

HIGH COURT OF CHHATTISGARH, BILASPURM.A(C) No.1303 of 2015Reserved on 13.04.2021Pronounced on 09.06.2021

1. Madhusudan Sahu S/o Shri Raghav Sahu, Aged About 50 Years R/o Village-Ranai, Tahsil- Baikunthpur, Distt. Korla, Chhattisgarh (Owner Of Vehicle Truck No. C G-16 A-1777)
2. Shivkumar Sahu S/o Shri Rambadan Sahu, Aged About 45 Years R/o Village-Ranai, Tahsil- Baikunthpur, Distt. Korla, Chhattisgarh (Driver Of Vehicle Truck No. C G-16 A-1777) ----- Appellants

Versus

1. Shivram Khutia S/o Late Mangla Khutia, Aged About 27 Years Caste- Belma, R/o Charcha Colliery, Tahsil- Baikunthpur, Distt. Korla, ChhattisgarhClaimant
2. Manager, I.C.I.C.I. Lombard General Insurance Company Ltd. Registered Office At I.C.I.C.I. Bank Tower, Bandra-Kurla Complex, Mumbai, 400 051, India. (Insurer Of Vehicle Truck No. C G-16 A-1777)
3. Bala Ji Reddy, S/o Shri Ram Reddy Aged About 26 Years R/o Pashimi Nepal Gate, Charcha Colliery, Tahsil- Baikunthpur, Distt. Korla, Chhattisgarh (Owner Of The Motorcycle)
4. Manager, United India Insurance Company Ltd. Branch Office At Brahma Road, Ambikapur, Distt. Surguja, Chhattisgarh (Insurer Of The Motorcycle) ----- Respondents

For Appellants:	Shri Raj Kumar Pali, Advocate
Respondents No.1 & 3:	None, though served.
Respondent No.2:	Shri Amrito Das along with Shri T. Abraham, Advocate
For Respondent No.4:	Shri Dashrath Gupta, Advocate

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**C A V Award**

1. This Miscellaneous Appeal has been preferred by the owner-Madhusudan Sahu and driver-Shiv Kumar Sahu under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') questioning the legality and propriety of the award impugned dated 13.07.2015 passed in Claim Case No.52/2013, whereby the Motor Accidents Claims Tribunal, Baikunthpur, District Korla (CG) (for short 'the Claims Tribunal'), while exonerating the

Insurance Company from its liability, has awarded the total amount of compensation payable to the Claimant to the tune of Rs.4,00,000/- along with its interest @ 6% per annum from the date of filing of the Claim Petition till the date of actual payment.

2. Briefly stated the facts of the case are that on 03.07.2012, at 10.00 a.m, Claimant-Shirvram, while driving a motorcycle, was going from his village Charcha to Baikunthpur along with his brother Lingraj Khutia and as soon as they reached near “Odgi Naka new petrol pump”, it was dashed vehemently from its opposite direction by the offending vehicle “truck” bearing its registration No.CG 16-A/1777 owing to rash and negligent driving by its driver namely Shiv Kumar Sahu, Non-applicant No.1. The alleged offending vehicle was owned by Non-Applicant No.2-Madhusudan Sahu, which was insured with Non-applicant No.3-I.C.I.C.I. Lombard General Insurance Company Ltd.

3. On account of the aforesaid accident, the Claimant got injured badly while his brother Lingraj Khutia died during the course of his treatment giving rise to the institution of the claim Petition by the Claimant submitting, *inter alia*, that he is a Computer Operator and working as such in the “Sahkari Vipnan Sangh Maryadit” at a monthly salary of Rs.6,400/- and, has claimed a total amount of compensation to the tune of Rs.5,84,124/-.

4. The aforesaid claim has been contested by the Non-applicants. According to Non-applicants No.1 & 2, the alleged accident occurred due to rash and negligent driving by the Claimant himself and pleaded further that since the alleged offending vehicle “truck” was insured with the I.C.I.C.I. Lombard General Insurance Company Ltd., therefore, in case of any liability being fastened, then it could be indemnified by the said Company. While, the said Insurance Company contested the claim mainly on the ground that since

the alleged offending vehicle was insured as "Goods Carrying Vehicle", but was being used without any permit and fitness certificate by a driver, who was not even holding the valid and effective driving license, therefore, no liability could be fastened upon it.

5. Non-applicant No.4-United India Insurance Company Ltd has contested the claim mainly on the ground that as the alleged accident occurred due to rash and negligent driving of alleged truck, no liability as such could therefore, be fastened upon it.

