NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 915 of 2018

1 - The New India Assurance Company Limited Through Its Branch Manager, Branch Office Commerical Complex, Pandari, Raipur, District Raipur Chhattisgarh. (Non Applicant No. 3), District : Raipur, Chhattisgarh

... Appellant

versus

1 - Ansuiya Devi @ Anshu Rajpur Wd/o Late Shri Ashvani Kumar Rajput, Aged About 40 Years R/o Kailash Nagar, Beergaon, P.S. Urla, District Raipur Chhattisgarh. (Applicant No. 1), District : Raipur, Chhattisgarh

2 - Himanshu Rajput S/o Late Shri Ashvani Kumar Rajput, Aged About 15 Years Minor Through Their Mother Smt. Ansuiya @ Anmshu Rajput (Respondent No. 1) R/o Kailash Nagar, Beergaon, P.S. Urla, District Raipur Chhattisgarh. (Applicant No. 2), District : Raipur, Chhattisgarh

3 - Harsh Rajput S/o Late Shri Ashvani Kumar Rajput, Aged About 12 Years Minor Through Their Mother Smt. Ansuiya @ Anmshu Rajput (Respondent No. 1) R/o Kailash Nagar, Beergaon, P.S. Urla, District Raipur Chhattisgarh. (Applicant No. 3), District : Raipur, Chhattisgarh

4 - Umesh Kumar Upadhyay, S/o Sarju Prasad Upadhyay, R/o Hardatra, P.S. Kutmba, District Aurangabad (Bihar). Hall Mukam - Ashok Vihar Colony. Ring Road No. 2, Gondwara, P.S. Khamtarai, District Raipur Chhattisgarh. (Driver Of Vehicle No. C.G.-04-J-2755) (Non Applicant

No. 1), District : Raipur, Chhattisgarh

5 - Deepchand Yadav S/o Nidhu Yadav, R/o Shyam Nagar, Telibandha, Raipur, Tashil And District Raipur Chhattisgarh. (Owner Of Vehicle No. C.G.-04-J-2755) (Non Applicant No. 2), District : Raipur, Chhattisgarh

6 - Brijesh Singh, R/o Ashoka Vihar, Gondwara, Bhanpuri, District Raipur Chhattisgarh. (Non Applicant No. 2a), District : Raipur, Chhattisgarh

7 - Sarswati @ Sati Rajput, Aged About 65 Years R/o Village - Luk. Tahsil - Khaja, P.S. Dhamdha, District Bemetara Chhattisgarh. (Non Applicant No. 4), District : Bemetara, Chhattisgarh

... Respondents

(Cause-title taken from the Case Information System)

For Appellant	:-	Mr. Dashrath Gupta, Advocate
For Respondents	:-	None.

<u>SB- Hon'ble Shri Justice Amitendra Kishore Prasad</u>

<u>Order On Board</u>

<u>19.01.2026</u>

1. This appeal is by the Insurance Company against the award 26.03.2018 passed by learned Additional Motor Accident Claims Tribunal, Raipur, Distt. Raipur C.G. in Claim Case No.674/2014, awarding total compensation of Rs.17,30,550/- with interest @ 9% per annum from the date of application till realization while fastening liability on the non-applicant Nos. 1 to 3 jointly and severally.

2. As per the averments made in the claim petition, on 02.05.2014 at about 5.00 p.m., when Ashvani Kumar Rajput had parked his bus in front of the Siltara Gate of S.K.S. Ispat Company and was crossing the road on foot, respondent No. 4, while driving the vehicle bearing registration No. CG-04-J-2755 in a rash and negligent manner from inside the company premises, dashed against him, as a result of which Ashvani Kumar Rajput sustained serious injuries and subsequently died on 11.05.2014 during the course of treatment. At the time of accident, the offending vehicle was owned by non-applicant No.2, driven by non-applicant No. 1 and insured with non-applicant No.3/Insurance Company.

3. On claim petition being filed by the claimant under Section 166 of the Motor Vehicles Act seeking compensation to the tune of Rs. 37,50,000/- under various heads, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

4. Learned counsel for the appellant Insurance Company submits that the impugned award is bad in law as liability has been wrongly fastened upon the appellant despite clear evidence that respondent No. 4 was holding a fake and forged driving licence. The owner failed to prove that he had verified the licence or exercised due diligence before employing the driver, and therefore the appellant was liable to be exonerated. It is further submitted that the Tribunal has assessed the income of the deceased on the higher side without proper evidence and has awarded excessive compensation with an

unreasonably high rate of interest. