2026:CGHC:2934

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1308 of 2017

1 – IFFCO TOKIO General Insurance Company Limited Aged About 48 Years Branch Office Raipur 205 2nd Floor Silver Plaza Opposite Udyog Bhawan Opposite Mining Office Ring Road No. 1 Raipur Chhattisgarh. ....Insurer.

... Appellant (s)

versus

1 - Suberam Yadav S/o Kartik Ram Yadav Aged About 42 Years Occupation Agriculturist / Labour R/o Gadgaon Police Station Punjipathra Tehsil Tamnar District Raigarh Chhattisgarh., Chhattisgarh

2 - Sufal Bai W/o Suberam Yadav, Aged About 40 Years Occupation House Wife R/o Gadgaon Police Station Punjipathra Tehsil Tamnar District Raigarh Chhattisgarh. ....Claimant,

3 - Sukhram Rathiya S/o Mohitram Rathiya, Aged About 18 Years Cast Rathiya R/o Village Harradih Police Station Punjipathra Tehsil Tamnar District Raigarh Chhattisgarh. ....Driver, District : Raigarh, Chhattisgarh

4 - Badrika Prasad Sahu Died Through Lrs.

4A - Shiva S/o Badrika Prasad Aged About 25 Years.

4B - Bhuwan S/o Badrika Prasad Aged About 19 Years.

4C - Purnima Sahu W/o Badrika Prasad Aged About 48 Years.

4D - Pooja Sahu D/o Badrika Prasad Aged About 27 Years.

Respondent No. 4A to 4D are R/o Village Dehjari Police Station Kharsiya District Raigarh Chhattisgarh.

... Respondents

For Appellant	:	Mr. Ghanshyam Patel, Advocate.
For Res. No. 4A	:	Mr. Syed Afaque Hussain Rizvi, Advocate on behalf of Mr. Lavkush Kumar Sahu , Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

Order on Board

19/01/2026

1. The instant Miscellaneous Appeal has been filed by the appellant/Insurance Company under Section 173 of the Motor Vehicles Act against the award dated 27.02.2017 passed by the learned Third Additional Motor Accident Claims Tribunal, Raigarh, District – Raigarh (C.G.) in M.A.C.T. Case No. 112/2014 in case of Suberam & another

Vs. Sukhram Rathiya & others by which application filed by the claimant under Section 166 of the Motor Vehicles Act for grant of compensation has been partly allowed and the appellant/Insurance Company is directed to pay Rs. Rs. 4,45,000/- to the claimants with 9% interest from filing of the claim application i.e. 30.09.2014 till the payment is actually made.

2. The brief facts as reflected from records are that on 29.03.2014 at about 08:15 a.m., the deceased Deepak Yadav was returning from village Saraipali to village Gadgaon on his Hero Honda CD Deluxe motorcycle bearing registration No. CG-13-R-7010, with Harishankar seated on the rear seat and when they reached between villages Barpali and Harradih, at that time a Mahindra tractor bearing registration No. CG-13-LA-1286, coming from opposite direction, driven by its driver at a high speed in a rash and negligent manner, dashed the deceased's motorcycle, causing accident. As a result, Deepak Yadav sustained serious injuries on his head and leg, he was taken to Metro Hospital, Raigarh for treatment. Harishankar, who was seated on the rear seat of the motorcycle with the deceased, lodged information regarding the accident against the tractor driver at Police Station Punjipathra, Raigarh. Police Station Punjipathra registered Crime No. 48/2014 against the driver of the tractor under Sections 279 and 337 of the IPC. During the course of treatment, injured Deepak Yadav died at about 11:00 p.m. on 29.03.2014 at Metro Hospital, Raigarh. Thereafter, after completing usual investigation, Police Station Punjipathra filed charge-sheet against the tractor driver/ non-applicant No. 1 before the Court of Judicial Magistrate First Class, Raigarh,

under Sections 279, 337 and 304 of the IPC read with Section 3 & 181 of the Motor Vehicles Act, 1988 (for short "the Act, 1988").

3. On account of the said accident, the claimants have filed an application under Section 166 of the Act, 1988 for grant of compensation mainly contending that the applicants are the parents of the deceased and are his legal representatives. At the time of the accident, the deceased was aged about 17 years of age and, along with his studies, used to earn an income of Rs. 3,000/- per month by doing contract labour work and assisting in agricultural work at home. Due to the death of Deepak Yadav in the accident, the applicants have been deprived of the said financial assistance to the family, as such, the non-applicants are liable to pay compensation. Accordingly, they have claimed compensation to the tune of Rs. 20,70,000/-.

