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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 867 of 2015

- National Insurance Company Ltd., Through Divisional Manager, Akashganga Parisar, Supela, Bhilai, Tahsil & District Durg (CG)

---- Appellant (Insurer)

Versus

1. Smt. Geeta Bai @ Muniya Bai, W/o Late Murli Kanware, aged about 42 years.

2. Lalla @ Laxminarayan Kanwae, S/o Late Murli Kanware Aged About 20 Years

3. Yogi @ Vijendra Kanware S/o Late Murli Kanware Aged About 19 Years

   All R/o Near Gatwa Talab, Bhilai-3, P.S. Bhilai-3, Tahsil - Patan, District Durg (CG) (Claimants)

4. **Truck Driver** Upendra Singh S/o Nathuni Singh Rajput, aged about 50 years, R/o Qr. No.69-F, A.L.C. B.S.P. Quarter, Khursipar Labour Colony, P.S. Khursipar, Tahsil & District Durg (CG).

5. **Truck Owner** Harpreet Singh Bhatia S/o Late S.S. Bhatia R/o Galaxi Chowk, Bhilai-3, Tahsil-Patan, District Durg (CG)

---- Respondents

For Appellant	:	Mr. Raj Awasthi, Advocate
For Respondent No.1 to 3	:	Mr. P.K.Dhrundhar, Advocate
For Respondent No.5	:	Mr. Shakti Raj Sinha, Advocate.

Hon'ble Shri Parth Prateem Sahu, J

Order On Board

7/9/2021

1. Appellant Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging award dated 29.4.2015 passed by the learned 3rd Additional Motor Accident Claims Tribunal, Durg (for

short ‘the Claims Tribunal’) in Claim Case No.34/12 whereby learned Claims Tribunal allowed claim application in part, awarded total amount of Rs.9,04,000/- as compensation along with interest @ 6% p.a. and fastened liability upon appellant insurance company to pay compensation.

2. Facts of the case, in brief, are that on 8.2.2012 Murali Kanware after discharging duty of Sweeper in Indian Oil Depot, Bhilai-3 was returning to his house on bicycle. When he reached in front of gate of CSEB Colony, at that time one truck tanker bearing registration number CG07/ZC/2235 (for short 'offending vehicle'), driven rashly and negligently by respondent No.4, dashed bicycle of Murali Kanware as a result he sustained grievous injuries on his head and other parts of body. He was taken to the Government Hospital, Durg where he died during course of treatment. Report of accident was lodged in Police Station Bhilai-3, District Durg based on which crime bearing No.87/2012 was registered against driver of offending vehicle.

3. Claimants/respondents No.1 to 3, who are widow & sons of deceased respectively, filed claim application before the Claims Tribunal seeking total amount of Rs.16,00,000/- as compensation under different heads. It was pleaded in application that on the date of accident, deceased was working as part-time Sweeper in different organizations and earning Rs.10,000/- per month. On account of untimely death of deceased, they have suffered loss of income.

4. Non-applicant No.1 & 2, driver & owner of offending vehicle submitted reply to application denying facts pleaded therein. It was pleaded that on the date of accident, non-applicant No.1-driver of offending vehicle, was possessed with valid and effective driving license. Offending vehicle was insured with non-applicant No.3, hence liability to satisfy amount of compensation, if any awarded, would be of non-applicant No.3.

5. Non-applicant No.3-Insurance Company resisted claim by filing its reply and pleaded that on the date of accident, non-applicant No.1 was not possessed with valid and effective driving license to drive offending vehicle, which amounts to breach of condition of insurance policy, hence, non-applicant No.3 is not liable to indemnify the insured.

6. Upon appreciation of pleadings and evidence brought on record by respective parties, the Claims Tribunal arrived at a conclusion that deceased Murali Kanware died on account of injuries suffered by him in a motor vehicle road accident occurred due to rash and negligent driving of offending vehicle by non-applicant No.1. There was no breach of any condition of insurance policy. Claims Tribunal assessed income of deceased as Rs.5000/- per month; awarded total amount of Rs.9,04,000/- as compensation along with interest @ 6% p.a. and saddled appellant insurance company with liability to pay the entire amount of compensation.

