NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 1004 of 2014

1. United Indian Insurance Company Limited, through its Divisional Manager, Divisional Office-2nd Floor Gurukripa Towers, Vyapar Vihar Road, Bilaspur, C.G.

------Appellant/Claimant

VERSUS

1. Uday Shankar S/o late Bachchan Singh Yadav, aged – 60 years (DIED AND DELETED)
2. Ku. Sheetal D/o Udayshankar, aged 21 years
3. Ku. Shweta, D/o Udayshankar, aged 16 years, minor through guardian-father-Udayshankar (Respondent 1)

   All R/o Housing Board, Industrial Estate Bhilai, Block No. 09, Quarter No. 19, P.S. Jamul, Distt. Durg C.G.
4. Kamla Pandey S/o Rambali Pandey, aged 45 years, R/o Redwa, P.S. Saiyadraja, Dist. Chandauli U.P.
5. Jaiprakash Singh S/o Arjun Singh, R/o Saraiya Sikandarpur, Chunar, Distt. Mirjapur U.P.

-------Respondents

For Appellant	:	Mr. Dashrath Gupta, Advocate
For Respondent 1 to 3	:	Mr. Aman Yadav, Advocate
For Respondent 5	:	Mr. Shalvik Tiwari, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per Parth Prateem Sahu, J.

06/01/2021

1. Non-applicant 3/ appellant-Insurance company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "Act of 1988") challenging the impugned award dated 05.07.2014 passed by First Additional Motor Accident Claims Tribunal, Durg, Chhattisgarh in claim case no. 80/2012, whereby learned Claims Tribunal allowed the application filed under Section 166 of the Act of 1988 and awarded Rs. 3,74,000/- as total compensation.

2. Facts relevant for disposal of this appeal are that on 26.12.2010, Raunak Yadav, after meeting his sister at Gorakhpur was returning back on Tata Indica car bearing registration no. CG07M9638, while so, one truck bearing registration no. UP63D9833 (hereinafter referred to as "offending truck") driven by non-applicant 1 rashly and negligently dashed the Indica car and caused accident. In the said accident, Raunak suffered grievous injuries and died on spot. Other occupants of the car also suffered injuries on their person. Accident was reported to concerned police station based on which crime was registered against non-applicant 1. Father and siblings of deceased Raunak filed an application under Section 166 of the Act of 1988 pleading therein that on the date of accident, deceased was aged about 25 years engaged in the business of wholesale of vegetables and earning Rs. 1,46,500/- per annum and claimed Rs. 21,60,000/- as total compensation.

3. Non-applicant 1 driver of the offending truck did not appear before the Claims Tribunal and he was proceeded *ex parte*.

4. Non-applicant 2/ owner of the offending truck, after filing reply to the claim application, became *ex parte*. In reply, non-applicant 2 denied the pleadings made in the application under Section 166 of the Act of 1988 and further pleaded that the application has been filed on false and frivolous grounds.

5. Non-applicant 3/ Insurance Company submitted reply to the claim application, denying the pleadings made therein, it was further pleaded that the amount of compensation claimed is highly exaggerated. There was breach of policy conditions as on the date of accident, driver of the offending truck was not possessed with valid and effective driving licence. It was also pleaded that as the copy of fitness and permit is placed on record, there is breach of policy conditions.

6. Learned Claims Tribunal, upon appreciation of pleadings and evidence placed on record by the respective parties held that non-applicant 1, while driving the offending vehicle rashly and negligently, caused accident. Contributory negligence of deceased Raunak Yadav was not proved. He died on account of motor accidental injuries suffered by him. Breach of policy conditions was not found to be proved and awarded Rs. 3,74,000/- as compensation.

7. Mr. Dashrath Gupta, learned counsel for the appellant submits that the driver of the offending truck remained absent, owner of the offending truck though appeared and filed reply to the claim application but subsequently he was also proceeded. He did not enter into the witness box. Copy of licence and other documents were also not placed on record which was the burden of owner of the offending truck to prove that on the date of accident, driver of the truck was possessed with valid and effective driving licence, there was valid permit and fitness of the offending truck. Claims Tribunal, without there being any evidence placed on record by the driver or owner of the offending truck in this regard, has held that it was the burden of the Insurance Company to prove that the driver of the offending truck was not possessed with valid and effective driving licence. The said finding is erroneous. He further pointed out that after obtaining the copy of licence placed on record in criminal case which was sent for verification through the Investigator of the Insurance Company sent the verification report issued by the licencing authority mentioning therein that the licence sent for verification was not issued in the name of non-applicant 1, hence, it is a case of fake licence. He submits that in cases of fake licence, the liability to satisfy the amount of compensation cannot be fastened upon the Insurance Company. He further submits that Insurance Company has filed an application under Order 41 Rule 27 of CPC along with copy of letter dated 08.08.2014 by one Atul Kumar, Advocate and Investigator of appellant-Insurance Company as Annexure A-1, verification report issued

by the Licencing Authoirty, Motor Vehicle Department, Varanasi as Annexure A-2. He submits that in licence verification report, it is specifically mentioned that the licence sent for verification is not issued in the name of non-applicant 1. In view of the above, he submits that the appellant-Insurance Company be exonerated from the liability to satisfy the amount of compensation.

