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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 263 of 2015

- The Oriental Insurance Company Limited Through- Branch Manager, Branch Office, Behind Amar Talkies, Dhamtari, Tahsil And District Dhamtari, Chhattisgarh, Chhattisgarh

---- Appellant

Versus

1. Smt.Jhangli Bai, D/o Wd/o Late Mehar Singh Mandavi Aged About 40 Years R/o Village- Parsapani, Tahsil Nagri, District- Dhamtari, Chhattisgarh, Chhattisgarh

2. Chhabi Lal S/o Late Mehar Singh Mandavi Aged About 24 Years R/o Village- Parsapani, Tahsil Nagri, District- Dhamtari, Chhattisgarh, District : Dhamtari, Chhattisgarh

3. Sukhram S/o Late Mehar Singh Aged About 22 Years R/o Village- Parsapani, Tahsil Nagri, District- Dhamtari, Chhattisgarh, District : Dhamtari, Chhattisgarh

4. Mahendra Kumar Dhruv (Died) As Par Hon'ble Court Order Dated 19-01-2021

5. Shashwat Shukla S/o Rajendra Prasad Shukla R/o Near Santosh Mill, Bijli, Office Road, Jangle Para Nagri, Tahsil Nagri, District- Dhamtari, Chhattisgarh

6. Hathiyarin Bai, Wd/o Late Sukhdayal Singh Aged About 67 Years R/o Village Achholi, Tahsil Nagri, District- Dhamtari (CG)

7. Chhagendra Kumar, S/o Late Sukhdayal Singh Aged About 34 Years R/o Village- Achholi, Tahsil Nagri, District- Dhamtari (CG)

8. Khilesh Kumar S/o Late Sukhdayal Singh Aged About 32 Years R/o Village- Achholi, Tahsil Nagri, District- Dhamtari (CG)

9. Dhanraj S/o Late Sukhdayal Singh Aged About 45 Years R/o Village Achholi, Tahsil Nagri, District Dhamtari, C.G. Presently Residing At Kharkha Bharri, Nawagaon Saraitola Tahsil Nagri, District- Dhamtari (CG)

10. Premlal S/o Late Sukhdayal Singh Aged About 43 Years R/o Village- Achholi, Tahsil Nagri, District Dhamtari C.G., Presently Residing At Karli Police Line Colon, Dantewada, Tahsil And District- Dantewada (CG)

11. Smt. Meena Bai Died Through Legel Heirs As Par Hon'ble Court Order Dated 19-01-2021;
    (I) Umesh Kumar Tagod (Gond) S/o Munna Lal Tagod Aged About 30 Years
    (Ii) Govind Tagod (Gond) S/o Munna Lal Tagod Aged About 24 Years
    (Iii) Munna Lal Tagod Aged About 53 Years

12. Smt. Sadamani W/o Devkaran, D/o Sukhdayal Singh Aged About 30 Years R/o Village- Achholi, Tahsil Nagri, District Dhamtari C.G., Presently Residing At Kharkha Bharri, Nawagaon Saraitola , Police Station And Tahsil Nagri, District-Dhamtari (CG)

---- Respondents

For Appellant	:	Mr. H.B. Agrawal, Sr. Advocate with Ms. Richa Dwivedi, Advocate
For Respondents	:	None.

Hon'ble Shri P.R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Per Parth Prateem Sahu, J

16/3/2021

1. Challenge in this appeal is to the award dated 13.12.2014 passed by the Chief Motor Accident Claims Tribunal, Dhamtari, (for short 'the Claims Tribunal') in Claim Case No.172/2011 whereby the Claims Tribunal allowed application for grant of compensation in part and awarded Rs.3,37,000/- as total compensation in a death case.

2. Facts relevant for disposal of this appeal are that on 13.8.2011 Mehar Singh Mandavi was walking towards his house, at that time, tractor-trolley bearing registration number CG12-F-0193 & CG05-A-4057 respectively, driven rashly and negligently by non-applicant No.1, dashed Mehar Singh Mandavi and ran over below his waist, as a result he suffered grievous injuries and succumbed thereto on the way to Nagri hospital.