7. Mr. Raj Awasthi, learned counsel representing appellant

Insurance Company submits that insurance company has filed this appeal only challenging liability fastened upon insurance company to pay entire amount of compensation. He submits that offending vehicle is a truck-tanker, at the time of accident it was loaded with dangerous and hazardous goods i.e. petrol & diesel, and as per Section 10 of the Act of 1988, a driver driving goods carriages carrying dangerous and hazardous goods requires separate endorsement on his license authorizing him to drive vehicles of such category. Insurance company placed on record extract of driving license of non-applicant No.1-respondent No.4 as Ex.D-3 and a glance of same would reveal that it was valid only upto 22.9.2011 for driving transport vehicles carrying dangerous or hazardous goods, whereas accident took place on 8.2.2012. This extract of driving license (Ex.D-3) was issued by Licensing Authority, Durg and proved by NAW3-1 Satyendra Kumar Soni, posted as Assistant Grade-III in the office of Additional RTO, Durg. Thus, it is apparent that on the date of accident, non-applicant No.1/ respondent No.4 was not authorized to drive vehicle carrying dangerous or hazardous goods. However, Claims Tribunal has not considered this evidence brought on record by appellant Insurance Company i.e. extract of driving license and evidence of NAW3-1 and held insurance company liable to satisfy impugned award. He submits that findings recorded by Claims Tribunal on Issue Nos.5 & 6, which are to the effect 'whether on the date of accident, non-applicant No.1 driver was having valid and effective driving license'; and 'whether the offending vehicle was plied in breach of conditions of policy', are erroneous, perverse to evidence brought on record and hence, liable to be set aside. He submits that this appeal be allowed and impugned award so far as it relates to fastening of liability upon appellant to make payment of entire amount of compensation be set aside.

8. Mr. Praveen Dhurandhar, learned counsel for claimants/ respondents No.1 to 3 supports the impugned award and submits that in the given facts and circumstances of case, the award passed by Claims Tribunal does not call for any interference. In alternate, he submits that if this Court reaches to conclusion that findings of Claims Tribunal on Issue Nos.5 & 6 are liable to be interfered with, then interest of claimants may be protected by issuing 'pay & recover' direction against appellant insurance company.

9. Mr. Shakti Raj Sinha, learned counsel for respondent No.5 submits that from the extract of driving license (Ex.D-3) it is apparent that license issued in favour of non-applicant No.1/ respondent No.4 authorizes him to drive transport vehicles and it was valid upto 16.8.2012, whereas accident took place in the month of February, 2012. Offending vehicle, which was being driven by respondent No.4, was a transport vehicle and at an earlier point of time, respondent No.4 was also authorized to drive vehicle carrying dangerous or hazardous goods. Referring to document Ex.D-3, he submits that endorsement on license authorizing respondent No.4 to drive vehicle carrying

dangerous or hazardous goods was made on 25.2.2011 and as per Section 14 of the Act of 1988, currency of license to drive transport vehicle carrying dangerous or hazardous goods shall be effective for a period of one year. Thus, it is clear that endorsement made on 25.2.2011 authorizing respondent No.4 to drive transport vehicle carrying dangerous or hazardous goods was valid upto 24.2.2011, whereas accident took place on 8.2.2012. Hence, finding of Claims Tribunal that respondent No.4 was authorized by way of endorsement to drive transport vehicle carrying dangerous or hazardous goods does not call for any interference. Lastly, he submits that respondent No.4 is driving transport vehicle from 2.9.1998, as is discernible from Ex.D-3, thus he is an experienced driver; accident was not occurred on account of any lapse on the part of respondent No.4 in driving offending vehicle and for these reasons also, the impugned award needs no interference.

10. I have heard learned counsel for the parties and perused the record.

11. To properly appreciate submissions made by learned counsel for appellant, I deem it appropriate to extract relevant provisions of the Act of 1988 and the Rules framed thereunder i.e. Central Motor Vehicle Rules, 1989 (for short 'the Rules of 1989').

12. Section 3 of the Act of 1988 talks about necessity for driving license, which reads as under:-

> "**3.Necessity for driving licence**.—(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than 1[a motor cab or motor cycle] hired for his own use or rented under any scheme made under sub-section (2) of section 75] unless his driving licence specifically entitles him so to do.—(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than 1[a motor cab or motor cycle] hired for his own use or rented under any scheme made under sub-section (2) of section 75] unless his driving licence specifically entitles him so to do.
>
> (2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government."