4. Non-applicant No. 2 filed his reply denying the allegations made in the application contending that on the date of the incident, the deceased himself was driving motorcycle No. CG-13-R-7010 in a rash, negligent, hasty manner, lost balance and fell down, resulting in the accident. On the date of the incident, non-applicant No. 2 had not given any instruction to non-applicant No. 1 to drive the tractor. On the date of the incident, the tractor bearing No. CG-13-LA-1286 and trolley bearing No. CG-13-LA-1287 did not cause the alleged accident, and a false and baseless criminal case has been registered against the driver of the tractor. It has been further contended that the claimants have not impleaded the Insurance Company of the motorcycle bearing No. CG-13-R-7010 as party to the case, therefore, there is defect of non-joinder of necessary parties. It has been further contended that the tractor

owned by non-applicant No. 2 was insured with non-applicant No. 4 from 20.03.2013 to 19.03.2014, and on the date of the accident, i.e. 29.03.2014, the insurance policy was in force, therefore, Insurance Company was liable to pay the claim and would pray for rejection of the application for grant of compensation so far as owner of the vehicle is concerned.

5. Non-applicant No. 4 has filed reply denying the allegation made in the application for grant of compensation mainly contending that the deceased himself was driving the motorcycle in rash and negligent manner which has caused head-on collision between the motorcycle and the tractor, as such it is a case of contributory negligence. It has also been contended that the Insurance Company of the motorcycle is necessary party to the case. However, they have not impleaded the Insurance Company, therefore, due to non-joinder of necessary parties, the case is liable to be dismissed. It has been further contended that the driver of the tractor involved in the accident / non-applicant No. 1 did not possess any valid and effective driving licence which is in violation of the insurance policy. It has been further contended that in the final report submitted before the Court, offence under Sections 3 & 181 of the Act, 1988 has also been included which clearly establishes that there is no valid license on the date of incident. Hence, on this ground, no liability can be fastened upon the Insurance Company and the owner of the vehicle is liable to pay the compensation. It has been further contended that the deceased was a school-going student and had no income and the applicants have made false statements regarding the income, age and dependency of the deceased. The parents of the deceased, who are the applicants, had their own

independent income and would pray for dismissal of the application for grant of compensation.

6. The learned Claims Tribunal after appreciating the evidence and material on record has passed the impugned award by granting compensation to the tune of Rs. 4,45,200/- in favour of the claimants with 9% interest. Being aggrieved with the award, the Insurance Company has preferred this appeal.

7. Learned counsel for the appellant/Insurance Company would submit that the impugned award passed by the learned Claims Tribunal suffers from perversity and illegality as the driver of the vehicle has been prosecuted under Sections 3 & 181 of the Act, 1988, therefore, it is presumed that the driver was not having valid driving license. He would further submit that the learned Claims Tribunal ought to draw adverse inference against the driver that the driver did not have valid driving license as the driver did not produce any valid driving license before the investigating agency or the tribunal and also did not rebut the contention of the appellant. He would further submit that the learned Claims Tribunal has committed grave illegality in awarding compensation towards loss of estate in favour of parents and would pray for setting aside the impugned order by allowing the appeal filed by the Insurance Company. To substantiate his case, he would refer to the judgment rendered by Coordinate Bench of this Court in case of **Oriental Insurance Co. Ltd. Vs. Mediami Mangdu & others [2007:CGHC:5511-DB]**.

8. On the other hand, learned counsel for respondent No. 4A opposing the submission made by learned counsel for the appellant would submit

that the impugned award is legal, justified and does not warrant any interference by this Court and would pray for dismissal of the appeal.

9. I have heard learned counsel for the parties and perused the record with utmost circumspection.

10. From the records, it is quite vivid that the appellant/Insurance Company has taken a plea that the driver was not having a valid driving license to drive the vehicle on the count that the driver of the vehicle was charge-sheeted for the offence committed under Sections 3 & 181 of the Act, 1988. Section 3 of the Act, 1988 provides for necessity of driving license and Section 181 of the Act, 1988 provides for punishment for driving the vehicle in contravention of Section 3 or 4 of the Act, 1988. Sections 3 & 181 of the Act, 1988 read as under:-

> "**Section 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 a motorcab 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.
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> (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.
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> **Section 181- Driving vehicles in contravention of section 3 or section 4.** - Whoever drives a motor vehicle in contravention of section 3 or section 4 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both."

11. From perusal of Section 181 of the Act, 1988, it is quite vivid that if the person drives the vehicle in contravention of Section 3 or 4, he will be punished with imprisonment for a term which may extend to three months or with fine (of five thousand rupees) or with both. It means the driver having no valid driving license should have not only been

prosecuted but the charges leveled against that person should be proved by the competent court of law. In the present case, the Insurance Company has only placed before the Claims Tribunal the charge-sheet wherein it has been alleged that the driver of the tractor has been charged but no final judgment has been placed on record to substantiate that he has been held guilty and punished by competent court of law. In absence of any such material, the submission made by learned counsel for the Insurance Company that the driver of the tractor was not having valid driving license, is misconceived and liable to be rejected by this Court.