3. Claimants, who are widow and children of deceased Mehar Singh Mandavi, filed an application under Section 166 of the

Motor Vehicles Act, 1988 seeking compensation of Rs.24,00,00/- on the grounds pleaded therein.

4. Non-applicant No.1 & 2, driver & owner of offending vehicle, submitted reply to claim application and denied the pleadings made therein. It was pleaded that deceased met with accident on account of his own negligence. Non-applicant No.1-driver was possessed with valid and effective driving license on the date of accident; the offending vehicle was insured with non-applicant No.4-Insurance Company and as such, the liability to pay compensation, if any, would be upon it.

5. Non-applicant No.4 Insurance Company resisted claim by filing its reply, pleading therein that deceased was walking on the centre of road under the influence of liquor and as such, he himself was responsible for the accident. The offending vehicle was falsely involved in the offence. Non-applicant No.4 has only insured tractor and not trolley. On the date of accident, non-applicant No.1 driver was not possessed with valid and effective driving license and even there was no valid permit in favour of offending vehicle, hence there was breach of conditions of insurance policy. The insurance company is not liable to indemnify the insured.

6. The Claims Tribunal upon appreciation of pleadings and evidence brought on record by respective parties held that deceased died on account of motor accidental injuries suffered by him in an accident occurred due to rash and negligent driving of offending vehicle by non-applicant No.1; fact of contributory negligence and breach of policy conditions have not been found to be proved. The Claims Tribunal by assessing monthly income of deceased as Rs.3,000/- on notional basis, calculated and awarded total sum of Rs.3,37,000/- as compensation.

7. Mr. H.B. Agrawal, learned Senior Counsel for appellant-Insurance Company submits that finding of the Claims

Tribunal with respect to breach of policy condition is contrary to the evidence brought on record. He submits that extract of license of non-applicant No.1-driver is placed on record by appellant as Ex.D-4 in which the period during which driving license was not valid has been specifically mentioned as 'from 8.1.2011 to 7.9.2011'. Appellant-Insurance Company had examined one Pradeep Kumar Vishwas as NAW4-1 to prove extract of driving license issued by the concerned Transport Office. Accident in question took place on 13.8.2011 i.e. between the period when license of non-applicant No.1-driver was not valid, hence, on the date of accident, non-applicant No.1-driver was not holding valid and effective driving license to drive offending vehicle. However, the Claims Tribunal failed to take into consideration the aforesaid aspect of the matter and held the insurance company along with owner & driver of offending vehicle, jointly & severally, liable to satisfy the amount of compensation.

8. There is no representation on behalf of respondents though served.

9. We have heard learned Senior Counsel for appellant and minutely perused record of claim case.

10. To appreciate the submission of learned Senior Counsel for appellant with regard to validity of license of non-applicant No.1-driver on the date of accident, we have perused Ex.D-4 available on record, under Clause-C, which deals with subsequent transactions, it is mentioned that from 8.1.2011 to 7.9.2011 driving license of non-applicant No.1-driver was not valid. Meaning thereby, non-applicant No.1-driver was not possessed with valid driving license on the date of accident i.e. on 13.8.2011. The Claims Tribunal though considered the document of Ex.D-4 but disbelieved evidence of NAW4-1 Pradeep Kumar Vishwas only on the ground that any employee / officer from the concerned Transport Office has

not been examined to prove Ex.D-4 available on record. We find it difficult to affirm said finding recorded by the Claims Tribunal. Original extract of license has been placed on record, which has been issued by the Licensing Authority concerned, and this document has not been disputed by non-applicant Nos.1 & 2-driver & owner of offending vehicle. Once a copy of driving license issued by Competent Authority showing its validity period is placed on record, the burden shifts on the owner & driver of offending vehicle to refute the same by placing cogent and admissible piece of evidence or valid license issued by Competent Authority indicating that on the date of accident, driver of offending vehicle was possessed with valid driving license.