13. Section 9 of the Act of 1988 deals with grant of license. Section 10 prescribes the form and contents of license to drive. Sub-section (2) of Section 10 of the Act of 1988 envisages as under:-

> "(2) A learner's license or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:-
> (a) motorcycle without gear;
> (b) motorcycle with gear;
> (c) invalid carriage;
> (d) light motor vehicle;
> (e) transport vehicle;
> (i) road-roller;
> (j) motor vehicle of a specified description."

14. Section 14 of the Act of 1988 is with regard to the currency of licenses to drive motor vehicles. Sub-section (2) prescribes different periods of validity with respect to different class of vehicles. Sub-section (2) (a) is relevant for disposal of present case, therefore, the same is reproduced below for ready

reference:-

"**14.Currency of licences to drive motor vehicles**:-

(1) xxxxxx.

(2) A driving licence issued or renewed under this Act shall,-

(a) In the case of a licence to drive a transport vehicle, be effective for a period of three years:

Provided that in the case of licence to drive a transport vehicle, carrying goods of dangerous or hazardous nature, be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus."

15. Rule 9 of the Rules of 1989 provides as follows:-

"**9**.**Educational qualifications for drivers of goods carriages carrying dangerous or hazardous goods**: (1) One year from the date of commencement of Central Motor Vehicle (Amendment) Rules, 1993, any person driving a goods carriage carrying goods of dangerous or hazardous nature to human life shall, in addition to being the holder of a driving licence to drive a transport vehicle, also has the ability to read and write at least one Indian language out of those specified in the VII Schedule of the Constitution and English and also possess a certificate of having successful passed a course consisting of following syllabus and periodicity connected with the transport of such goods:......."

16. From reading of the above quoted provisions of the Act of 1988 and the Rules of 1989, it is clear that no person shall drive a motor vehicle in any public place unless he holds an effective driving license, which shall be issued by competent authority specifically entitling him to do so; a license to drive a transport vehicle shall be effective for a period of three years, whereas, license to drive a transport vehicle carrying goods of dangerous or hazardous nature shall be effective for a period of one year; a person driving transport vehicle, carrying goods of dangerous & hazardous nature, is required to have an endorsement on his

license for the same and the licence can be effective for a period of one year only and that such driver should have the ability to read and write at least one language specified in 7th Schedule of the Constitution and English and also possess a certificate, having successfully passed the course, consisting of syllabus as described under the rules. Likewise, Rule 9 of the Rules of 1989 talks about required qualification with driver of transport vehicle for becoming entitle to get the license endorsed authorising him to drive heavy goods vehicle carrying dangerous and hazardous goods. Rule 132 of the Rules of 1989 deals with responsibility of transporter or owner of goods carriage and sub-rule (5) casts a duty upon the owner to ensure that driver of goods carriage carrying dangerous or hazardous goods holds a driving license as per provisions of Rule 9 of the Rules of 1989.

17. Coming back to the facts of present case. In letter dated 5.9.2013 (Ex.D-4), which is information supplied by Indian Oil Corporation Ltd. under Right to Information Act, 2005 in connection with offending vehicle, it is mentioned that on the date of accident, offending vehicle was carrying '6 KL petrol & 6KL diesel'; invoice number and date was also mentioned in it. In the Certificate of Registration of offending vehicle, which is available on record as Ex.D-4C, class of vehicle is shown as 'heavy goods vehicle' and type of body is mentioned as 'tanker'. From the aforementioned documents available in record, it is clear that class of offending vehicle is 'heavy goods

vehicle', type of body is 'tanker' and on the date of incident, it was loaded with dangerous or hazardous goods i.e. petrol & diesel. Extract of driving license (Ex.D-3) was proved by NAW3-1 Satyendra Kumar Soni, who was working as Assistant Grade-III in the office of Additional RTO, Durg. This witness has stated in his statement recorded before the Claims Tribunal that as per license particulars available in the office register and mentioned in Ex.D-3, respondent No.4 Upendra Singh was authorized to drive hazardous vehicle only upto 22.9.2011 and thereafter he has not applied for renewal in the office. He further specified that currency of license for transport vehicles carrying hazardous or dangerous goods is of one year, whereas in respect of transport vehicles it is of three years.

