HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 268 of 2015

- The New India Assurance Company Limited Through- Branch Manager, Micro Branch Opposite United Hospital Near Old Bus Stand Rajnandgaon Tehsil And District Rajnajdgaon C.G. Through Authorized Signatory For Divisional Office, 460500 The New India Assurance Company Limited Divisional Office Opposite Rajiv Plaza Old Bus Stand Bilaspur, Chhattisgarh

---- Appellant

Versus

1. Smt. Purnima Devangan, aged 26 years Wd/o Late Eman Lal Devangan
2. Minor Abhinav Devangan, S/o Eman Lal Devangan Aged About 4 Years Through Next Friend Mother Smt. Purnima Devangan

   Both R/o Ward No. 8 Chouki Road Sevtapara Dongargaon Tehsil Dongargaon District Rajnandgaon, Chhattisgarh
3. Chunu Ram S/o Kharnu Ram Devangan Aged About 45 Years
4. Smt. Revti W/o Chunu Ram Devangan Aged About 42 Years

   3 and 4 R/o Village- Garka P.S. Devri District Balod, Chhattisgarh
5. Yogesh Kumar Shri Harichand Nirmalkar Aged About 26 Years R/o Village- Gahira Navagaon Tehsil Devri District- Balod, Chhattisgarh (Driver)

----Respondents

For Appellant	:	Shri BN Nande, and Shri Priyanshu Gupta, Advocates
For Respondents- 1 and 2	:	Shri Rakesh Thakur, Advocate
For Respondents- 3 to 5	:	None appears

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
22.01.2021

1. Appellant/NA2 Insurance Company preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the impugned award dated 02.12.2014 passed by the 2nd Additional Motor Accident Clams Tribunal, Rajnandgaon (for short, 'Claims Tribunal') in Claim Case No.174 of 2013 whereby learned Claims Tribunal allowed the application under Section 163A of the Act of 1988 for and awarded Rs.3,98,000/- as compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal are that on 23.10.2011 Eman Dewangan, was returning from Indore to his house at Dongargarh, District Rajnandgaon, Chhattisgarh on Maruti 'A' Star Car bearing No.CG07-MB-0539 (hereafter referred to as 'offending Car') along with his friend Umesh. Car was driven by NA1. On the way near Monu Dhaba at about 7.30 am in between Pipariya-Tamiya Road, offending Car dashed with stationary Tanker and met with an accident. In the said accident Eman Dewangan (occupant-cum-owner) suffered grievous injuries on his person and died on spot. Accident was reported to Police Station Tamiya, District Chindwada (MP)

3. Claimants/respondents-1 and 2, who are widow and child of deceased Eman Dewangan filed an application under Section 163A of the Act of 1988, pleading therein that on the date of accident, deceased was aged about 28 years, an able bodied person, working with the private Insurance Company since last five years and earning Rs.40,000/- per annum. The claimants were fully dependants upon the income of deceased, claimed Rs.11 Lakhs as total compensation.

4. NA1, driver of offending Car did not appear before the claims Tribunal and was proceeded *ex-parte.*

5. NA2, Insurance Company submitted reply to the claim application while denying the pleadings of claim application, further pleaded that the amount of compensation claimed is highly exaggerated, fact of accident is required to be proved by the claimants, for want of verification, Insurance of the Car was denied. Accident was with stationery vehicle, which was standing on the road without any indication or signal as such, the owner, driver and Insurance Company of the

Tanker are necessary party. Deceased himself was owner and insured of offending Car and not a third party, hence, claim application under Section 163A of the Act of 1988 against death of owner of offending Car is not maintainable. The accident was in between two motor vehicles, as such, there was contributory negligence on the part of stationary Tanker also.

6. NA-3 and 4, who are parents of deceased submitted reply to the claim application pleading that on account of ill treatment given by claimant-1, deceased was residing separately with his family and maintaining them.

