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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 356 of 2015

- The Divisional Manager, The National Insurance Company Limited, through Divisional Manager, Divisional Office B-1, Taha Complex, Priyadarshini Nagar, Vyapar Vihar Road, Bilaspur, Post Office- Bilaspur, Police Station-Civil Lines, Bilaspur, District Bialspur (CG)

---- Appellant/Non-applicant No.3

Versus

1. Ranjeet Toppo, S/o Late Bhuwaram Toppo, aged about 35 years, R/o Rajkishor Nagar, Post Office Bilaspur, Police Station-Sarkanda, Bilaspur, District-Bilaspur (CG) (Claimant)

2. Vinay Kujur, S/o Baldeo Uraon, aged about 19 years, R/o Village- Putukela, Post Office & Police Station - Sitapur, District-Surguja (CG) [Non-applicant No.1-driver of vehicle Motor cycle bearing registration No.CG15-CH-4299]

3. Mahendra Kumar Bhagat, S/o Basant Ram Bhagat, R/o Village- Benai, Post Office- Girhuldih, Police Station & Tahsil - Sitapur, District - Surguja (CG) [Non-applicant No.2-registered owner of vehicle Motor cycle bearing registration No.CG15-CH-4299]

---- Respondents

For Appellant	:	Mr. Shivendu Pandya, Advocate
For Respondents	:	None though served.

Hon'ble Shri PR Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Per Parth Prateem Sahu, J

28/1/2021

1. Appellant-Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (henceforth 'the Act of 1988') challenging the award dated 11.12.2014 passed by the learned 7th Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case

No.389/2014 thereby allowing application filed under Section 166 of the Act of 1988 and awarded Rs.2,63,000/- as compensation in a fatal accident case.

2. Facts relevant for disposal of this case are that on 30.5.2011 Lethobai was travelling as pillion rider on motorcycle bearing registration number CG15-CH-4299, which was being driven by non-applicant No.1. Due to rash driving by non-applicant No.1, Lethobai fell down from motorcycle, suffered grievous on her person and died.

3. Respondent No.1-Claimant filed an application under Section 166 of the Act of 1988 pleading therein that on the date of accident, the deceased was aged about 54 years, she was working as Labourer and earning Rs.150/- per day (Rs.4,500/- per month). Respondent No.1 claimed Rs.4,70,000/- as total compensation.

4. Non-applicant No.1 & 2 remained absent during the proceedings pending before the Claims Tribunal and as such, they were proceeded ex-parte.

5. Non-applicant No.3/appellant Insurance Company submitted reply to claim application, while denying pleadings made therein it was pleaded that on the date of accident, non-applicant No.1 was not possessed with valid and effective driving license to drive offending vehicle, hence there was breach of condition of insurance policy, therefore, the insurance company is not liable to indemnify the insured. Deceased was not doing any work much less as Labourer, hence was not having any source of income.

6. The Claims Tribunal upon appreciation of pleadings and evidence brought on record by the parties held that accident was outcome of rash and negligent driving of offending vehicle by non-applicant No.1 as a result of which Lethobai fell down from offending vehicle, suffered grievous injuries

and succumbed thereto. Breach of policy condition has not been found to be proved. Consequently, the Claims Tribunal allowed the application in part and awarded a total sum of Rs.2,63,000/- as compensation.

7. Mr. Shivendu Pandya, learned counsel for appellant Insurance Company submits that the Claims Tribunal erred in holding that insurance company failed to prove breach of policy condition, overlooking the fact that non-applicant Nos.1 & 2, driver & owner of offending vehicle respectively, after putting in their appearance, absented themselves and they have not produced copy of driving license. He further points out that initial burden to prove that non-applicant No.1 was possessed with a valid and effective driving license was upon the driver & owner of offending vehicle, which they utterly failed to discharge. Burden to prove the fact that driving license possessed by driver of offending vehicle is not valid and effective shifts only after it is brought on record. He further points out that in absence of any admissible piece of evidence from the part of the claimant, the Claims Tribunal was not justified in assessing monthly income of deceased as Rs.4,500/- in respect of accident occurred in the year 2011. He further submits that amount of compensation is liable to be scaled down by assessing appropriate income of deceased i.e. at Rs.3,000/- per month and further to exonerate appellant Insurance Company from its liability.

8. We have heard learned counsel for appellant and perused the record of claim case.

9. To appreciate the submission made by learned counsel for appellant with regard to breach of policy condition, we have perused copy of insurance policy, certificate of registration available on record. However, there is no copy of driving license in the record. In the insurance policy available on record as NA3-1, there is specific clause under the heading 'Driver', according to which, 'driver' means any person

including insured who holds a valid and effective driving license. Driver and owner of offending vehicle were served with the notice through registered post but they did not turn up, therefore, they were proceeded ex-parte. Even otherwise there is nothing on record to show that the police have ever seized a copy of driving license of non-applicant No.1-driver of offending vehicle. Initial burden to prove that on the date of accident, driver was possessed with a valid and effective driving license is upon the driver & registered owner of offending vehicle. In absence of copy of driving license in the record of claim case or criminal case, the only inference which could be drawn is that on the date of accident, non-applicant No.1 was not possessed with valid and effective driving license to drive offending vehicle. We hold accordingly.

10. In the above facts and circumstances of case, the finding recorded by the Claims Tribunal that appellant Insurance Company failed to prove breach of condition of insurance policy is not sustainable and is hereby set aside. Appellant Insurance Company is exonerated from its liability to indemnify the insured. Respondents No.2 & 3 herein are held liable to make payment of the amount of compensation to respondent No.1, jointly and severally.

11. Now we shall deal with submission of learned counsel for appellant regarding quantum of compensation awarded by the Claims Tribunal by taking monthly income of deceased as Rs.4,500/-. In claim application, the deceased was shown to be a 'Labourer'. Looking to the date of accident, we feel that income of deceased assessed by the Claims Tribunal is little bit on higher side, but considering the fact that Claims Tribunal has not added any amount towards future prospects and awarded only Rs.20,000/- under other conventional heads, we are not inclined to interfere with the quantum of compensation. Submission of learned counsel for appellant

that quantum of compensation is on higher side is not sustainable and it is hereby repelled.

12. In case of **Shamanna & another vs. Divisional Manager, Oriental Insurance Company Ltd. & ors** reported in **(2018) 9 SCC 650** where the offending vehicle was driven by the person not having a valid driving license, the Hon'ble Supreme Court has held thus;-

> "6. As per the decision in Swaran Singh case[3] , onus is always upon the insurance company to prove that the driver is had no valid driving license and that there was breach of policy conditions. Where the driver did not possess the valid driving license and there are breach of policy conditions, "pay and recover" can be ordered in case of third party risks...."

13. In view of above ruling of Hon'ble Supreme Court and keeping in mind the beneficial object of the Act of 1988, we find it appropriate to direct appellant Insurance Company to first deposit the entire amount of compensation before the Claims Tribunal and thereafter to recover the same from respondents No.2 & 3, driver & owner of offending vehicle respectively, in accordance with law.

14. 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/-