

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A.(C) No. 1078 of 2015****Reserved on 02.09.2020****Pronounced on 22.09.2020**

- The Oriental Insurance Co. Ltd. Through- Its Divisional Manager, Divisional Office, 1st Floor, Rama Trade Centre, Near Bus Stand, Bilaspur, Civil And Revenue District- Bilaspur Chhattisgarh, Pin- 495001, Appellant/non-Applicant No.2.

---- Appellant**Versus**

1. Vivek Giri S/o Anurudh Giri, Aged About 22 Years R/o Village- Asola, P.O. Parsa, P.S. And Tahsil- Ambikapur, District- Surguja Chhattisgarh, Claimant.
2. Panmeshwar Maravi S/o Sahdev Ram, Aged About 30 Years R/o Village- Bhandarpara, Kundikala, Tahsil- Lundra, District- Surguja Chhattisgarh, Owner/driver.

---- Respondents

For Appellant:	Shri R. N. Pusty, Advocate.
For Respondent No.1:	Shri Anurag Dayal Shrivastava, Advocate
For Respondent No.2:	None.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**CAV Award/Order**

1. The Oriental 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 27.06.2015 passed by the Motor Accident Claims Tribunal, Surguja (Ambikapur) (hereinafter referred to as 'the Tribunal') in Claim Case No.08/2014, whereby, the Tribunal has allowed the claim in part by awarding a sum of Rs.94,839/- with 6 % per annum from the date of filing of the claim petition till its realization while fastening the liability upon the insurance company. The parties to this appeal shall be referred hereinafter as per their description in the Tribunal.

2. Briefly stated the facts of the case are that on 22.06.2013 at about 9:00 p.m., the Claimant Vivek Giri was returning home from his field accompanied by his brother Birendra and friends, namely, Khota Cherwa and Dilip Paikra and when they reached near the Balaji Cold Storage of village Sonpurkala, it was dashed vehemently by a motor cycle bearing Registration Number CG15/CL-9849. It was being driven by its owner in a rash and negligent manner. As a result of the alleged accident, the Claimant received serious multiple injuries on his legs, jaw and rear portion of the head, giving rise to the institution of the claim. It has been alleged by the Claimant that he was admitted into the District Hospital, Ambikapur, from where he was referred to M.M.I. Hospital, Raipur and was admitted there for his treatment from 24.06.2013 to 28.06.2013. In view of the injuries sustained, he claimed an amount of Rs.2,15,364/- under various heads.

3. The owner-cum-driver of the alleged offending vehicle was proceeded *ex parte*, while the insurer of it contested the claim mainly on the ground that the driver of the alleged offending vehicle was driving the same without having any valid and effective driving licence in violation of the insurance policy, and therefore, no liability could be fastened upon it.

4. The Tribunal, after considering the evidence led by the Claimant, arrived at a conclusion that the alleged accident occurred due to rash and negligent driving by the owner-cum-driver of the alleged offending vehicle causing serious injuries to the Claimant. It held further, while entertaining the issue no.2, that the vehicle in question was not being used in violation of the policy as the insurer has failed to lead any

evidence in order to establish the said fact. As a consequence, the aforesaid amount of compensation has been determined while fastening the liability upon the insurance company, which has been impugned by way of this appeal.

5. Shri R. N. Pusty, learned counsel appearing for the Appellant/insurance company submits that the finding of the Tribunal, holding that the vehicle in question was not being used in violation of the policy, is apparently contrary to law. According to him, the charge sheet was submitted by the concerned Station House Officer against the owner-cum-driver under Section 3/181 of the Act, 1988 which raises a presumption that at the relevant point of time, he was driving the same without having any kind of driving licence. It is contended further that since the owner-cum-driver of the alleged offending vehicle has failed to produce his defence, therefore, in absence thereof, it cannot be said that he was driving his vehicle with valid driving licence. As such, no liability could be fastened upon the insurance company. In support, he placed his reliance upon the decision rendered by the Supreme Court in the matter of ***Pappu and others vs. Vinod Kumar Lamba and another*** reported in **(2018) 3 SCC 208**.

6. On the other hand, Shri Anurag Dayal Shrivastava, learned counsel for Respondent No.1 has supported the award impugned as passed by the Tribunal.

7. I have heard learned Counsel for the parties and perused the entire record carefully.

8. The question which arises herein for determination is as to whether the vehicle in question was being used by its owner-cum-driver

without having a driving licence so as to absolve the liability of the Appellant/insurance company in order to indemnify him?