11. Section 15 of the Act of 1988 deals with the provisions for 'renewal of driving license'. Proviso to Section 15 (1) envisages that an application for renewal of license, if made after 30 days of expiry, then driving license shall be renewed with effect from the date of its renewal. The first proviso to Section 15 (1) of the Act of 1988 makes it clear that in case application for renewal of driving license is filed after thirty days of its expiry, the renewal of license will not be from the date of its expiry. The issue of submission of application for renewal of driving license after thirty days, as envisaged under first proviso to Section 15 (1) of the Act of 1988, was considered by Hon'ble Supreme Court in case of **Rambabu Tiwari vs. United India Insurance Co. Ltd.** reported in **(2008) 8 SCC 165** and it was held in **Para-18** as under:-

> “18. It is beyond any doubt or dispute that only in the event an application for renewal of licence is filed within a period of 30 days from the date of expiry thereof, the same would be renewed automatically which means that even if an accident had taken place within the aforementioned period, the driver may be held to be possessing a valid licence. The proviso appended to sub-section (1) of Section 15, however, clearly states that the driving licence shall be renewed with effect from the date of its renewal in the event the

> application for renewal of a licence is made more than 30 days after the date of its expiry. It is, therefore, evident that as on renewal of the licence on such terms the driver of the vehicle cannot be said to be holding a valid licence, the insurer would not be liable to indemnify the insured."

12. In view of above discussions and ruling of Hon'ble Supreme Court in Rambabu Tiwari's case (supra), we are of the considered opinion that in between 8.1.2011 & 7.9.2011 non-applicant No.1-driver of offending vehicle, was not possessed with valid and effective driving license to drive, hence on the date of accident non-applicant No.1-driver was not authorized to drive offending vehicle. Since on the date of accident the non-applicant No.1-driver was driving offending vehicle without license, the same amounts to breach of essential condition of insurance policy and being so, the insurance company cannot be held liable to indemnify the insured. Accordingly, we absolve appellant Insurance Company from its liability to indemnify the insured-owner of offending vehicle, and hold that respondent No.5 is liable to pay the entire amount of compensation to the claimants.

13. Now the question arises for consideration before this Court is whether in the given facts of the case, a direction can be issued to appellant insurance company to first pay the awarded amount of compensation to claimants and then recover the same from the owner of offending vehicle i.e. respondent No.5 herein to protect the interest of the claimants. The Hon'ble Supreme Court in **Shamanna & anr Vs. Divisional Manager, Oriental Insurance Company Ltd. & ors** reported in **(2018) 9 SCC 650** while considering the issue of 'pay & recover' has held as under:-

> "5. In the case of third party risks, as per the decision in National Insurance Company Ltd. vs. Swaran Singh & ors reported in (2004) 3 SCC 297, the insurer had to indemnify the compensation amount payable to the third party and the insurance company may recover the same from the insured. Doctrine of "pay and

> recover" was considered by the Supreme Court in Swaran Singh case wherein the Supreme Court examined the liability of the insurance company in cases of breach of policy condition due to disqualifications of the driver or invalid driving licence of the driver and held that in case of third party risks, the insurer has to indemnify the compensation amount to the third party and the insurance company may recover the same from the insured. Elaborately considering the insurer's contractual liability as well as statutory liability vis-a-vis the claims of third parties, the Supreme Court issued detailed guidelines as to how and in what circumstances, “pay and recover” can be ordered.....”
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> 6. As per the decision in Swaran Singh case, onus is always upon the insurance company to prove that the driver had no valid driving licence and that there was breach of policy conditions. Where the driver did not possess the valid driving licence and there are breach of policy conditions, “pay and recover” can be ordered in case of third party risks. The Tribunal is required to consider as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, does not fulfil the requirements of law or not will have to be determined in each case.”

14. In the light of above ruling of Hon'ble Supreme Court, considering the beneficial object of the Act of 1998 and further considering that there is no dispute with respect to issuance of insurance policy in favour of offending vehicle and that deceased was a third party, we find it appropriate to direct appellant Insurance Company to first satisfy the entire amount of compensation and thereafter to recover it from respondent No.5 i.e. owner of offending vehicle, in accordance with law.

15. Accordingly, the appeal is allowed in part. Impugned award stands modified to the extent indicated above.

Sd/-	Sd/-
(P.R Ramachandra Menon)	(Parth Prateem Sahu)
Chief Justice	Judge

roshan/-