AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 616 of 2014

- The United India Insurance Company Limited, through its Branch Manager, Opposite to Anupama Talkies, Jagdalpur (CG)

---- Appellant

Versus

1. Jayaram Manjhi, S/o Lakshman Manjhi, R/o Gangalur, P.S. Gangalur, Distt. Bijapur (CG)
2. Jai Kumar Nair, S/o Shivadasan, R/o Main Road, Bijapur C.G.
3. Mandavi Bode, W/o Late Jagguram, aged about 25 years
4. Malati D/o Late Jagguram, aged about 37 years
5. Ganesh, S/o Late Jagguram, aged about 5 years
6. Madavi Budari W/o Farsi Ram, aged about 50 years

   R/o Piskonda, P.S. Nirtur, Distt. Bijapur C.G., District : Bijapur, Chhattisgarh

---- Respondents

For Appellant	:	Mr. HB Agrawal, Sr. Advocate with Mr. Pankaj Agrawal, Advocate
For Respondent No.1 & 2	:	Mr. Subhash Yadav, Advocate with Ms. Rajkumari Yadav, Advocate.

Order On Board By Hon'ble Shri Justice Parth Prateem Sahu

09/03/2020

1. Appellant-insurer of offending vehicle has challenged the impugned award dated 28.3.2014 passed by learned Commissioner, Workmen's Compensation Act- cum- Labour Court, Jagdalpur (for short 'the Commissioner') in Case No.24/2012/WC Act/Fatal by which the Commissioner has partly allowed claim application of claimants/respondents No.3

to 6 herein, awarded a sum of Rs.3,20,920/- along with default interest of 12% p.a. and fastened liability on appellant-Insurance Company to make payment of amount of compensation.

2. Brief facts relevant for disposal of this appeal are that Jagguram (since deceased) was working as 'loader' on the vehicle Tata 409 bearing registration number CG18-H-0287 (henceforth 'the offending vehicle'), which was owned by non-applicant No.2/respondent No.2 and insured by non-applicant No.3 / appellant herein. On 30.1.2011 the offending vehicle met with an accident resulting in death of Jagguram.

3. Respondents No.3 to 6 being widow, children & mother of deceased Jagguram, have filed claim application before the Commissioner against the driver, owner & insurer of offending vehicle claiming Rs.4,30,560/- as compensation mentioning therein that at the time of accident, the deceased was 26 years old and was earning Rs.4,000/- per month.

4. Non-applicant No.1 & 2/ respondents No.1 & 2 filed their reply to claim application admitting that on the date of accident, the deceased was working as 'loader' on the offending vehicle, but denied that accident was the result of rash & negligent driving of the driver of offending vehicle. They have pleaded that deceased was getting Rs.3,000/- per month as salary and not Rs.4,000/- as pleaded by the claimants in the claim application. On the date of accident, the offending vehicle was

insured with non-applicant No.3/appellant herein. Driver of offending vehicle was having valid & effective driving license, therefore, if the owner is found liable to pay compensation to the claimants as a result of accident, the insurance company is liable to indemnify the owner.

5. Non-applicant No.3/appellant herein also submitted reply to claim application and denied the fact that the deceased was employed under non-applicants No.2 on salary of Rs.4,000/- per month. The offending vehicle was insured as 'goods carrying vehicle', whereas on the date of accident it was being used for carrying passengers, which amounts to violation of condition of insurance policy; there was no valid fitness and permit; the driver was not having valid and effective driving license to drive offending vehicle. Thus, there was violation of essential conditions of insurance policy and as such, appellant Insurance Company cannot be held liable to make payment of compensation to claimants/respondents No.3 to 6 herein.

6. On the basis of pleadings of the respective parties, the Commissioner has framed as many as seven issues and after providing opportunity of leading evidence to the parties in support of their respective cases, allowed the claim application in part, awarded a total sum of Rs.3,22,920/- as compensation, along with interest @ 12% for the entire period on delayed payment and saddled appellant insurance company with the liability to pay compensation to the claimants.

7. The appeal was admitted for consideration on following substantial question of law:-

> "Whether under the facts and circumstances of the case, the Commissioner, Workmen's Compensation, erred in holding that the driver of the offending vehicle who was possessing the driving license for driving the light motor vehicle only, was authorized to drive the heavy goods vehicle and thereby erred further in fastening the liability upon the insurance company?"