9. From perusal of the record, it appears that the Appellant/insurance company, while contesting the claim, has taken a specific defence that it was being used in violation of the insurance policy as the driver of it was driving the same without having a valid driving licence. The owner-cum-driver of the alleged offending vehicle, who was aware of this particular fact, was, however, proceeded *ex parte* without controverting the same. It appears further from a bare perusal of the charge sheet (Ex.A.1) submitted by the concerned Station House Officer that an offence punishable under Section 3/181 of the Act, 1988 has been registered against him, i.e., the owner-cum-driver of the vehicle in question. It, thus, raises a presumption that he was not holding any kind of driving licence else the said offence would not have been registered against him. Whether he was holding the valid driving licence at the relevant point of time or not, was in fact well within his knowledge, and it was his bounden duty to produce the said material fact in order to establish the same. The initial burden was, however, upon him to establish the said fact, but has failed even to contest the claim.

10. What is, therefore, reflected from the record that the owner-cum-driver of the alleged offending vehicle has neither submitted his written statement nor has produced any evidence in order to establish the fact that he was driving the same with a valid driving licence. In fact, for the reasons best known to him, he has rather chosen not to contest the claim, though he was under an obligation to furnish the information in

writing to the insurer with regard to the particulars of his driving licence as required under sub-clause (iv) of clause (c) of Section 134 of the Act, 1988. The said provision is relevant for the purpose, which reads as under:-

134. Duty of driver in case of accident and injury to a person.- When any person is injured or any property of a third party is damaged, as a result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall-

(a) unless it is not practicable to do so on account of mob fury or any other reason beyond his control, take all reasonable steps to secure medical attention for the injured person, [by conveying him to the nearest medical practitioner or hospital, and it shall be the duty of every registered medical practitioner or the doctor on duty in the hospital immediately to attend to the injured person and render medical aid or treatment without waiting for any procedural formalities], unless the injured person or his guardian, in case he is a minor, desires otherwise;

(b) give on demand by a police officer any information required by him, or, if no police officer is present, report the circumstances of the occurrence, including the circumstances, if any, for not taking reasonable steps to secure medical attention as required under clause (a), at the nearest police station as soon as possible, and in any case within twenty-four hours of the occurrence;

[(c) give the following information in writing to the insurer, who has issued the certificates of insurance, about the occurrence of the accident, namely:-

- (i) insurance policy number and period of its validity;
- (ii) date, time and place of accident;
- (iii) particulars of the persons injured or killed in the accident;
- (iv) name of the driver and the particulars of his driving license.

Explanation.---- For the purposes of this section the expression “driver” includes the owner of the vehicle.]

11. A bare perusal of the aforesaid provision, particularly, sub-clause (iv) of clause (c) of it, would show that the duty is cast upon the driver and owner of the vehicle in question to furnish the information in writing

to the insurer regarding the name of the driver and particulars of the driving licence. However, as observed herein above, neither the information required mandatorily under the aforesaid provision was complied with nor the copy of it was produced by the owner-cum-driver of the alleged offending vehicle for the reasons best known to him. He even did not enter into the witness box in order to show that the vehicle in question was being used by him with a valid driving licence.

12. At this juncture, the principles laid down in the matter of ***The Oriental Insurance Company Limited, Raipur (CG) V. Shrikant Singh and others*** decided by the Division Bench of this Court in ***MAC No. 1040 of 2008*** on 13.10.2011, are to be seen, where the driver of the offending vehicle has failed to fulfill the requirement provided under the said clause of Section 134 of the Act. In that factual scenario, while interpreting clause (c) of the said provision, it has been held at paragraph 7 as under:-

- "07) Section 134 of the Act, 1988, provides that it is the duty of the driver to give the following information in writing to the insurer, who has issued the certificates of insurance, about the occurrence of the accident, namely:
- (i) insurance policy number and period of its validity;
 - (ii) date, time and place of accident;
 - (iii) particulars of the persons injured or killed in the accident;
 - (iv) name of the driver and the particulars of his driving licence.

Further, in the explanation, it has been clarified that for the purposes of this section, the expression "driver" includes the owner of the vehicle. Therefore, sub-clause (iv) of clause (c) of Section 134 imposes a duty upon the owner and driver of the vehicle to disclose the particulars of the driver and his driving licence. Thus, if particulars have not been produced by the owner

or driver, there is breach of statutory provisions of the Act, 1988 and for that, the insurance company cannot be held liable.”

