

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 08.11.2021
Pronounced on 09.11.2021
M.A(C) No.1090 of 2013

The United India Insurance Co. Ltd. Thru- Its Branch Manager, United India Insu.Co.Ltd., Shandilya Stone, Deoshri Talkies Road, Dhamtari, Distt. Dhamtari C.G. **--- Appellant**

Versus

1. Prakash Sahu, S/o Jeedhan Sahu Aged About 23 Years R/o Atanga, Tah. Kurud, P.S. Kurud, Distt. Dhamtari C.G.
2. Bhushan Lal S/o Ramdeen Sahu Aged About 38 Years R/o Atanga, Tah. Kurud, P.S. Kurud, Distt. Dhamtari C.G.
3. Hemant Kumar S/o Tejram Dhruw Aged About 18 Years R/o Bhothali, Tah. Kurud, P.S. Kurud, Distt. Dhamtari C.G. **----Respondents**

For Appellant:	Shri Dashrath Gupta, Advocate.
For Respondents No.1 & 2:	None, though served.
For Respondent No.3:	Shri HAPS Bhatia, Advocate appears on behalf of Shri Anil Gulati, Advocate.

Single Bench: Hon'ble Shri Deepak Kumar Tiwari, J
C A V Judgment

1. This is an Appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') praying for setting aside the award dated 28.09.2013 passed by the Chief Motor Accident Claims Tribunal, Dhamtari (CG) (for short 'the Tribunal') in Claim Case No.30/2013.

2. The Tribunal by virtue of the award impugned, awarded an amount of Rs.31,000/- with 6% per annum in favour of the Claimant/Respondent No.3 from the date of the presentation of the claim Petition i.e.12.03.2013 till its realization jointly and severally from the owner, driver and the Insurance Company of the vehicle involved in the accident. The accident occurred on 20.04.2012, when the Claimant was going towards village Bhothali by his bicycle, near Maitri Godown, he was dashed by the tractor-trolley bearing Nos.

CG 05 G 0735 & CG 05 G 0736 respectively owned by Respondent No.2 from its back side, which was being driven in a rash and negligent manner by Respondent No.1 as a result of which, the Claimant has received serious injuries and has suffered permanent disability.

3. The main ground of challenge in the present Appeal is that since the driver of the offending vehicle did not have an effective and valid licence, therefore, no liability could be fastened upon the insurance Company.

4. The Seminal question for determination of this Appeal is:-

“Whether the owner of the offending vehicle i.e. Respondent No.2 had permitted the driver of the offending vehicle i.e. Respondent No.1 to ply the offending vehicle without having a valid and effective driving licence thereby committed breach of policy conditions, if so, what would be its effect on the claim Petition?”

5. It was contended by learned Counsel for the insurance Company that there was a clear evidence that the driver of the vehicle did not possess a driving licence and this constitutes a breach of an essential term of the insurance policy.

6. M.P. Gilhare, Administrative Officer of the insurance Company has stated that the Company had made an investigation wherein, it was found that the driver was not having driving licence on the date of accident and the same fact was also reported in the charge sheet (A-1) and the driver and owner were also prosecuted for such offence. Respondent No.1-Prakash Sahu (Driver), in his statement though stated that he had given his driving licence for renewal to the agent and the said agent had not returned it to him. He has also stated that his earlier driving licence was issued from the R.T.O. Dhamtari. In this case, owner of the tractor-trolley has not led any evidence that while hiring the services of Respondent No.1 (driver), he has made proper

enquiry about the driving licence. No copy of driving licence was produced either by the owner or driver and even the owner was not examined and the Police has also registered an offence against the owner and driver for driving the vehicle without licence and the insurance Company has led the evidence that on investigation, no driving licence was found with the driver. So, the Appellant/insurance Company has proved its defence for breach of policy condition under Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988.

S."149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.--

(2).....; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:--

(a) that, there has been a breach of a specified condition of the policy, being one of the following conditions, namely:--

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

7. When admittedly, no licence was obtained by a driver, the Supreme Court, in the matter of *National Insurance Co. Ltd. v. Swaran Singh and Others* reported in (2004) 3 SCC 297, dealt with this aspect at para 84 as under:-

“We have analysed the relevant provisions of the said Act in terms whereof a motor vehicle must be driven by a person having a driving licence. The owner of a motor vehicle in terms of Section 5 of the Act has a responsibility to see that no vehicle is driven except by a person who does not satisfy the provisions of Section 3 or 4 of the Act. In a case, therefore, where the driver of the vehicle, admittedly, did not hold any licence and the same was allowed consciously to be driven by the owner of the vehicle by such person, the insurer is entitled to succeed in its defence and avoid liability. The

matter, however, may be different where a disputed question of fact arises as to whether the driver had a valid licence or where the owner of the vehicle committed a breach of the terms of the contract of insurance as also the provisions of the Act by consciously allowing any person to drive a vehicle who did not have a valid driving licence. In a given case, the driver of the vehicle may not have any hand in it at all e.g. a case where an accident takes place owing to a mechanical fault or vis major. (See *Jitendra Kumar* [(2003) 6 SCC 420 : JT (2003) 5 SC 538] .)”

8. In view of the above appreciation, this court is of the view that the insurance Company has successfully established its defence. So, the learned Tribunal has wrongly fastened the liability against the insurance Company. Accordingly, insurance Company/Appellant is exonerated from the liability. In *National Insurance Co. Ltd. v. Swaran Singh and Others* (supra), even after the success of the Insurance Company in its defence for the third party and its liability to satisfy the award, the following direction was made :-

“Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured from the owner or driver of the vehicle, as the case may be, for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under [Section 174](#) of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of [Section 168](#) of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.

9. In the present case, there was clear evidence that the driver of the

vehicle involved in the accident did not have a driving licence. Therefore, the Tribunal should have made an order for 'pay and recover' in terms of the aforesaid decisions of the Hon'ble Supreme Court. To that extent, interference is warranted with the impugned Award.

10. For all the aforesaid reasons, this Appeal is partly allowed and it is directed that the Appellant/Insurance Company will have to firstly satisfy the Award and then will be entitled to recover such amount in the same execution from the Respondent No.2/owner of the Tractor-Trolley CG 05 G 0735. There shall be no order as to costs.

Sd/-

(Deepak Kumar Tiwari)
Judge

Priya