8. Per contra, Mr. Shalvik Tiwari, learned counsel for Respondent 5/ owner of the offending truck submits that the Claims Tribunal has rightly recorded a finding that it is the burden of the Insurance Company to prove the fact that driver of the offending truck was not possessed with valid and effective driving licence on the date of accident. He further contended that the copy of licence is available on record in criminal case. Considering the documents placed on record, Court of competent jurisdiction had passed an order Ext. P-3 of giving custody of the offending truck to the appellant which shows that on the date of accident, all the document necessary for plying the vehicle, were available. He further contended that the application under Order 41 Rule 27 CPC is not maintainable as the said provision of CPC is not applicable to the proceedings under the Motor Vehicles Act, 1988. He supported the impugned award and submits that the appeal be dismissed.

9. Mr. Aman Yadav, learned counsel for respondent 1 to 3/ claimants submits that the date of accident is of 26.12.2010. Son of Respondent 1 died in the accident but till date total amount of compensation has not been received by them. He further submits that the insurance Company has filed this appeal only to cause delay in depositing the amount of compensation awarded by the Claims Tribunal. He further contended that even if the appeal filed by the Insurance Company be allowed then also in cases of breach of policy conditions on account of not having the valid and effective driving licence with the driver of the offending truck then also the

Insurance company is required to deposit the entire amount of compensation and thereafter to recover the same from the owner of offending vehicle. Hence, a direction be issued to appellant-Insurance Company to deposit the entire amount of compensation. He places his reliance in case of ***Shamanna v. Oriental Insurance Co. Ltd.*** reported in **(2018) 9 SCC 650.**

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

11. Sofar as the submission of the learned counsel for the appellant-Insurance Company based upon the application under Order 41 Rule 27 CPC, placing on record the copy of verification report of the driving licence to be taken as additional evidence. Submission of the learned counsel for Respondent 5 appears to be correct that the entire provisions of the CPC are not applicable to the proceedings under the Act of 1988. Section 168 and Section 169 of the Act of 1988 envisages proper enquiry to be conducted for awarding 'just compensation'. When it talks about 'just compensation' then it would mean compensation to be 'just' for both sides. When appeal is arising out of the proceeding under the Act of 1988 and any of the party makes out a case for taking additional evidence on record which goes to the root of the case then the said additional evidence can be considered, moreso when, the owner of the offending vehicle though participated in the proceeding before the Claims Tribunal, has not placed any evidence or copy of licence, in fact, became *ex parte*.

12. Upon going through the records of the claim case, it is evident that though Respondent 5, after service of notice of claim application, caused his appearance, submitted reply to the claim application but thereafter he remained absent and was proceeded *ex parte.* Being owner of the offending vehicle, it was the duty of Respondent 5 to place on record the relevant documents relating to offending vehicle like copy of driving

licence, copy of insurance policy, copy of fitness and permit issued by the competent authority. Owner of the offending vehicle, instead of placing on record the copy of aforementioned documents, became ex parte, without entering into witness box to prove his case. Other aspect of the case is that the counsel for appellant-Insurance Company referred the documents Ext. D2 to submit that the appellant has issued letter dated 08.08.2014 to the owner of the offending truck ie. Respondent 5 to produce before them the relevant documents but Respondent 5 has not submitted those documents nor replied the same. Respondent 5 being owner of the offending truck cannot be permitted to play hide and seek game, hence, we find it appropriate, in the facts and circumstances of the case and considering the provisions of Act of 1988, to allow this appeal and remand back the case to the Claims Tribunal for deciding issue no. 4 and 5 only. We are not interfering with the entitlement of the amount of compensation as held by the Claims Tribunal or quantum of amount of compensation awarded in favour of Respondent 1 to 3/ claimants. It is affirmed.

13. At this stage, we find it appropriate to consider the submission made by the learned counsel for Respondent 1 to 3/ claimants that a direction be issued to the appellant-Insurance Company to deposit the entire amount of compensation. Perusal of the order-sheet dated 23.09.2015 of this appeal would show that by way of interim order, appellant-Insurance Company was directed to deposit Rs. 2,50,000/- in addition to mandatory deposit of Rs. 25,000/- as deposited by the appellant-Insurance Company for filing of this appeal. Even if the grounds raised by the appellant-Insurance Company in appeal are allowed in their favour then also in cases of breach of policy conditions on the ground of licence, as per the ruling of Hon'ble Supreme Court in case of **Shamanna (supra)**, it is the first liability of insurer to satisfy the amount of compensation and thereafter to recover the same from the owner of the offending vehicle.

14. In this case also, coverage of risk of the deceased is not in dispute. Challenge is with regard to fastening of liability on the ground of breach of policy conditions. For the foregoing reasons, we find it appropriate to direct the Insurance Company to first deposit the entire amount of compensation along with interest before the Claims Tribunal. Upon depositing the entire amount of compensation, claimants shall be entitled for withdrawal of amount of compensation deposited by the Insurance Company. We also direct that if the Claims Tribunal arrived at a conclusion based on evidence, material placed on record that non-applicant 1/ driver of the offending truck was not possessed with valid and effective driving licence and there was breach of policy conditions then the Claims Tribunal shall pass appropriate orders, keeping in mind the ruling of the Supreme Court in case of **Shamanna (supra)** or any other ruling(s) of Hon'ble Supreme Court having its force on the issue on that date.

15. For the foregoing reasons, appeal is allowed and the case is **remitted back** to the concerned Claims Tribunal for deciding issue no. 4 and 5 afresh. It goes without saying that the parties will be at liberty to place on record the relevant documents, lead further evidence in their support and Claims Tribunal, after affording the opportunity of hearing to the parties therein, shall decide issue no. 4 and 5 afresh and to pass order accordingly.

16. Records of the claim case be sent back to the concerned Claims Tribunal, forthwith.

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

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