

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Misc. Appeal No.642 of 2018

National Insurance Co. Ltd., represented through Branch Manager, Raja Bangla, P.O. & P.S. Giridih (T) & Dis

trict Giridih 815301 **Appellant**

Versus.

1. Shaibun Nisha, wife of Md. Sagar Ansari
2. Md. Sagir Ansari, son of Late Bali Mohammad
3. Md. Sohel Ansari, son of Md. Sagir Ansari
4. Pinky Praveen, daughter of Md. Sagir Ansari
5. Md. Samir Ansari, son of Md. Sagir Ansari
6. Tarana Praveen, daughter of Md. Sagir Ansari

(Respondent Nos. 5 & 6 are minors and are being represented through their natural guardian Respondent No.1 as their next friend) All residing at Village Chaitadih, P.O. & P.S. Giridih (M), District Giridih

Claimant No.1 to 6

7. Md. Shoket, son of Md. Unush, resident of Koldiha, P.O. Giridih, P.S. Giridih(T), District Giridih, (Owner) Opposite Party No.1

8. Md. Furkan, son of Md. Ishrail, resident of Village Jogitand, P.O. Chaitadih, P.S. Giridih (M), P.S. & District Giridih (Driver)

Opposite party No.2

..... **Respondents**

CORAM: HON'BLE MR. JUSTICE SUBHASH CHAND

For the Appellant : Mr. Alok Lal, Advocate
For the Respondent Nos.1 to 6 : Mr. Prakash Chandra, Advocate
Mr. Virendra Kumar, Advocate
For the Respondent No.7 : Mr. Ajit Kumar, Advocate

C.A.V. on:28/11/2024

Pronounced on:11/12/2024

J U D G M E N T

1. The instant Miscellaneous Appeal has been preferred against the award dated 13.03.2018 passed by the learned District Judge-VIII-cum-Motor Vehicle Accident Claims Tribunal-VIII, Giridih in M.V. Claim Case No.64 of 2014, whereby the learned Tribunal has directed the appellant-Insurance Company to pay the compensation amount of Rs.6,63,000/- to the claimants with interest @ 9% per annum from the date of filing of the claim application till the realization of the amount of compensation.

2. The brief facts leading to this miscellaneous appeal are that the

deceased who was mason by profession was going on 13.05.2014 at 08:00 am to Jamua from his house for work by Tempo bearing registration No.JH-11J-5779, it was driven by its driver rashly and negligently, who turned turtle and the deceased had fallen from the Tempo and received injuries and succumbed to the injuries at the spot. The deceased after his death, left the claimants as legal heirs. The FIR of this case was registered with the police station concerned and the charge-sheet was also filed against the driver of the Tempo. In this way, the compensation was claimed.

3. On behalf of the opposite party Nos.1 and 2, who are the driver and owner respectively, the written statement was filed, in which it has been stated that Md. Shoket is the owner of the offending Tempo and the driver was Md. Furkan , who was driving the said vehicle very carefully but the same got imbalanced due to mechanical defect, as a result of which it became out of control of the driver, hence fell down causing death of the deceased. The said vehicle was insured by the opposite party No.3-National Insurance Company Limited, if any liability is fastened, the Insurance Company is liable.

4. On behalf of the opposite party No.3-National Insurance Company Limited, the written statement was filed, in which, it has been stated that the offending vehicle is alleged to have been insured by the National Insurance Company Limited but the owner and driver of the same did not adduce valid document such as driving license, permit etc., there being the breach of the policy, therefore, the Insurance Company is not liable for the same.

5. On behalf of the claimants **in oral evidence** examined altogether four witnesses i.e. **C.W.-1, Md. Sagir Ansari; C.W.-2, Jamal Ansari; C.W.-3, Md. Nishar and C.W.-4, Md. Moin Ansari** and in documentary evidence

Exhibit-1, Certified copy of FIR; Exhibit-2, Certified copy of charge-sheet; Exhibit-3, Death certificate of deceased; Exhibit-4, Postmortem report of the deceased; Exhibit-5, Heir certificate and; Exhibit-X, Insurance Policy.