12. Even otherwise, it is well settled position of law that if the Insurance Company intends to take plea of fundamental breach of the policy, the burden heavily lies upon the Insurance Company who in the present case has miserably failed to prove. The application of principle of burden of proof of fundamental breach of terms of policy has been subject matter of examination by Hon’ble the Supreme Court in various judgments. In recent judgment, Hon’ble the Supreme Court in case of **IFFCO Tokio General Insurance Co. Ltd. Vs. Geeta Devi & others [2023 INSC 954]** has held in paragraphs 14, 15 & 16 as under:-

> “14. Applying the aforestated edicts to the case on hand, it may be noted that the petitioner-insurance company did not even raise the plea that the owner of the vehicle allowed Ujay Pal to drive the vehicle knowing that his licence was fake. Its stand was that the accident had occurred due to the negligence of the victim himself. Further, the insurance policy did not require the vehicle owner to undertake verification of the driving licence of the driver of the vehicle by getting the same confirmed with the RTO. Therefore, the claim of the petitioner-insurance company that it has the right to recover the compensation from the owners of the vehicle, owing to a willful breach of the condition of the insurance policy, viz., to ensure that the vehicle was driven by a licenced driver, is without pleading and proof.

> 15. As already pointed out supra, once a seemingly valid driving licence is produced by a person employed to drive a vehicle, unless such licence is demonstrably fake on the face of it, warranting any sensible employer to make inquiries as to its genuineness, or when the period of the licence has already expired, or there is some other reason to entertain a genuine doubt as to its validity, the burden is upon the insurance company to prove that there was a failure on the part of the vehicle owner in carrying out due diligence apropos such driving licence before employing that person to drive the vehicle. Presently, no evidence has been placed on record whereby an inference could be drawn that the deceased vehicle owner ought to have gotten verified Ujay Pal's driving licence. Therefore, it was for the petitioner-insurance company to prove willful breach on the part of the said vehicle owner. As no such exercise was undertaken, the petitioner-insurance company would have no right to recover the compensation amount from the present owners of the vehicle. The impugned order passed by the Delhi High Court holding to that effect, therefore, does not brook interference either on facts or in law.
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> 16. These legal propositions being so well settled, it is indeed shocking that insurance companies deem it appropriate to raise such pleas as a matter of course, without reference to the facts of the given case and/or the evidence available therein, and also consider it necessary to arry such matters in appeal till the last forum, unmindful of the wastage of valuable curial time and effort!"

13. Thus, it cannot be said that the Insurance Company is able to prove the fundamental breach of the policy. As such, the submission made by learned counsel for the appellant/ Insurance Company that since the driver of the tractor is charged for not having the valid driving license and the Insurance Company is liable to be exempted from payment of compensation, deserves to be rejected and accordingly, it is rejected.

14. Further submission of learned counsel for the appellant that the application under Order 11 Rule 12 of the CPC was submitted by the Insurance Company before the learned Claims Tribunal to issue direction to the owner of the vehicle to produce the driving license on 05.10.2015 but no final order has been passed, therefore, the matter

may be remitted back to the learned trial Court, is being considered by this Court. The record of the claim case would demonstrate that during pendency of the claim case, the owner of the vehicle expired on 30.10.2014 and the claimants have moved an application to bring legal representative of the deceased on record, which was allowed but from perusal of the order-sheet, it is quite vivid that the Insurance Company has taken any step to see that the application moved by them, is heard and decided by the Claims Tribunal which is their responsibility to pursue the same but no step has been taken. Even otherwise, from records, it is quite vivid that the Insurance Company is unable to establish the fundament breach of the insurance policy, as such, it is not a case where this Court should remit the matter for re-adjudication as the Insurance Company itself negligence towards pursing the case and also keeping in mind that the Act, 1988 is benevolent legislation and object of the Act, 1988 is to grant financial assistance to the sufferer of unsafe use of motor vehicle. As such, the submission made by learned counsel for the applicant that the matter may be remitted, deserves to be rejected and accordingly, it is rejected,

15. The judgment cited by learned counsel for the appellant in case of **Mediami Mangdu** (supra) is distinguishable from the present facts of the case as no evidence was produced by the insurance company before the learned trial Court that the driver of the tractor has been punished for commission of offence under Sections 3 & 181 of the Act, 1988.

16. Considering the facts and circumstances of the case and law on the subject, the learned Claims Tribunal has passed the award which is

neither bonanza nor on a lower side but it is just and fair compensation, as such, the award passed by the Claims Tribunal is legal, justified and does not warrant interference by this Court.

17. Therefore, the claim appeal filed by the insurance company is liable to be dismissed and accordingly, it is dismissed.

Sd/-
(Narendra Kumar Vyas)
Judge

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