7. Learned Claims Tribunal on appreciation of pleadings and evidence brought on record by the respective parties, held that Car driven by NA1 met with an accident with stationary tanker on account of his own negligence, in which Eman Dewangan died; breach of policy conditions, contributory negligence and non-joinder of necessary party were not found to be proved and awarded Rs.3,98,000/- as total compensation.

8. Shri BN Nande, learned counsel for the appellant/Insurance Company submits that as per case of the claimants themselves, on the date of accident deceased was not driving the vehicle but it is NA1, who was driving the vehicle. Deceased was occupant of the vehicle at the time of accident. Tribunal has not considered that on the date of accident, NA1 was not possessed with valid and effective driving license. He further pointed out that NA1 has not produced any document of license to prove that he was possessed with valid and effective driving license on the date of accident, even then Tribunal erroneously held that breach of policy conditions could not be proved. Deceased himself was owner of the offending vehicle and insured. He cannot claim any compensation against

himself. On the date of accident, deceased also was not possessed with valid license to drive the offending vehicle. Ex.D2 which is the copy of license issued by the licensing authority would show that the license issued in favour of deceased was only for Motorcycle with gear, Non-transport, there is no mention in the license that deceased was authorised to drive LMV also. He submits that finding recorded by learned Claims Tribunal with regard to breach of policy conditions is not sustainable. Liability fastened upon the appellant/Insurance Company is liable to be set aside.

9. Shri Rakesh Thakur, learned counsel for respondents-1 and 2/claimants submits that admittedly, on the date of accident, deceased was not driving offending Car but it is NA1. License of NA1 was seized by the Police during the course of investigation from NA1, which is evident from ExP5 seizure memo. In the said seizure memo, number of license, name of NA1 is also mentioned clearly, but even then, appellant/Insurance Company has not made any effort to get the copy of license and prove it to be not valid and effective for driving offending Car. Liability to prove breach of policy conditions is upon appellant /Insurance Company in which it utterly failed, as Insurance Company has not led any evidence before the Tribunal on any of the grounds. He further pointed out that Ex.P2 is FIR, lodged within two hours of accident which mentions that deceased was sitting on front seat and not driving the offending Car. Premium of Rs.100/- was paid towards personal accident coverage, hence, even if for any reason, Court comes to the conclusion that the claimants are not entitled for entire amount awarded by the Tribunal then, at least the claimants are entitled for amount under personal accident coverage which will be of Rs.2,00,000/-, which is a contractual liability.

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

11. So far as the 1st ground raised by learned counsel for the appellant that driver of offending vehicle was not possessed with valid and effective driving license is concerned, it is settled law that party who pleads has to prove unless admitted by the other side. In case at hand, deceased-owner of car, engaged a driver (NA-1). At the time of accident, deceased-owner of car, was travelling as one of the occupants. Criminal case was registered against NA-1, during the course of investigation of crime, police seized several documents including driving license from the possession of NA-1 vide Ex.P-5 (seizure memo). The claimants have placed on record the seizure memo showing details or license. Appellant Insurance Company in support of its case examined one Deepal Malik, Assistant Manager as NAW-1. Appellant proved insurance policy Ex.D-1 and driving license of Eman Dewangan, deceased owner of offending vehicle as Ex.D-2. There is specific pleading that NA-1 was driving the vehicle at the time of accident, criminal case for rash and negligent driving was registered against NA-1 and the document showing details of license is placed on record as Ex.P-5, but even then appellant/NA-2 has not taken any step to obtain the extract of license of NA-1 to prove its pleading. When they have obtained extract of license of deceased, owner of offending car, from office of Licensing Authority, they could very well have obtained the same of NA-1 also. In view of the above fact, we are of the considered view that appellant Insurance Company failed to prove the fact of breach of policy condition. Learned Claims Tribunal has correctly arrived at a finding that breach of policy condition on account of absence of valid and effective driving license with NA-1 is not proved. We affirm the said finding.

