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HIGH COURT OF CHHATTISGARH BILASPUR

M. A. (C) No. 1630 of 2017

1. Dil Say S/o Late Bakoliya Ram, Aged About 50 Years R/o Parvatipur, P.S. & Tahsil Premnagar, District Surajpur, Chhattisgarh
2. Santlal Sahu S/o Kanwar Lal Sahu, Aged About 38 Years Caste Teli, R/o Tarkeshwarpur, P.S. & Tahsil Premnagar, District Surguja Now Surajpur, Chhattisgarh

---- Appellants

Versus

1. The Branch Manager, United India Insurance Company Limited, Branch Office Bramhroad, Ambikapur, District Surguja, Chhattisgarh
2. Bahali Bargah S/o Bhikham Bargah, Aged About 25 Years Caste Bargah, R/o Umeshwarpur, P.S. & Tahsil Premnagar, District Surajpur, Chhattisgarh
3. Smt. Mousami Vishwas Wd/o Late Alok Kumar Vishwas, Aged About 35 Years, Caste Namosudra
4. Aridam Vishwas S/o Late Alok Kumar Vishwas, Aged About 12 Years
5. Abhijeet Vishwas S/o Late Alok Kumar Vishwas, Aged About 5 Years

   Respondents No.4 & 5 being minor therefore through the natural guardian mother respondent No.3, respondents No.3 to 5 are R/o Village Tara, P.S. & Tahsil Premnagar, District Surguja Now Surajpur, Chhattisgarh

---- Respondents

For Appellants	:	Shri Ashok Kumar Shukla, Advocate
For Respondent No.1	:	Shri Dashrath Gupta, Advocate
For Respondent No.2	:	None
For Respondent No.3 to 5	:	Shri Harish Khuntiya, Advocate

(Proceedings through Video Conferencing)

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

17.08.2021

1. Non-applicants No.2 and 3 have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the impugned award dated 12.12.2014 passed by the First Additional Motor Accident Claims Tribunal, Surajpur, District Surajpur,

Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.47 of 2013 whereby learned Claims Tribunal allowed application filed under Section 166 of the M.V. Act in part, awarded a sum of Rs.6,65,000/- as total compensation. While exonerating the Insurance Company from its liability, fastened liability upon non-applicants No.1 to 3 to satisfy the amount of compensation. Further issued direction to non-applicant No.4/Insurance Company (wrongly mentioned as non-applicant No.3) to first deposit entire amount of compensation and thereafter, to recover the same from non-applicants No.1 to 3.

2. Brief facts relevant for disposal of this appeal, are that, on 29.08.2012, Alok Kumar Vishwas was travelling on his motorcycle bearing No.CG-15/CR/9347, when he was talking with Amit Jaiswal and others on the side of the road, non-applicant No.1 while driving the motorcycle bearing No.CG-15/CA/1575 (hereinafter referred to as 'offending vehicle') rashly and negligently, dashed Alok Kumar Vishwas and caused accident. In the said accident, Alok Kumar Vishwas succumbed to motor accidental injuries.

3. Claimants who are widow and minor children of deceased Alok Kumar Vishwas filed an application under Section 166 of the M.V. Act pleading therein that on the date of accident,

deceased was working as private doctor and claimed Rs.34,40,000/- as total compensation.

4. Non-applicant No.1/driver of offending vehicle submitted reply to claim application, while denying the pleadings made therein, it was pleaded that deceased himself was driving his motorcycle rashly and negligently. Non-applicant No.1 was driving his motorcycle cautiously and slowly. Non-applicant No.1 was sitting on the motorcycle driven by Dheerpal. Non-applicant No.1 was possessed with valid and effective driving licence.

5. Non-applicant No.2 submitted separate reply to claim application and denied the entire pleadings made in claim application. It was pleaded that accident was a result of rash and negligent driving of deceased himself. Non-applicant No.1/driver was possessed with valid and effective driving licence and offending vehicle was insured with non-applicant No.4.

6. Non-applicant No.3 also pleaded the similar facts in his reply as pleaded by non-applicant No.2.

7. Non-applicant No.4/Insurance Company submitted reply to claim application, denying the facts pleaded therein and pleaded that non-applicant No.1/driver of offending vehicle was not possessed with valid and effective driving licence and offending vehicle was insured in the name of Dilsai.

8. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties held that Late Alok Kumar Vishwas died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by non-applicant No.1, which was owned by non-applicants No.2 and 3, offending vehicle was being driven in breach of policy conditions as on the date of accident, non-applicant No.1 was not possessed with valid and effective driving licence and awarded a sum of Rs.6,65,000/- as total compensation.