8. Learned counsel for appellant-Insurance Company submits that the vehicle involved in the accident was 'heavy goods vehicle' and on the date of accident, non-applicant No.1-driver of offending vehicle, was not having valid & effective driving license to drive offending vehicle and therefore the insurance company could not have been held liable to indemnify the insured. In support of this submission, he refers to document Ex.D1-C, which is a copy of register produced by Ramkaran Ratre (NAW3-1), an employee of Regional Transport Office, Jagdalpur, and submitted that there is clear mention of license issued to non-applicant No.1/respondent No.1 by the Regional Transport Office, Jagdalpur authorizing him to drive only 'light motor vehicle' and there is no endorsement on this license authorizing him to drive offending vehicle i.e. heavy goods vehicle. Reference is also made to document Ex.D-4C, which is a copy of register produced by Shishupal Mandavi (NAW-2),

who was working as Assistant Grade III in District Transport Office, Dantewada, showing that there is specific mention of license issued to non-applicant No.1 authorizing him to drive 'heavy goods vehicle' was cancelled w.e.f. 18.2.2011. However, the Commissioner did not take into consideration aforesaid specific evidence available on record and arrived at an erroneous conclusion that on the date of accident, the driver of offending vehicle was having valid and effective driving license to drive heavy goods vehicle. The finding of the Commissioner that there was no violation of any of the conditions of insurance policy is liable to be set aside and appellant Insurance Company deserves to be exonerated from the liability of satisfying the amount of compensation to the claimants/ respondents No.3 to 6.

9. Per contra, learned counsel for respondent No.2, owner of offending vehicle, submits that on the date of accident, respondent No.1-driver was having valid and effective driving license to drive 'light motor vehicle' and the same was also placed before the Claims Tribunal in which there is a specific endorsement that license holder is also authorized to drive 'heavy goods vehicle' w.e.f. 18.3.2008. He also refers to document Ex.D-2, which is 'particulars of motor driving license' issued by the Licensing Authority, South Bastar Dantewada and submits that in this document there is no specific mention of description of vehicle for which license has been issued. Validity period of license has been shown from 13.9.2001 to

12.09.2021. He pointed out that date of accident is 30.1.2011 and on that day, respondent No.1 was possessing valid and effective driving license. It is also pointed out that cancellation of license was never brought to the notice of respondent No.1 or respondent No.2. He submits that owner of vehicle after perusing copy of license produced by non-applicant No.1-driver, has engaged him as driver of offending vehicle. As per document Ex.D-2 itself, an endorsement in the license of non-applicant No.1 has been made by the Competent Authority authorizing him to drive 'heavy goods vehicle'. It is also contended that the vehicle involved in the accident is not 'heavy goods vehicle' but it is 'light goods vehicle', there was no violation of conditions of insurance policy. He submits that the Commissioner has passed the impugned award considering the entire evidence, documentary & oral, and other materials placed on record by respective parties and the same does not call for any interference.

10. I have heard learned counsel for the parties and perused the record.

11. Copy of license available on record clearly reveals that its holder is authorized to drive 'light motor vehicle'. This license also contains an endorsement to the effect that holder is authorized to drive 'heavy goods vehicle' and this endorsement was issued on 18.3.2008 and valid upto 17.3.2011. The endorsement was renewed from time to time and lastly on 18.3.2011 upto 17.3.2014. From perusal of the

particulars of license issued by the Licensing Authority, South Bastar Dantewada, it is further evident that license was renewed on 18.3.2011 upto 17.3.2014.

Copy of register, which has produced by DW-1, an employee posted in the Regional Transport Office, Jagdalpur reflects that originally license was issued on 13.9.2001 to drive motorcycle with gear & light motor vehicle, which is valid upto 12.9.2021. The information supplied to the Investigator of appellant Insurance Company under the Right to Information Act, 2005 is marked and exhibited as Ex.D-3. Copy of register is marked as Ex.D-4, which was produced by DW-2 saying that license issued in favour of non-applicant No.1 authorizing him to drive LMV & HGV and it was valid upto 17.3.2011. Endorsement on the license came to be cancelled only on 18.2.2011.

12. Shishupal Mandavi (NAW3-2) has stated in his evidence that information regarding cancellation of license was sent to the non-applicant No.1, but it has not been specifically stated as to by which mode, information was sent to non-applicant No.1. No documentary evidence has been placed on record to show that non-applicant No.1 has been duly informed about the cancellation of endorsement authorizing him to drive heavy goods vehicle (HGV). This witness only points out that original license, which has been issued by the Transport Office, Jagdalpur, was only to drive 'light motor vehicle' and therefore there cannot be any endorsement to drive heavy

goods vehicle (HGV).

