NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1158 of 2014

1. Kanhaiya Lal, S/o Late Budhram Aged About 25 Years, R/o Badgumda, Tah. Dharamjaigarh, Gharghora, Distt. Raigarh C.G, At Present Village- Patrapali, Tah. Kartala, Distt. Korba, Chhattisgarh
2. Leela Bai D/o Late Budhram Aged About 28 Years
3. Ramsheela D/o Late Budhram Aged About 27 Years

Both R/o Badgumda, Tah. Dharamjaigarh, Gharghora, Distt. Raigarh Chhattisgarh

---- Appellants/Claimants

Versus

1. Jitendra Dubey, S/o Harishankar Dubey Aged About 32 Years R/o Hinichhapar Road, P.S. Merwa, Distt. Siwan Bihar, Present Address- Parsabhata, Balco Nagar, Post- Balco, P.S. Balco, Distt. Korba, Chhattisgarh (Owner)
2. Shailendra Kumar Singh, S/o Duli Chand Prasad, R/o Gurudwara Basti, Jamshedpur, East, Singhbhoom, Jharkhand (Driver)
3. National Insu. Co.Ltd. S/o Thru- Branch Manager, Branch Office, 13 Meenu Complex, Main Road, Korba, P.O. Korba, Tah. And Distt. Korba Chhattisgarh (Insurer)

----Respondents

For Appellants	:	Shri Basant Dewangan, Advocate
For Respondents-1 and 2	:	None appears
For Respondent-3	:	Shri Dashrath Gupta, Advocate

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

Per Parth Prateem Sahu, J.
06.10.2020

1. Claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the impugned award dated 31.07.2014 passed in Claim Case No.228 of 2013 by the Additional Motor Accident Claims Tribunal (FTC), Korba (for short, 'Claims Tribunal'), whereby learned Claims Tribunal allowed the claim application in part and awarded a sum of Rs.3,25,000/- as compensation and fastened liability upon NA 1

and 2, owner and driver of offending vehicle to satisfy the amount of compensation.

2. Facts relevant for disposal of this appeal are that on 04.10.2008 Budhram Manjhi (since deceased) was travelling on his Motorcycle bearing No.CG 13-7032 along with his friend and going to village Badegumda. While so, one Truck bearing No.JH 05-R-1250 (for short, 'offending vehicle'), coming from opposite direction, knocked down the Motorcycle driven by Budhram Manjhi and caused accident. In the aforementioned accident, Budhram Manjhi suffered grievous injuries and died.

3. Claimants/appellants, who are children of the deceased filed claim application under Section 166 of the Act of 1988 seeking total compensation of Rs.25,60,000/- .

4. NA1 and 2 did not appear before the learned Claims Tribunal and they were proceeded *ex-parte*.

5. NA3/Insurance Company submitted reply to the claim application and denied the facts pleaded in the claim application. It was pleaded that there was no valid and effective driving license with the driver of offending vehicle, there was no valid permit for plying the vehicle as such, there was breach of Policy conditions and the Insurance Company cannot be held liable to satisfy the amount of compensation.

6. On appreciation of pleadings and evidence, initially, learned Claims Tribunal passed an award on 11.08.2010 awarding Rs.3,25,000/- as

compensation and while exonerating the insurance company fastened liability upon NA1 and NA2 to satisfy the amount of compensation.

7. Appellants/claimants have preferred an appeal by filing MAC-1149 of 2010 which came to be allowed in part and learned Single Judge vide Order dated 12.08.2013, has affirmed the assessment of amount of compensation but set aside the finding with regard to liability of satisfying the amount of compensation and remanded back the case for considering the same afresh with regard to fixing liability of the party after affording opportunity of hearing. After receiving back the case on remand, learned Claims Tribunal had issued notice to NA-1 and 2. In Order Sheet dated 21.02.2014, had recorded that earlier also, paper publication was made for causing presence of NA-1 and 2, but they remained absent and thereafter, they were proceeded *ex-parte.* The claimants have stated that they do not want to produce any witness. The Insurance Company submitted application for appointing Commissioner for examination of witnesses, which was allowed. The evidence recorded by the Commissioner was placed on record on 18.06.2014 and thereafter, learned Claims Tribunal has passed the impugned award. Insurance Company has examined Sunil Kumar, Assistant Clerk, District Transport Office, Lohardaga, Jharkhand, as witness, who in his evidence has stated that driving license No.1709/2006 was not issued in the name of Jitendra Dubey (NA1), S/o Hari Shankar Dubey from his Office. The Claims Tribunal, considering material and evidence placed on record, passed impugned award fastening liability upon NA1 and 2 on the ground that on the date of accident, driver of offending vehicle was not possessing valid and effective

