NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1019 of 2013

- Kanker Roadways Through The Managing Parter, Near Gandhi Udyan, Civil Lines, P.S. Civil Lines, Raipur, District Raipur (C.G.)

---- Appellant

Versus

1. Smt.Jamuna Bai W/o Late Govindram Sahu Aged About 43 Years R/o Navagaon, Tah. Abhanpur, Distt. Raipur C.G.
2. Mahesh Kumar S/o Late Govindram Sahu Aged About 25 Years R/o Navagaon, Tah. Abhanpur, Distt. Raipur C.G.
3. Rewaram S/o Late Govindram Sahu Aged About 22 Years R/o Navagaon, Tah. Abhanpur, Distt. Raipur C.G.
4. Aagesh Kumar S/o Late Govindram Sahu Aged About 18 Years R/o Navagaon, Tah. Abhanpur, Distt. Raipur C.G.
5. Kumari Ashwani D/o Late Govindram Sahu Aged About 15 Years Minor, Vali Maa Jamuna Bai, W/o Late Govindram Sahu, R/o Navagaon, Tah. Abhanpur, Distt. Raipur C.G.
6. Gopiram S/o Late Govindram Sahu Aged About 15 Years Minor, Vali Mata Jamuna Bai, W/o Late Govindram Sahu, R/o Navagaon, Tah. Abhanpur, Distt. Raipur C.G.
7. Amar Singh S/o Hari Ram Sanodiya Aged About 52 Years R/o Manglipeth, Thana- Seoni, Madhya Pradesh., District : Seoni, Madhya Pradesh
8. Branch Manager S/o The New India Insu.Co.Ltd., Post Box No. 35, Madina Building, 1st Floor, Medical College Road, P.S. Ganj, Raipur, Distt. Raipur C.G.

---- Respondents

For Appellant	:	Mr. J.K. Gupta, Advocate.
For Respondents 1 to 6	:	None though served.
For Respondent No.7	:	None through served.
For Respondent No.8	:	Shri B.N. Nade, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &

Hon'ble Smt Justice Rajani Dubey

Order On Board

Per Rajani Dubey, J

07/05/2021

1. Learned counsel for the appellant submits that he wants to withdraw his power, but he has not filed any application to this effect.

2. With the consent of the parties, the matter is heard finally.

3. The appellant (owner of the offending vehicle) has preferred this appeal being aggrieved by the award dated 12.08.2013 passed by Chief Motor Accident Claims Tribunal (for short the “Tribunal”), Raipur (C.G.) in Claim Case No.195/2011, whereby the Tribunal has directed respondent No.8-Insurer of the offending vehicle to pay award of Rs.7,39,200/- to the claimants (respondents 1 to 6) and also entitled the insurance company to recover the same from the owner of the offending vehicle (appellant herein).

4. Brief facts of the case are that on 21.08.2011 at 7.15 pm, deceased Govind Ram Sahu was going on his Moped bearing registration No.CG04-FDC-8045 from village Khursenga to village Kodapar. At the relevant time, respondent No.7-driver of Bus bearing registration No.CG-04-E-2034 (hereinafter referred to as 'the offending vehicle'), driving his vehicle in rash and negligent manner dashed Govind Ram Sahu as a result of which Govind Ram Sahu

sustained multiple injuries on his body and succumbed to those injuries on the spot.

5. The claimants (respondent Nos. 1 to 6 herein), who are widow and children of the deceased had filed a claim case before the learned Tribunal under Section 166 read with section 140 of the Motor Vehicle Act, 1988 (for short the 'Act 1988) against owner, driver and insurance company of the offending vehicle.

6. The owner (appellant herein) of the offending vehicle neither appeared before the learned Tribunal nor filed any written statement in his defence.

7. The driver (respondent No.7 herein) of the offending vehicle filed his written statement and denied the entire allegations. The insurance company (respondent No.8 herein) also filed written statement and defended its case pleading that on the date of incident, the driver of the offending vehicle was not having valid and effective driving license, therefore, it cannot be held liable to indemnify the insured.

8. The learned Tribunal calculated the compensation of Rs.7,39,200/- recording its finding that on the date of incident, the driver of the offending vehicle was not having valid and effective license to drive the offending vehicle. Therefore, the learned Tribunal directed the Insurance Company (respondent No.8) to pay the awarded sum to the claimants and the insurance company would be entitled to recover the same

from the owner/appellant and the driver of the offending vehicle. Hence, this appeal by the owner of the offending vehicle.

9. Submission on behalf of appellant/owner is that the accident did not occur due to rash and negligent driving of the driver-respondent No.7. The compensation amount has been assessed by the claimants on a fictitious basis. The claimants/respondents No.2 and 3 are major and married persons, therefore, they do not fall within the definition of dependents. Further submission is that the learned Tribunal has committed gross error in directing the Insurance Company-respondent No.8 to recover the amount of compensation from the appellant. There was no evidence before the learned Tribunal of licensing authority on record to ascertain whether the application for renewal of license being filed and pending before it or not. Last but not the least submission is that on the date of incident the offending vehicle was insured with the Insurance Company-respondent No.8 and the Insurance Company is liable to indemnify the insured.

10. Respondent Nos. 1 to 7 were not represented before this Court though served.

11. Learned counsel for respondent No.8-Insurance Company supported the order of learned Tribunal.

12. We have heard learned counsel for the parties and

perused the record.

13. To appreciate the submission of learned counsel for the appellant, we have gone through the material on record. With regard to the fact whether the driver-respondent No.7 was having valid and effective driving license at the time of accident, the learned Tribunal framed issue No.2-A, which reads thus:-

> "क्या दुर्घटना के समय अनावेदक क. 1 के पास वाहन चलाने का वैध एवं प्रभावशील ड्रायविंग लायसेंस नहीं था ?"

14. The learned Tribunal, in paras 10 to 27, after appreciating the oral and documentary evidence, recorded its finding that on the date of incident i.e. on 21.08.2011 the driver of the offending vehicle was not having valid and effective driving license to drive the offending vehicle. This finding of the learned Tribunal is based on documentary evidence i.e. particulars of driving license (Ex.D-1) and driving license (Ex.D-4) of driver-respondent No.7. The driving license (Ex.D-4) clearly indicates that it was valid from 27.06.1984 to 13.07.2011. In the case in hand, the accident took place on 21.08.2011, thus, it can safely be inferred that there was breach of policy condition. The learned Tribunal has rightly arrived at conclusion that the driver of the offending vehicle was not having valid and effective driving license at the time of accident.

15. Hon'ble the Supreme Court in the matter of ***Shamanna***

and another Vs. Divisional Manager, Oriental Insurance Company Limited and others[1] held that if the driver of the offending vehicle does not possess the valid driving license, the principle of "Pay and Recover" can be ordered to direct the Insurance Company to pay the compensation to the victim/claimants and then to recover the amount from the owner of the offending vehicle, which the learned Tribunal ordered so.

16. We do not find any substance in the submission of learned counsel for the appellant that the driver of the offending vehicle was having valid and effective driving license at the time of accident. The finding of the learned Tribunal on the breach of policy condition is perfectly in accordance with law which does not call for any interference by this Court.

17. The appeal being devoid of merit is liable to be and is hereby dismissed.

Sd/-

(PR Ramachandra Menon)
Chief Justice

Sd/-

(Rajani Dubey)
Judge

PKD

1 (2018) 9 SCC 650