18. Sanjay Gupta, Senior Assistant, National Insurance Company, Divisional Office, Durg was examined on behalf of appellant Insurance Company as NAW3-2. He has proved insurance policy (Ex.D-7) which contained driver's clause. He has stated in his evidence that for driving transport vehicle carrying dangerous or hazardous goods, a person/driver must possess license with endorsement authorizing him to drive such vehicle, which was lacking in the license of non-applicant No.1 on the date of accident and this amounts to breach of condition of insurance policy. Claims Tribunal while dealing with Issue No.5 & 6 has considered evidence of this witness who has stated that validity of endorsement on license of respondent No.4 for driving transport vehicles carrying dangerous or hazardous

goods was valid upto 22.9.2011. Claims Tribunal has also considered the issue "whether absence of endorsement on license authorizing to drive transport vehicle carrying dangerous and hazardous vehicles will amount to breach of policy condition" and after taking note of judgements mentioned in impugned award, concluded that mere absence of endorsement in license itself is not sufficient to exonerate insurance company from its liability under policy.

19. The aforementioned finding recorded by the Claims Tribunal is contrary to the provisions of the Act of 1988. Law envisages requirement of valid license of each category of vehicle separately under Section 10 (2) of the Act of 1988. For driving vehicle carrying dangerous and hazardous goods, driver has to undergo special training under the Rules of 1989 after obtaining valid and effective license to drive particular category of vehicle.

20. In case at hand, admittedly the offending vehicle is a Tanker, on the date of accident, it was loaded with petrol & diesel and driven by respondent No.4-driver. There is also no denial of fact that endorsement made in driving license of respondent No.4 authorizing him to drive transport vehicle carrying dangerous or hazardous goods was valid upto 22.9.2011 and accident occurred on 8.2.2012. Section 3 of the Act of 1988 deals with necessity for driving license. Section 10 of the Act of 1988 provides for separate license for each category of motor vehicles. Section 14 of the Act of 1988 deals with currency of

license and prescribes different validity of periods with respect to different class of vehicles. Rule 9 of the Rules of 1989 deals with educational qualification for drivers of goods carriages carrying dangerous or hazardous goods and it specifically envisages that driver needs to undergo course of prescribed syllabus.

21. Division Bench of this Court considered identical issue elaborately, discussing provisions of Section 3, Section 9, Section 14 of the Act of 1988 and also Rule 9 of the Rules of 1989 in **MAC No.1255/2012**, **The Oriental Insurance Co. Ltd. vs. Smt. Parwati Sharma & ors**. Aforementioned judgment was authored by me. Division Bench in **MAC No.462/2014, National Insurance Company vs. Avinash Nag & ors**, relied upon judgment rendered in MAC No.1255/2012 and held that non-endorsement of authorization to drive 'dangerous or hazardous goods carrying vehicle to be violation of mandatory requirements under the relevant provisions of law,

22. In view of above, I am of the view that finding of Claims Tribunal on Issue No.5 is not sustainable in law and its hereby set aside. This Court holds that on the date of accident, non-applicant No.1 / respondent No.4, driver of offending vehicle, was not possessed with valid driving license to drive offending vehicle. Consequently, finding recorded by Claims Tribunal on Issue No.6 “whether offending vehicle tanker No.CG07-ZC-2235 was plied by non-applicant No.1 & 2 in breach of conditions of insurance policy” is also not sustainable being

contrary to evidence available on record and it is hereby set aside.

23. As regards prayer of learned counsel for claimants / respondent No.1 to 3 herein for issuing direction of 'pay and recover' against appellant Insurance Company. In case of **National Insurance Co. Ltd. v. Challa Bharathamma and others** reported in **(2004) 8 SCC 517** Hon'ble Supreme Court while considering breach of policy condition for want of permit has held as under:-

> "13. The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured. In the instant case considering the quantum involved we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured."