6. On behalf of the opposite party Nos.1 and 2, the owner and driver of the offending vehicle, neither documentary nor oral evidence was adduced.

7. On behalf of the opposite party No.3-Insurance Company, no evidence oral as well documentary was adduced.

8. The learned Tribunal after hearing the rival submissions of the learned counsel for the parties, passed the impugned award.

9. Aggrieved from the impugned award dated 13.03.2018 passed by the learned District Judge-VIII-cum- Motor Vehicle Accident Claims Tribunal-VIII, Giridih in M.V. Claim Case No.64 of 2014, the instant Miscellaneous Appeal has been directed on behalf of the appellant-Insurance Company.

10. Learned counsel for the appellant has submitted that this Miscellaneous Appeal has been assailed on behalf of the appellant-Insurance Company on the point that the direct liability has been fastened to the appellant Insurance Company to pay the amount of compensation while on behalf of the owner and driver none of them was examined nor any documentary as well as oral evidence was adduced. The initial burden was upon the owner to prove that the offending vehicle was driven with the valid and effective driving license but this very burden of proof has been wrongly shifted by the learned Trial Court upon the Insurance Company and directed to pay the amount of compensation.

11. Per contra, learned counsel for the respondents vehemently opposed the contentions made by the learned counsel for the appellant and contended

that since the Insurance Company had also taken the plea in the written statement that he reserves right to contest the claim petition on all grounds, which are available to the owner of the offending vehicle under Section 170 of the Motor Vehicles Act, 1988, therefore, the burden of proof has rightly been shifted upon the Insurance Company and the impugned order needs no interference.

12. I have heard the learned counsel for the parties and perused the materials available on record.

13. The learned Tribunal has framed the **issue No.VI** to this effect whether the owner and driver of Auto vehicle bearing No.JH-11J-5779 possessed every and all vehicular document at the time of accident and whether there was any violation and breach of terms and conditions of Insurance Policy by the owner of the Auto vehicle at the time of accident?

13.1 On this issue, on behalf of the claimant only oral evidence has been adduced and **C.W.-1, Md. Sagir Ansari** has stated that he is not aware how many persons were boarded in the offending Tempo. He reached to the place of occurrence after three hours of occurrence.

13.2 C.W.-2, Jamal Ansari has stated that he is not aware how many persons were boarding in the Tempo. He reached to the place of occurrence after half an hour of the occurrence. He did not see the documents of the offending vehicle with the driver.

13.3 C.W.-3, Md. Nisar has deposed nothing in regard to the accident how it was caused.

13.4 C.W.-4, Moin Ansari has stated that he is witness in the police case and he has seen the occurrence from his own eyes. He has stated that he has not seen the driving license of the driver.

13.5 No driving license or other documents related to the Tempo has been filed on behalf of the claimants.

13.6 On behalf the opposite party Nos.1 and 2, the owner and driver of the vehicle neither adduced himself in evidence to depose the pleadings of the written statement and no documentary evidence has been filed in regard to the document of the vehicle such as driving license of the driver of offending vehicle.

13.7 On behalf of the appellant Insurance Company neither oral nor documentary evidence has been adduced.

13.8 Admittedly, the offending vehicle was insured by the opposite party No.3-Insurance Company and from the oral evidence on record and the charge-sheet, it is proved that the said accident was caused by the driver of the offending vehicle. The charge-sheet has also filed against the opposite party No.3 in the police case registered for the rash and negligent driving and the death of the deceased with the police station concerned. Whether the offending vehicle was being driven with a valid and effective driving license by its driver? Though it is alleged that accident was caused on account of some mechanical defect; yet the driver has not produced himself to depose before the learned Tribunal this very fact that the accident was caused due to the mechanical defect. The very burden of proof lies upon the owner of the offending vehicle even if the said vehicle was insured by the Insurance Company that it was being driven by its driver with a valid and effective driving license. If the initial burden is discharged by the owner, then the liability shifts upon only the Insurance Company.