12. Hon'ble Supreme Court in case of **National insurance Co. Ltd. Vs. Swaran Singh** reported in **(2004) 3 SCC 297** has held that liability to prove the breach of policy condition is upon the Insurance Company and to absolve itself from the liability to satisfy the amount of compensation.

13. For the foregoing reasons, the ground raised by learned counsel for the appellant that NA1 was not possessed with valid and effective driving license is not sustainable hence it is repelled.

14. The 2nd ground raised by learned counsel for the appellant that claimants will not be entitled for any amount of compensation as no premium was paid by the insurer for covering risk of occupants. Premium was paid only towards personal accident covering legal liability for driver apart from the 3rd party. He submits that Tribunal has not taken into consideration this aspect and awarded amount of compensation to the tune of Rs.3,98,000/-.

15. At this stage, Shri Rakesh Thakur, learned counsel for claimants/ respondents-1 and 2 submits that even if no premium was paid for covering the risk of occupants of vehicle, then also claimants will be entitled for compensation under the head of Personal Accident coverage.

16. From copy of policy placed on record as Ex.D1, it would show that Insurance Company has accepted premium of Rs.100/- towards personal accident cover.

17. Perusal of Ex.D-1 would show that the policy issued is a **'package policy' (Private Vehicle).** In Column 'B' of Liability insured 'Eman Kunar Dewangan (now deceased) has paid premium for compulsory PA Cover premium of Rs.100/-, Rs.25/- for

legal liability towards driver. Appellant Insurance Company has charged premium of Rs.100/- towards Personal Accident Cover, covering risk of Rs.2 Lakhs. The ground raised by the appellant that the deceased was not holding valid and effective driving license, hence claimants are not entitled for any amount of compensation is concerned, a person who had purchased a motor car, paid premium for Personal Accident Cover and died while travelling in his own car, then in the opinion of this Court, he/she will be covered and claimant/claimants will be entitled for the compensation to the extent of the liability covered under Personal Accident Cover i.e. Rs.2 Lakhs. Appellant has not proved as to how the deceased was not covered or how the claimants are not entitled. In case of **Ramkhiladi & another Vs. United India Insurance Company & another** reported in **(2020) 2 SCC 550** Hon'ble Supreme Court has considered the issue where deceased, who was borrower of vehicle, met with an accident and held as under:-

> "9.8. However, at the same time, even as per the contract of insurance, in case of personal accident the owner-driver is entitled to a sum of Rs.1 Lakh. Therefore, the deceased, as observed herein-above, who would be in the shoes of the owner shall be entitled to a sum of Rs.1 lakh, even as per the contract of insurance. However, it is the case on behalf of the original claimants that there is an amendment to the 2nd Schedule and a fixed amount of Rs.5 lakh has been specified in case of death and therefore the claimants shall be entitled to Rs.5 lakh. The same cannot be accepted. In the present case, the accident took place in the year 2006 and even the judgement and award was passed by the learned Tribunal in the year 2009, and the impugned judgment and order has been passed by the High Court in 10.5.2018 i.e. much prior to the amendment in the 2nd Schedule. In the facts and circumstances of the present case, the claimants shall not be entitled to the benefit of the amendment to the 2nd Schedule. At the same time, as observed herein-above, the claimants shall be entitled to Rs.1 lakh

as per the terms of the contract of insurance, the driver being in the shoes of the owner of the vehicle."

18. In view of the above, where claim is against deceased owner of offending vehicle, premium of Rs.100/- is paid towards Personal Accident Cover, the claimants/ respondents No.1 & 2 shall be entitled for compensation of Rs.2 Lakhs only instead of Rs.3,98,000/- as awarded by the Claims Tribunal. The amount of compensation of Rs.2 Lakh shall carry interest @ 6% p.a. from the date of filing of application till its realization.

19. Accordingly, appeal is allowed in part and the impugned award is modified to the extent indicated above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

padma