6. After considering the evidence led by the parties, it was held by the Claims Tribunal that the alleged accident occurred due to rash and negligent driving by the driver of the alleged offending vehicle "truck" as a result of which, the Claimant has suffered permanent disability to the extent of 40% and that by exonerating the said Insurance Company awarded total amount of compensation along with its interest as mentioned hereinabove.

7. Shri Raj Kumar Pali, learned counsel appearing for the Appellants submits that the finding of the Tribunal holding that the driver of the alleged offending vehicle was not possessing valid and effective driving license on the date of the alleged accident is apparently contrary to law and the materials available on record. According to him, since the investigator of the Insurance Company namely Santosh through whom, the alleged driving license (being Driving License No.H-1182 issued in the name of said driver) got verified from the Regional Transport Office, Secunderabad was not examined, therefore, no reliance could have been placed upon the report (Ex.D-3C) furnished by the said Regional Transport Office in arriving at a conclusion that the driver of it was not holding the valid and effective driving license and has placed his reliance upon the decision rendered by the Supreme Court in the matter of

“National Insurance Ltd. vs. Swaran Singh and others” reported in (2004) 3 SCC 297. It is contended further that the amount of compensation as determined by the Tribunal is on higher side and, therefore, deserves to be modified.

8. On the other hand, Shri Amrito Das along with Shri T. Abraham, learned counsel appearing for respondent No.2 submits that the amount of compensation as determined by the Tribunal is just and proper and does not require to be interfered.

9. Shri Dashrath Gupta, learned Counsel appearing for Non-applicant No.5-United India Insurance Company Ltd has supported the award impugned as passed by the Tribunal.

10. I have heard learned Counsel for the parties and perused the entire record carefully.

11. Ex.D-3C is the information furnished by the Regional Transport Officer, Secunderabad under Right to Information Act to the surveyor of the Insurance Company namely Santosh regarding the verification of the Driving License Number H-1182. According to it, the alleged driving license which appears to be in the name of the driver of the offending vehicle namely Shiv Kumar Sahu was neither issued from the said Office nor any endorsement was made therein. Ex.D-4C is the particulars of the driving license of the said driver Shiv Kumar Sahu issued from the Licensing Authority, Ambikapur, District Surguja which was duly established by the employee of the said Office namely Pawan Kumar Sahu. He was examined on behalf of the owner and driver of the alleged offending vehicle. A bare perusal of his statement would show that the driving license of the said driver was renewed with effect from 04.07.2012 to 03.07.2015 i.e. after the date of its expiry, which was expired on 15.12.2011. It

is, thus, apparent that the driving license of the said driver was not in existence from 16.12.2011 up to 03.07.2012 as it was renewed only with effect from 04.07.2012. The driver of the alleged offending vehicle was, therefore, authorized to drive the same only with effect from 04.07.2012 and was certainly not authorized to drive the same when the alleged accident occurred on 03.07.2012. It appears further that no driving license was issued from the Regional Transport Office, Ambikapur as reflected from the testimony of the said witness Pawan Kumar and it appears further from his evidence that prior to issuance of renewal of his license (Ex.D-5), it was not verified, though was required to be verified, as his license was issued for the first time from a different State i.e. Secunderabad (Government of Telangana). That apart, he himself has admitted at paragraph-3 of his evidence that the driver - Shiv Kumar Sahu was not holding the valid and effective driving license on 03.07.2012.

12. In view of the aforesaid evidence, both oral and documentary, it is evident that the driver of the alleged offending vehicle namely Shiv Kumar Sahu was not possessing the valid and effective driving license on the fateful day and I.C.I.C.I. Lombard General Insurance Company Ltd has therefore, rightly been exonerated from its liability and the finding of the Claims Tribunal in this regard therefore, deserves to be and is hereby affirmed. In so far as the reliance of the learned counsel for the Appellants as placed upon the decision rendered in the matter of **National Insurance Ltd. vs. Swaran Singh and others** (supra) is concerned, the same is, however, noted to be distinguishable from the facts involved herein as the Appellants are relying upon the renewal of the alleged driving license, which was, however, found to be renewed with effect from 4th July, 2012, i.e., after the occurrence of the

alleged accident, which took place on 03.07.2012.

13. In so far as the quantum of compensation as awarded by the Claims Tribunal is concerned, I find that after following the strict principles of law, the same has been determined and as such, the same is hereby affirmed.

14. In view of the foregoing discussions, I do not find any substance in this Appeal, which is accordingly dismissed. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
Judge

Priya