13.9 The Hon'ble Allahabad High Court held in *United India Insurance Company vrs. Sanjay Kumar ACJ 2013 at 1223*:

25. *Whether the driver had valid licence or not, was in the exclusive knowledge of the driver of the Tanker. The burden was upon the driver or the owner of the Tanker to prove that the driver had valid licence {See National Insurance Co. Ltd. v. Brij Pal Singh and another: 2003(3) TAC 849 (All) : (2003 All LJ 873) and Oriental Insurance Co. Ltd. v. Smt. Indrasani Devi and others: 2006 (1) TAC 261 (All) }. Neither any driving licence was produced on their behalf nor any witness was examined. In view of this, it can not be said that the Tanker was not being driven by the person having valid licence.*

13.10 The Hon'ble Apex Court held in *Pappu & Ors. vrs. Vinod Kumar Lamba & Anr. (2018) 3 SCC 208*:

12. *This Court in National Insurance Co. Ltd. vs. Swaran Singh (2004) 3 SCC 297 has noticed the defences available to the insurance company under Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988. The insurance company is entitled to take a defence that the offending vehicle was driven by an unauthorised person or the person driving the vehicle did not have a valid driving licence. The onus would shift on the insurance company only after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorised by him to drive the vehicle and was having a valid driving licence at the relevant time.*

13. *In the present case, Respondent 1 owner of the offending vehicle merely raised a vague plea in the written statement that the offending Vehicle No. DIL 5955 was being driven by a person having valid driving licence. He did not disclose the name of the driver and his other details. Besides, Respondent 1 did not enter the witness box or examine any witness in support of this plea. Respondent 2 insurance company in the written statement has plainly refuted that plea and also asserted that the offending vehicle was not driven by an authorised person and having valid driving licence. Respondent 1 owner of the offending vehicle did not produce any evidence except a driving licence of one Joginder Singh, without any specific stand taken in the pleadings or in the evidence that the same Joginder Singh was, in fact, authorised to drive the vehicle in question at the relevant time. Only then would onus shift, requiring Respondent 2 insurance company to rebut such evidence and to produce other evidence to substantiate its defence. Merely producing a valid insurance certificate in respect of the offending truck was not enough for Respondent 1 to make the insurance company liable to discharge his liability arising from rash and negligent driving by the driver of his vehicle. The insurance company can be fastened with the liability on the basis of a valid insurance policy only after the basic facts are pleaded and established by the owner of the offending vehicle that the vehicle was not only duly insured but also that it was driven by an authorised person having a valid driving licence. Without disclosing the name of the driver in the written statement or producing any evidence to substantiate the fact that the copy of the driving licence produced in support was of a person who, in fact, was authorised to drive the offending vehicle at the relevant time, the owner of the vehicle cannot be said to have extricated himself from his liability. The insurance company would become liable only after such foundational facts are pleaded and proved*

by the owner of the offending vehicle.”

14. Herein in this case though the Insurance Policy is on record and the same is not denied by the appellant-Insurance Company; but the driving license of the driver of offending vehicle was neither adduced on behalf of the claimant nor on behalf of the owner and driver and this very burden being not discharged by the owner that it was driven with a valid and effective driving license, the burden of proof cannot be shifted upon the Insurance Company. The learned Tribunal had wrongly shifted this burden upon the Insurance Company, therefore, the impugned award on this very point of determination, which has been decided against the appellant-Insurance Company on the very Issue No.VI is based on perverse finding and the same needs interference and this Miscellaneous Appeal deserves to be allowed.

15. Accordingly, the instant Miscellaneous Appeal is **allowed** and the impugned award is **set aside up to the extent of fastening liability upon the appellant-Insurance Company**. The liability to pay the said amount of compensation along with interest will be of the owner of the offending vehicle.

16. If any amount of compensation has been paid by the Insurance Company, the appellant Insurance Company shall be liable to recover the same from the owner of the offending vehicle.

17. Let the learned Tribunal be communicated in regard to this judgment. The statutory amount, if any, be sent back to the learned Tribunal.

(Subhash Chand, J.)

Jharkhand High Court, Ranchi
Dated: the 11 December, 2024,
Madhav/- A.F.R.