 297** has considered the issue of license and discussed its various aspects like license not held, fake license, license validity expired, license not held for type of vehicle being driven and learners license, etc., and held thus:-

> 92.It may be true as has been contended on behalf of the petitioner that a fake or forged licence is as good as no licence but the question herein, as noticed herein-before, is whether the insurer must prove that the owner was guilty of the wilful breach of the conditions of the insurance policy or the contract of insurance. In Lehru's case (supra), the matter has been considered at some details. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of law in terms whereof the insurer is to establish wilful breach on the part of the insured and not for the purpose of its dis-entitlement from raising any defence or the owners be absolved from any liability whatsoever. We would be dealing in some details with this aspect of the matter a little later.
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> 99.So far as the purported conflict in the judgments of Kamla (supra) and Lehru (supra) is concerned, we may wish to point out that the defence to the effect that the licence held by the person driving the vehicle was a fake one, would be available to the insurance companies, but whether despite the same, the plea of default on the part of the owner has been established or not would be a question which will have to be determined in each case.
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> 100.The court, however, in Lehru (supra) must not read that an owner of a vehicle can under no circumstances has any duty to make any enquiry in

this respect. The same, however, would again be a question which would arise for consideration in each individual case.

101.The submission of Mr. Salve that in Lehru's case (supra), this Court has, for all intent and purport, taken away the right of insurer to raise a defence that the licence is fake does not appear to be correct. Such defence can certainly be raised but it will be for the insurer to prove that the insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver.

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110. (iii)The breach of policy condition eg. disqualification of driver or invalid driving license of the driver, as contained in sub-section (2)(a (ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving license or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

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(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving license is/ are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149 (2) of the Act.

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving license produced by the driver, (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case."

18. Hon'ble Supreme Court in its another judgment in the matter of **Pepsu RTC v. National Insurance Company Ltd.** reported in (2013) 10

SCC 217, considered its earlier judgments in the matters of **Swarn Singh** (supra), **United India Insurance Company Limited Vs Lehru and others** reported in (2003) 3 SCC 338 and **National Insurance Company Limited Vs Laxmi Narain Dhut** reported in (2007) 3 SCC 700 and also dealt with the issue with respect to defence of insurer of holding fake driving license at the time of accident and held thus:-

> "10.In a claim for compensation, it is certainly open to the insurer under Section 149 (2) (a) (ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh's case (supra). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation."

19. Recently, in **Ram Chandra Singh v. Rajaram & others** reported in (2018) 8 SCC 799 the Supreme Court while taking into consideration its

earlier decisions in Swarn Singh's case (supra), and also Pepsu RTC's case (supra) has observed thus:-

> “11.Suffice it to observe that it is well established that if the owner was aware of the fact that the license was fake and still permitted the driver to drive the vehicle, then the insurer would stand absolved. However, the mere fact that the driving license is fake, *per se,* would not absolve the insurer. Indubitably, the High Court noted that the counsel for the appellant did not dispute that the driving licence was found to be fake, but that concession by itself was not sufficient to absolve the insurer.”

20. Now, coming back to facts of the case and evidence placed on record by the respective parties, as discussed above, there was a specific pleading in reply submitted by owner of offending vehicle that he has looked into the driving license produced by driver of offending vehicle and after satisfying himself, he has engaged respondent-3 as driver. Owner also entered into witness box and has stated in his evidence that he had perused license of driver and after satisfaction respondent- 3 has been engaged as driver. He also stated that from perusal of license, it did not reveal that there is any requirement of verification of license from RTO Office. The witness examined on behalf of appellant/Insurance Company in his evidence also stated that only after verification of license from RTO Office, it revealed that it was not valid and effective driving license.

21. From the aforementioned facts and evidence available on record, what is emerging is that owner of the offending vehicle perused the license of driver before engaging him, satisfied himself that NA-1 was possessing valid license for the class of vehicle which he owned and *bona fidely*, engaged him and permitted him to drive. We do not find that owner of offending vehicle has not taken any care prior to engaging respondent- 3 as driver or acted negligently. It is not the case where

driving license is not having endorsement or authorisation to drive class of vehicle which respondent-4/Owner was owning and engaged respondent-3 for driving the said vehicle. But, here is a case that driving license of NA-1 bears authorisation to drive the class of offending vehicle and only after verification from RTO Office it was found that license possessed by respondent-3/driver of offending vehicle was fake as it was not issued from RTO Office, Raipur.

22. Hon'ble Supreme Court in the aforementioned case law, put the burden upon Insurance Company to prove that the insured is guilty of wilful breach and failed to exercise reasonable care in the matter of fulfilling the condition of policy regarding use of vehicle by duly licensed driver to which the appellant has not able to prove.

23. In light of judgments passed by Hon'ble Supreme Court and after considering the facts and evidence available on record, we do not find any error in the finding recorded by learned Claims Tribunal to the extent that appellant/Insurance Company failed to prove that the insured/respondent-3/Owner of offending vehicle has not taken reasonable care or is guilty of any wilful breach of policy condition and fastened liability upon the Insurance Company for satisfying the award of amount of compensation.

24. So far as the second ground raised by learned counsel for the appellant/Insurance Company that learned Claims Tribunal erred in awarding default/penal interest is concerned, the award of interest is envisaged under Section 171 of the Act of 1988, which reads as under:

> “171. **Award of interest where any claim is allowed—**Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of

> compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf."

25. Perusal of above provision would show that it only provides for the award of simple interest. It nowhere mentioned about awarding penal interest in case of default of satisfying the amount of compensation, within prescribed time.

26. In view of above specific provision of Section 171 of the Act, the impugned award of penal interest @ 11% by the Tribunal is contrary to law, which is liable to be and is hereby set aside.

27. The submission of learned counsel for the appellant that award of 7% interest is on higher side is concerned, looking to the date of accident, and bank rate of interest during this period, we do not find any reason to interfere with the award of 7% interest.

28. In view of above, the appeal is allowed in part and the award of penal interest of 11% is set aside and remaining portion of the award will remain intact.

Sd/-	Sd/-
(PR Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	**Judge**

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