13. In the light of the aforesaid principles and in absence of fulfilling and/or furnishing the information as required by virtue of the aforesaid provision, it cannot be expected from the Appellant/insurance company to establish the fact that he was driving the alleged offending vehicle without having a valid driving licence. The initial burden, thus, could not have been discharged by him and in such circumstances, the onus to establish the alleged violation cannot be shifted upon the Appellant/insurance company.

14. At this juncture, the principles laid down by the Supreme Court in the matter of ***Pappu and others*** vs. ***Vinod Kumar Lamba and another*** (supra) are to be seen, where a question with regard to the fact that the offending vehicle insured with the insurance company would *per se* make the insurance company liable, was considered and it was observed therein that the onus would shift upon the insurance company only after the owner of the offending vehicle pleads and proves the basic facts which was within his knowledge that the driver of the offending vehicle was authorised by him to drive the vehicle and was having a valid driving licence at the relevant time and only thereafter, the onus would be held to be shifted upon the insurance company in order to substantiate its defence. Paragraphs 12 and 13 are relevant for the purpose, which read as under:-

“12.The insurance company is entitled to take a defence that the offending vehicle was driven by an unauthorised person or the person driving the vehicle did not have a valid driving licence. The onus would shift on the insurance company only after the owner of the

offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorised by him to drive the vehicle and was having a valid driving licence at the relevant time.

13. In the present case, Respondent 1 owner of the offending vehicle merely raised a vague plea in the written statement that the offending Vehicle No. DIL 5955 was being driven by a person having valid driving licence. He did not disclose the name of the driver and his other details. Besides, Respondent 1 did not enter the witness box or examine any witness in support of this plea. Respondent 2 insurance company in the written statement has plainly refuted that plea and also asserted that the offending vehicle was not driven by an authorised person and having valid driving licence. Respondent 1 owner of the offending vehicle did not produce any evidence except a driving licence of one Joginder Singh, without any specific stand taken in the pleadings or in the evidence that the same Joginder Singh was, in fact, authorised to drive the vehicle in question at the relevant time. Only then would onus shift, requiring Respondent 2 insurance company to rebut such evidence and to produce other evidence to substantiate its defence. Merely producing a valid insurance certificate in respect of the offending truck was not enough for Respondent 1 to make the insurance company liable to discharge his liability arising from rash and negligent driving by the driver of his vehicle. The insurance company can be fastened with the liability on the basis of a valid insurance policy only after the basic facts are pleaded and established by the owner of the offending vehicle that the vehicle was not only duly insured but also that it was driven by an authorised person having a valid driving licence. Without disclosing the name of the driver in the written statement or producing any evidence to substantiate the fact that the copy of the driving licence produced in support was of a person who, in fact, was authorised to drive the offending vehicle at the relevant time, the owner of the vehicle cannot be said to have extricated himself from his liability. The insurance company would become liable only after such foundational facts are pleaded and proved by the owner of the offending vehicle.”

15. In the present matter, as observed herein above, a criminal case was not only registered against the owner-cum-driver of the alleged offending vehicle under Section 3/181 of the Act, 1988 but, he even

failed to furnish the necessary information regarding his driving licence in strict compliance with the provision prescribed under sub-clause (iv) of clause (c) of Section 134 of the Act, 1988. Therefore, in the light of the principles laid down by the Supreme Court in the aforesaid judgment, it is, thus, evident that the vehicle in question was being used by its owner without having a driving licence in violation of the insurance policy. In such circumstances, no liability could, therefore, be fastened upon the Appellant/insurance company. In the said background, the finding of the Tribunal fastening the liability upon the insurance company is, therefore, liable to be and is hereby set aside. Accordingly, it is held that the alleged offending vehicle was being used at the relevant point of time by its owner in violation of the policy and the insurance company is, thus, entitled to be and is hereby exonerated from its liability to indemnify him, i.e., the owner-cum-driver of the alleged offending vehicle.

16. Since the vehicle in question was admittedly insured with the Appellant/insurance company, therefore, by applying the principles of 'pay and recover' as held in the matter of ***National Insurance Co. Ltd vs. Swaran Singh and Others*** reported in (2004) 3 SCC 297, it would be just and proper to issue a direction to the Appellant/insurance company to first pay the awarded sum, i.e., Rs.94,839/- with 6% interest per annum from the date of filing of the claim petition till its realization, to the Claimant and then to recover the same from the owner-cum-driver of the alleged offending vehicle namely, Panmeshwar Maravi in execution proceedings arising in this very case.

17. In view of foregoing discussions, the appeal is allowed with the

aforesaid observations. Rest of the observations as made by the Tribunal shall remain intact.

18. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
JUDGE

Nikita