driving license. The evidence of Clerk of RTO concerned (NAW-2) remain uncontroverted. In support of his evidence, he has placed on record Ex.D-4, letter written to the Tribunal and Ex.D-5 copy of driving license register.

8. In view of the above, we do not find any infirmity or perversity in the finding of breach of policy condition recorded by the Claims Tribunal, we affirm the finding recorded by learned Claims Tribunal that on the date of accident, NA2, Driver of offending vehicle was not possessed with valid and effective driving license.

9. Shri Basant Dewangan, learned counsel for the appellants submits that even if the Claims Tribunal has arrived at a finding that there was no valid and effective driving license with NA2, driver of offending vehicle, then also, to protect the interest of claimants, a direction of pay and recover to respondent-3/Insurance Company be issued, as Insurance of the offending vehicle on the date of accident was not denied by the Insurance Company.

10. Shri Dashrath Gupta, learned counsel for the Insurance Company while opposing the above submission of learned counsel for the appellants, submits that even if there is no denial of Insurance of offending vehicle on the date of accident but then also, pay and recover direction may not be passed to satisfy the amount of compensation as there was breach of policy condition.

11. Hon'ble Supreme Court in cases of not having valid and effective license, forged license or no license, has considered the prayer made on behalf of claimants for protecting their interest being third party and

directed the Insurance Company to satisfy the amount of compensation first and thereafter, to recover the same from the owner of offending vehicle. In case of **Shamanna v. Oriental Insurance Co. Ltd.** reported in **(2018) 9 SCC 650** Hon'ble Supreme Court has considered the issue of “pay and recover” and held as under:

> “13. Since the reference to the larger Bench in *Parvathneni case (National Insurance Co. Ltd. v. Parvathneni, (2009) 8 SCC 785)* has been disposed of by keeping the questions of law open to be decided in an appropriate case, presently the decision in *Swarn Singh case (National Insurance Co. Ltd. v. Swarn Singh, (2004) 3 SCC 297)* followed in *Laxmi Narain Dhut (National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700* and other cases hold the field. The award passed by the Tribunal directing the insurance company to pay the compensation amount awarded to the claimants and thereafter, recover the same from the owner of the vehicle in question, is in accordance with the judgment passed by this Court in *Swarn Singh (supra)* and *Laxmi Narain Dhut (supra)* cases. While so, in our view, the High Court ought not to have interfered with the award passed by the Tribunal directing the first respondent to pay and recover from the owner of the vehicle. The impugned judgment (Shamanna v. Laxman, 2016 SCC On Line Kar 6928) of the High Court exonerating the insurance company from its liability and directing the claimants to recover the compensation from the owner of the vehicle is set aside and the award passed by the Tribunal is restored.”

12. In the aforementioned case also, driver of offending vehicle was not possessing valid and effective driving license on the date of accident and Hon'ble Supreme Court has directed the Insurance Company to first deposit the entire amount of compensation and thereafter, to recover the same from the Owner and Driver of offending vehicle.

13. In view of above ruling of Hon'ble Supreme Court, we find it appropriate to direct the Insurance Company to first deposit the entire amount of compensation before learned Claims Tribunal and thereafter to recover the amount of compensation so deposited by it from NA1 and 2 ie Owner and Driver of offending vehicle respectively.

14. It is made clear that the Insurance Company is not required to file any separate suit or case for recovery of amount so deposited by it but it can recover the amount so deposited by it in the very same proceeding by filing an application before the Claims Tribunal for execution.

15. In view of above, the appeal is allowed in part and the impugned award is modified to the extent as indicated above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

padma