HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

MAC No.804 of 2017

Manik Lal Dhruve and another **Versus** Ifko-Tokyo General Insurance Company

03/12/2021 B/-	Mr.Amiyakant Tiwari, counsel for the appellants. Mr.Vaibhav Dhar Diwan, counsel appears on behalf of the respondent. Though the matter is listed for hearing on admission, but with the consent of learned counsel appearing for the parties, the matter is heard finally. Final order passed separately. Signed and dated. Sd/- **(Sanjay K. Agrawal)** Judge

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC NO.804 of 2017

1. Manik Lal Dhruve, aged about 45 years, S/o Late Santu Singh Dhruve
2. Smt.Rupa Dhruve W/o Manik Lal Dhruve, aged about 42 years

   Both R/o Village Jhapul (Manoharpur) Tahsil Bichhiya, District Mandla (MP)

---- Appellants/Claimants

Versus

Ifko-Tokyo General Insurance Company Limited, through Departmental Officer, Ifko-Tokyo General Insurance Company office at 205, M.M. Silver Mall, Ring Road No.1, Near Khanij Bhawan, Raipur, District Raipur (CG)

---- Respondent

For Appellants :	Mr.Amiyakant Tiwari, Advocate
For Respondent :	Mr.Vaibhav Dhar Diwan, Advocate appears on behalf of Mr.P.R.Patankar, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

03/12/2021

1. Mr.Salik Ram Dhruve, owner of motor-cycle bearing registration No.C.G. 04 HM 7093, died in accident on 24.10.2014 and thereafter his parents being legal representatives filed an application under Section 163A of the Motor Vehicles Act, 1988 (hereinafter called as 'Act of 1988') claiming compensation of ₹ 1,00,000/- from the respondent Insurance Company, which was dismissed by the learned Claims Tribunal holding that Shalik Ram Dhruve while driving the offending vehicle on 24.10.2014 fell down from the vehicle and suffered grievous injuries and died and the vehicle was being plied with violation of terms of the insurance policy as he did not have a valid

and effective driving license to drive the offending vehicle, therefore, the parents / claimants are not entitled for compensation, against which, this appeal under Section 173 of the Act of 1988 has been filed.

2. Mr.Amiyakant Tiwari, learned counsel for the appellants / claimants, would submit that extra premium has been paid covering the owner to the extent of ₹ 1,00,000/- only and the Insurance Company has failed to prove that the deceased did not have a valid and effective license to drive the offending vehicle. Therefore, the claimants would be entitled for ₹ 1,00,000/- in the line of the judgment of the Supreme Court in the matter of **Oriental Insurance Company Limited v. Rajni Devi and others**[1] being contractual liability.

3. On the other hand, Mr.Vaibhav Dhar Diwan, learned counsel for the respondent, would oppose the submission and submit that the Claims Tribunal has rightly rejected the claim of the claimants.

4. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

5. In the statement before the Court, Law Officer Navin Soni, who has been examined on behalf of the Insurance Company, has clearly admitted that there was contractual insurance and by contractual insurance, premium of ₹ 50/- has been paid and therefore, contractual liability of the insurance company is ₹ 1,00,000/-, but since there was non-compliance of

1 (2008) 5 SCC 736

terms of insurance policy and the owner did not have a valid and effective license, therefore, claimants are not entitled for the said amount. The Claims Tribunal has also recorded a finding that the owner / Shalik Ram Dhruve did not have a valid and effective license to drive the vehicle. Though the plea has been taken by the Insurance Company that the owner did not have a valid and effective license to drive the offending vehicle, but no such evidence was led except self-serving statement of Navin Soni, who has simply stated that notice for production of driving license was served under Section 134 of the Act of 1988 read with Rule 220 of the Chhattisgarh Motor Vehicles Rules, 1994, but it could not be produced and therefore, adverse inference has to be drawn against the claimants. The Insurance Company has taken a plea that the owner / Shalik Ram Dhruve did not have a valid and effective license to drive the offending vehicle. Therefore, it is their liability to plead and prove that the deceased owner did not have a valid and effective license and therefore, contractual liability cannot be granted to the claimants, which the Insurance Company miserably failed. Self-serving statement of law officer Navin Soni would not serve any purpose as nothing has been brought on record to demonstrate that the deceased did not have a valid and effective driving license to drive the offending vehicle.

6. The Supreme Court in the matter of **Rajni Devi** (supra) has held as under:-

> "7. It is now a well-settled principle of law that in a case where third party is involved, the liability of the insurance company would be unlimited. Where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the insurance company would depend upon the terms thereof. The Tribunal, in our opinion, therefore, was not correct in taking the view that while determining the amount of compensation, the only factor which would be relevant would be merely the use of the motor vehicle."
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> 10. The liability under Section 163-A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a receipient. The heirs of Janakraj could not have maintained a claim in terms of Section 163-A of the Act. For the said purpose only the terms of the contract of insurance could be taken recourse to.
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> 12. According to the terms of contract of insurance, the liability of the Insurance Company was confined to Rs 1,00,000 (Rupees one lakh only). It was liable to be said extent and not any sum exceeding the said amount."

7. Reverting to the facts of the present case in light of principle of law laid down by the Supreme Court in **Rajni Devi** (supra), it is quite vivid that since the contractual liability of ₹ 1,00,000/- is admitted by the Insurance Company, therefore, the appellants / claimants would be entitled for ₹ 1,00,000/- along with 9% interest per annum from the date of making the claim application till the date of actual payment. It is ordered accordingly.

8. The MAC is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-