In **Manuara Khatun and others v. Rajesh Kumar Singh and others and Mamoni Saikia Mohanty and others v. Rajesh Kumar Singh and others** reported in **(2017) 4 SCC 796,** the Hon'ble Supreme Court held thus:-

> "19. We find no merit in any of the submissions. Firstly, as mentioned above, we find marked similarity in the facts of this case and the one involved in *National Insurance Co. Ltd. v. Saju P. Paul, (2013) 2 SCC 41*. Secondly, merely because the compensation has not yet been paid to the claimants though the case is quite old (16 years) like the one in *Saju P. Paul's Case* (supra), it cannot be a ground to deny the claimants the relief claimed in these appeals. Thirdly, this Court has already considered and rejected the argument regarding not granting of the relief of the nature claimed herein due to pendency of the reference to a larger Bench as would be clear from Para 26 of the judgment in *Saju P. Paul's Case (supra)*. That apart, learned counsel for the appellants stated at the bar that the reference made to the larger Bench has since been disposed of by keeping the issue undecided. It is for this reason also, the argument does not survive any more.
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> 21. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Co. Ltd. (respondent No. 3) - they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Co. Ltd. respondent No.3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo)-respondent No.1 in execution proceedings arising in this very case as per the law laid down in Para 26 of *Saju P. Paul's* case quoted supra.
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> 22. Accordingly, the appeals succeed and are allowed. Impugned order is modified to the extent that respondent No. 3-United India Insurance Company Ltd. is accordingly directed to pay the awarded sum to the appellants (claimants). Thereafter respondent No. 3 - United India Insurance Company Ltd. would be entitled to recover the entire paid awarded sum from the owner (insured) of the offending Vehicle (Tata Sumo)-respondent No.1 in these very proceedings by filing execution application against the insured."

In the matter of **Amrit Paul Singh and another v. Tata AIG General Insurance Company Limited and others** reported in **(2018) 7 SCC 558** Hon'ble Supreme Court while dealing with similar issue has held thus:-

> "We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh (supra) and Lakhmi Chand (supra) in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the "Tripitaka", that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the tribunal as well as the High Court had directed the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh (supra) and other cases pertaining to pay and recover principle."

24. In case of **Shamanna and another vs. Divisional Manager, Oriental Insurance Company Limited** reported in **(2018) 9 SCC 650** Hon'ble Supreme Court has held thus:-

> "2. ....Since the driver of the jeep had no valid driving licence at the time of the accident and since

there was violation of the terms of the insurance policy, the Tribunal directed the insurance company to pay the compensation to the claimants and granted liberty to the insurance company to recover the same from the owner of the offending vehicle.

13. Since the reference to the larger bench in National Insurance Co. Ltd. v. Parvathneni, (2009) 8 SCC 785 has been disposed of by keeping the questions of law open to be decided in an appropriate case, presently the decision in National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 followed inNational Insurance Co. Ltd. v. Laxmi NarainDhut, (2007) 3 SCC 700 and other cases hold the field. The award passed by the Tribunal directing the insurance company to pay the compensation amount awarded to the claimants and thereafter, recover the same from the owner of the vehicle in question, is in accordance with the judgment passed by this Court in Swaran Singh (supra)and Laxmi Narain Dhut (supra) cases. While so, in our view, the High Court ought not to have interfered with the award passed by the Tribunal directing the first respondent to pay and recover from the owner of the vehicle. The impugned judgment of the High Court exonerating the insurance company from its liability and directing the claimants to recover the compensation from the owner of the vehicle is set aside and the award passed by the Tribunal is restored."

25. In case at hand, deceased was a third party; appellant Insurance Company issued policy which was valid for the period from 29.3.2011 to 28.3.2012; accident occurred during the period of policy i.e. on 8.2.2012. Therefore, keeping in mind benevolent object of the Act of 1988 and the law laid

down by Hon'ble Supreme Court in above cases, I find it proper to issue direction to appellant Insurance Company to first deposit entire amount of compensation together with interest, as awarded by Claims Tribunal, and then to recover the same from non-applicant No.1 & 2 / respondents No.4 & 5, driver and owner of offending vehicle, jointly and severally, in accordance with law.

26. In the result, appeal is allowed. Appellant Insurance Company is exonerated from its liability to indemnify insured under the policy. Respondents No.4 & 5, driver & owner of offending vehicle, are held liable to satisfy the compensation awarded by the Claims Tribunal, jointly and severally. Appellant Insurance Company is directed to first deposit the entire amount of compensation together with interest, as awarded by Claims Tribunal, and then to recover the same from respondent Nos.4 & 5- driver & owner of offending vehicle, jointly and severally, in accordance with law.

27. In the result, appeal is allowed in part and award impugned stands modified to the extent indicated above.

Sd/-
(Parth Prateem Sahu)
Judge

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