13. So far as the liability of appellant insurance company to satisfy the impugned award is concerned, Section 149 of the Act of 1988 deals with the duty of insurer to satisfy award of compensation and also the grounds on which an insurance company can defend any claim or action brought against it. In the matter of **National Insurance Company Ltd. Vs. Swarn Singh** reported in **(2004) 3 SCC 297** the Hon'ble Supreme Court has held thus:-

> “102. The summary of our findings to the various issues as raised in these petitions are as follows:
>
> (i) xxxxx
>
> (ii) xxxxx
>
> (iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence 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 licence 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.”

In the above decision, Hon'ble Supreme Court was considering the issuance of fake or forged license and held that it is the liability of the insurance company to prove breach on the part of insured concerned of policy condition regarding holding of a valid license by the driver or his qualification to drive during the relevant period. It was also observed by Hon'ble Supreme Court that the insurer would not be allowed to avoid its liability towards insurer unless the said breach or breaches of the condition of driving license is/are so fundamental as are found to have contributed to the cause of the accident.

Admittedly, present is not a case of fake license as license has been issued by the Competent Authority i.e. RTO, Dantewada, and endorsement to drive 'heavy goods vehicle' has been made by the competent authority. Stand of appellant Insurance Company is that the endorsement on the license issued by the licensing authority concerned authorizing respondent No.1 to drive 'heavy goods vehicle' has been cancelled much prior to the date of accident and as such, the respondent No.1 was not authorized to drive offending vehicle and thus, on the date of accident, the offending vehicle was being plied in violation of condition of insurance policy.

14. In the matter of **Pepsu Road Transport Corporation Vs. National Insurance Company** reported in **(2013) 10 SCC 217** Hon'ble Supreme Court has 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."

15. In the above ruling of Hon'ble Apex Court it has been held in categorical terms that if it is not within the knowledge of insurer that driver employed by him is having fake license, but he had engaged the driver after satisfying himself by perusing license that the license is valid for the purpose of driving vehicle for which he has been engaged then the insurance company will not be absolved from its liability from payment of compensation.

16. In the case at hand, it is not disputed that license has been issued by the Competent Authority and on that basis non-applicant No.1 / respondent No.1 was driving offending vehicle on the date of accident. There is nothing on record to show that cancellation of license issued in favour of non-applicant No.1/ respondent No.1 has been communicated to him or that

it was well within the knowledge of non-applicant No.2/ respondent No.2, owner of offending vehicle that driving license of driver authorizing him to drive 'heavy goods vehicle' is cancelled and still, he permitted the driver to drive the vehicle. In this situation, it cannot be held that there was any breach of condition of insurance policy leading to exoneration of insurance company from its liability to indemnify the insured.

17. Another significant aspect in the present case is that the particulars of vehicle, which was placed on record as Ex.D-9, shows the class of offending vehicle as 'Light Goods Vehicle'; it has seating capacity of '4' including driver; its unladen weight is 3000 kilograms and gross vehicle weight is 7450 kilograms. Definition of 'light motor vehicle' is given in Section 2 (21) of the Act of 1988, which reads as under:-

> “(21) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms”

18. In the matter of **Mukund Dewangan vs. Oriential Insurance Co. Ltd.** reported in **(2017) 14 SCC 663** Hon'ble Supreme Court has held that a person holding driving license to drive 'Light Motor Vehicle' is competent to drive any transport vehicle whose weight does not exceed 7500 Kg and that separate endorsement on the license is not required to drive a transport vehicle of light motor vehicle class. Relevant portion of the said judgment is reproduced below:-

> “60.1.‘Light motor vehicle’ as defined in Section 2 (21) of the Act would include a transport vehicle as per the weight prescribed in Section 2 (21) read with Section 2 (15) and 2 (48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54/1994.
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> 60.2. A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, ‘unladen weight’ of which does not exceed 7500 kg. and holder of a driving licence to drive class of “light motor vehicle” as provided in Section 10 (2) (d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the “unladen weight” of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under Section 10 (2) (d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form.”

19. In the above factual backdrop, even if it is accepted that on the date of accident, non-applicant No.1/respondent No.1 was possessing license to drive 'light motor vehicle' only, then also in the light of decision of Hon'ble Supreme Court in Mukund Dewangan's case (supra), non-applicant No.1 was authorized to drive offending vehicle, which comes within the category of 'light motor vehicle' as defined in sub-section (21) of Section 2 of the Act of 1988. In Mukund Dewangan's case (supra) Hon'ble Supreme Court has held in categorical terms that a person who is holding a licence to drive a Light Motor Vehicle, does not require any endorsement from the Licensing Authority to enable him to drive a transport vehicle, including a

light goods vehicle.

20. In view of above facts and evidence available on record and also considering the law laid down by Hon'ble Supreme Court in above judgements, the question of law framed in this appeal is answered in negative.

21. The appeal is accordingly dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-