9. Shri Ashok Kumar Shukla, learned counsel for the appellants submits that on the date of accident, offending vehicle was insured with non-applicant No.4. Insurance Company was exonerated by learned Claims Tribunal on the ground that non-applicant No.1 was not possessed with valid and effective driving licence. He further submits that copy of driving licence of non-applicant No.1 was handed over to the counsel representing the appellants, which was placed on record of claim case, but inadvertently, due to mistake of counsel, said document was not exhibited. He further submits that appellants have filed an application under Order 41 Rule 27 of the CPC for taking additional documents as evidence on record along with “**original driving licence of non-applicant No.1 Bahali Ram”**. Driving licence was issued on 12.08.2002 for 'Motorcycle with Gear and Light

Motor Vehicle' and was valid till 11.08.2020, whereas accident took place on 29.08.2012 within the currency of licence, hence, finding recorded by learned Claims Tribunal that there was breach of policy conditions on the ground that non-applicant No.1 was not possessed with valid and effective driving licence is not sustainable and it be set aside. Liability to satisfy the amount of compensation be fastened upon non-applicant No.4/Insurance Company. It is contended that this Court considering the copy of driving licence available on record and also original licence placed along with application under Order 41 Rule 27 of the CPC, directed the learned counsel for respondent No.1/Insurance Company to verify the licence and today, learned counsel for respondent No.1/Insurance Company has stated that Insurance Company has verified the licence and it was found to be valid and effective on the date of accident, hence, appeal be allowed.

10. Per contra, Shri Dashrath Gupta, learned counsel for respondent No.1/Insurance Company submits that as non-applicant No.1/driver of offending vehicle has not stated anything in his evidence with respect to his driving licence nor driving licence was exhibited, learned Claims Tribunal was justified in arriving at a finding that on the date of accident, non-applicant No.1 was not possessed with valid and effective driving licence and rightly exonerated the

Insurance Company. However, he submits that in view of the direction issued by this Court on 30.07.2021, respondent No.1/Insurance Company has got the licence verified from Licensing Authority, produced along with application under Order 41 Rule 27 of the CPC and upon verification, licence of non-applicant No.1 placed on record is found to be valid and effective on the date of accident. He further submits that he is making this submission on instructions received by him from the Office of respondent No.1/non-applicant No.4.

11. I have heard learned counsel for the respective parties and perused the record carefully.

12. The sole ground raised by appellants/owner of offending vehicle in this appeal is recording of erroneous finding by learned Claims Tribunal with regard to driving licence of non-applicant No.1/respondent No.2 and holding that there was breach of policy conditions.

13. Considering the copy of driving licence available on record at page No.60 and original licence placed on record by the appellants along with application under Order 41 Rule 27 of the CPC would show that the date of issuance of licence on 12.08.2002 for 'Motorcycle with Gear and Light Motor Vehicle', this Court directed the learned counsel for respondent No.1/non-applicant No.4/Insurance Company to verify the licence available on record whether the licence

was valid and effective on the date of accident or not to avoid further delay in disposal of the case. This Court while issuing the direction for verification of licence on 30.07.2021 has also considered the submissions made by learned counsel for the appellants as well as respondent No.1/Insurance Company that in pursuance to the award passed by learned Claims Tribunal, respondent No.1/Insurance Company has deposited entire amount of compensation before the Claims Tribunal and execution proceedings for recovery of amount from non-applicants No.1 to 3 and appellants herein has been filed by respondent No.1/Insurance Company. Today, learned counsel for the respondent No.1/Insurance Company fairly submits that in pursuance to the direction issued by this Court, driving licence of non-applicant No.1 was verified from the Office of Licensing Authority and it was found to be valid and effective on the date of accident.

14. In view of submission of learned counsel for Insurance Company, finding recorded by learned Claims Tribunal that on the date of accident, non-applicant No.1/respondent No.2 was not possessed with valid and effective driving licence and there was breach of policy conditions, is not sustainable. Tribunal has not taken note of the copy of driving licence available on record. Once the copy of licence is placed on record by insured, burden to prove licence to be not valid

and effective is up on the Insurance Company. In view of above, finding of learned Claims Tribunal on issue Nos.2 and 3 is not sustainable and it is hereby set aside.

15. For the foregoing reasons and the submissions made by learned counsel for respondent No.1/Insurance Company, on verification of driving licence of non-applicant No.1/respondent No.2, this Court holds that on the date of accident, non-applicant No.1/respondent No.2 was possessed with valid and effective driving licence, there was no breach of policy conditions and deceased was a third party, hence, liability to satisfy the amount of compensation shall be upon respondent No.1/non-applicant No.4/Insurance Company of offending vehicle to pay the amount of compensation. It is ordered accordingly.

16. For the foregoing reasons, appeal is allowed in part and impugned award is modified to the extent as indicated above. Other part of impugned award passed by learned Claims Tribunal shall remain intact.

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh