

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 793 of 2015**

1. Ramswaroop Sahu S/o Mahesh Sahu Aged About 30 Years R/o Village Nawagaon (Muarda), Tahsil Kurud, District- Dhamtari, Chhattisgarh (Driver of the vehicle)
2. Devsingh Sonber S/o Shri Shivprasad Sonber, Aged About 71 Years, R/o Village Nawagaon, Tahsil Kurud, District- Dhamtari, Chhattisgarh (Owner of the vehicle)

---- Appellants/Non-Applicants 1 and 2**Versus**

1. Smt. Pushpa Devi Singh, Wd/o Late Deepak Singh Rajput, Aged About 38 Years
2. Ku. Shraddha Singh D/o Late Deepak Singh Rajput Aged About 18 Years
3. Ku. Shweta Singh D/o Late Deepak Singh Rajput Aged About 16 Years
4. Balraj Singh S/o Late Deepak Singh Rajput Aged About 14 Years
No.3 & 4 are minors through natural guardian mother Smt Pushpa Devi Singh Rajput Wd/o Late Deepak Singh Rajput
5. Kunwar Singh Rajput, S/o Late Banke Singh Aged About 66 Years
6. Smt. Sushila Devi Singh W/o Kunwar Singh Aged About 63 Years
All R/o Village Umarda, Police Station And Tahsil Kurud, District- Dhamtari, Chhattisgarh (Claimants)
7. Branch Manager, National Insurance Company Limited, 2nd Floor, Mobine Mahal, Opposite Shahid Smarak Bhawan, G.E. Road, Raipur, Tahsil And District- Raipur, Chhattisgarh

----Respondents

For Appellants	: Shri Pankaj Agrawal, Advocate
For Respondents- 1 to 6	: Shri Atul Pandey, Advocate
For Respondent- 7	: 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.
15.01.2021

1. Appellants/NA1 and 2, driver and owner of offending vehicle have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the impugned award dated 07.05.2015 passed by the Chief Motor Accident Claims Tribunal, Dhamtari (for short, 'Claims Tribunal') in Claim Case-145 of 2014 whereby learned Claims Tribunal allowed the

application for grant of compensation in part and awarded Rs.4,00,000/- in a fatal accident case.

2. Facts relevant for disposal of this appeal are that on 19.04.2014 at about 7.30 pm Deepak Singh Rajput was going to a shop from his house for buying tobacco. While so, one two wheeler Scooty bearing No. CG04 CX- 2786 (hereafter, referred to as 'offending vehicle') driven by NA1 dashed Deepak Singh Rajput from his back and caused accident. In the said accident, he suffered grievous head injury, and was taken to hospital at Kurud, from where he was taken to Medishine Hospital, Raipur. During the course of treatment, Deepak Singh Rajput succumbed to the injuries on 21.04.2014.

3. Respondents- 1 to 6/claimants, who are widow, children and parents of deceased filed an application under Section 166 of the Act of 1988 pleading therein that deceased was working as contractor and earning Rs.40,000/- per month. He was also supervising agricultural fields and earning Rs.1,50,000/- per annum. Claimants were dependants upon the income of deceased and claimed total compensation of Rs.1,65,50,000/-.

4. NA1 and 2 submitted reply to claim application while denying the pleadings made therein, it was further pleaded that NA1 has been falsely implicated. Offending vehicle was insured with NA3/Insurance Company and if the claimants are found to be entitled for any compensation, liability shall be of Insurance Company.

5. NA3 /Insurance Company submitted reply to the claim application denying pleadings made therein, it was further pleaded that report was lodged with delay which makes the case suspicious. Amount of compensation claimed is highly

exaggerated. NA1, driver of offending vehicle was not possessed with valid and effective driving license on the date of accident, as such, there is breach of policy conditions.

6. Learned Claims Tribunal on appreciation of pleadings and evidence brought on record by respective parties, held that Deepak Singh Rajput died on account of motor accidental injuries suffered by him due to rash and negligent driving of the offending vehicle by NA1. There was breach of policy conditions as NA1 was not possessed with valid and effective driving license, awarded Rs.4,00,000/- as total compensation, while exonerating the Insurance Company, fastened liability to satisfy the amount of compensation upon non-applicants-1 and 2.

7. Shri Pankaj Agrawal, learned counsel for the appellants submits that learned Claims Tribunal erred in arriving at a finding that there was breach of policy conditions, overlooking the copy of license placed on record. Though it is learner's driving license, but in view of judgment of Honble Supreme Court in case of **National Insurance Co. Ltd. v. Swaran Singh and others**, (2004) 3 SCC 297, the person who is possessed of learner's driving license is also authorised to drive the class of vehicle mentioned therein. He pointed out that learned Claims Tribunal has taken note of pleadings and evidence of the parties and recorded a finding in para-12 that NA1/appellant1 was possessed with valid learner's driving license. He submits that the finding recorded by learned Claims Tribunal with regard to breach of policy conditions be set aside.

8. Shri Dashrath Gupta, learned counsel for the Insurance Company opposing the submissions made by learned counsel for the appellants submits that there is no dispute that appellant-1 was possessed with valid learner's driving license. But,

offending vehicle was being driven by him in contravention of provisions under Rule 3 of the Central Motor Vehicle Rules, 1989 (for short, 'Rules of 1989').

9. Learned Claims Tribunal has taken note of judgment passed by High Court of Madhya Pradesh in case of **United India Insurance Company Vs Manik Rao and others**, (2001) 3 MPLJ 637 to arrive at a finding that there was breach of policy conditions. Finding recorded by the Tribunal is strictly in accordance with law and does not call for any interference.

10. We have heard learned counsel for the respective parties and also perused record of claim case.

11. Very short question has been raised by learned counsel for the appellants that whether the person holding a learner's driving license like appellant-1 herein can be permitted to drive offending vehicle alone without any instructor and it should be treated as valid and effective driving license.

12. We have perused the reply submitted by appellants to the claim application. They have denied the fact of accident with offending vehicle. There is no pleading in the reply that appellant-1 was accompanied with an instructor at the time of accident. In fact, they have taken a plea of false implication. Claimants in support of their application, have placed on record Ex.P1 Final Report, Ex.P2 FIR, Ex.P4 Merg intimation. Accident has been intimated with delay of three days, after the death of injured in hospital during the course of treatment, based on information of death given by the hospital, Merg intimation was registered by the Police Kurud, District Dhamtari. After merg, FIR was registered on 01.08.2014 in which name of appellant-1 as well as number of offending vehicle has been specifically mentioned.

Registration of criminal case has not been challenged before any court of law by appellant-1.

13. In the case at hand, there is no dispute with regard to the validity of 'Learner's Driving License'. The question is whether the person holding 'Learner's Driving License' can drive the class of vehicle mentioned therein alone. Section 3 of the Act of 1988 prescribes for the necessity for driving license. It mentions that no person shall drive a vehicle in any public place unless he/she holds a driving license. Grant of learner's license is prescribed under Section 8 of the Act of 1988. Grant of license under Rules is prescribed under Central Motor Vehicle Rules, 1989. Rule 3 of Rules 1989 prescribes for the conditions under which the person who holds a learner's license can drive class of vehicle mentioned therein. Under Rule 3(b) of Rules 1989 there is specific provision that such person to be accompanied by instructor holding an effective driving license to drive the vehicle and the instructor shall sit in such a position to control or stop the vehicle.

14. In the case at hand, there is no such defence taken by the appellants that appellant-1 was accompanied with a person holding valid and effective driving license. Appellant-1 was driving offending vehicle in contravention of Rule 3 of the Rules of 1989. This Court in case of **Branch Manager Vs Janki Bai and others** in MAC-211 of 2011 has considered the issue with regard to the persons holding learner's driving license and driving the offending vehicle without any instructor and held that the person holding learner's license without any instructor will be in breach of policy conditions. In the Judgment relied upon by learned counsel for the appellant in case of **Swaran Singh** (supra) Hon'ble Supreme Court has dealt with the issue with regard to learner's driving license in para-93, wherein it has been held as under:

“93. The Motor Vehicles Act, 1988 provides for grant of learner's licence. [See Section 4(3), Section 7(2), Section 10(3) and Section 14]. A learner's license is, thus, also a license within the meaning of the provisions of the said Act. It cannot, therefore, be said that when a vehicle is being driven by a learner subject to the conditions mentioned in the license, he would not be a person who is not “duly licensed” resulting in conferring a right on the insurer to avoid the claim of the third party. It cannot be said the person holding a learner's license is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's license, the same would run counter to the provisions of Section 149 (2) of the said Act.”

15. It is held that holder of learner's driving license can be treated to be duly licensee if he drives the vehicle subject to conditions mentioned in the license.

16. In Insurance Policy Ex.D1, Driver Clause also provides that person holding learner's driving license may also drive vehicle subject to specifying the requirement of Rule 3 of Rules, 1989. Rule 3 is extracted below for ready reference:

3. General—The provisions of sub-section (1) of Section 3 shall not apply to a person while receiving instructions or gaining experience in driving with the object of presenting himself for a test of competence to drive, so long as—

- (a) such person is the holder of an effective learner's licence issued to him in Form 3 to drive the vehicle;
- (b) such person is accompanied by an instructor holding an effective driving license to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle; and
- (c) there is painted, in the front and the rear of the vehicle or on a plate or card affixed to the front and the rear, the letter “L” in red on a white background as under:



Note: The painting on the vehicle or on the plate or card shall not be less than 18 centimetres squares and the letter “L” shall not be less than 10 centimetres high, 2 centimetres thick and 9 centimetres wide at the bottom:

Provided that a person, while receiving instructions or gaining experience in person on the motorcycle except for the purpose and in the manner referred to in clause (b).

17. Learner's license is to be issued in Form-3 under Rules of 1989, wherein there is specific warning given prohibiting the holder of learner's license from driving motor vehicle without instructor.

18. In case at hand also, appellant was not accompanied by any instructor at the time of accident. In the said circumstance, though appellant-1 was having valid learner's driving license, but in absence of any instructor accompanied with him, he was not authorised to drive the offending vehicle. Finding recorded by learned Claims Tribunal of breach of policy conditions is perfectly in accordance with law and in consonance with the law laid down by Hon'ble Supreme Court in case of **Swaran Singh** (supra).

19. As the appellants failed to prove that appellant -1 was driving the vehicle complying Rule 3 of Rules 1989, we do not find any merit in the submission made by learned counsel for the appellants.

20. For the foregoing reasons, the submission made by learned counsel for the appellants that on the date of accident, appellant-1 was holding valid learner's driving license, hence, there can't be breach of Policy condition is not sustainable and it is hereby repelled.

21. We do not find any infirmity in the award of Tribunal fastening liability upon driver and owner of offending vehicle.

22. Appeal being devoid of merit, it is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge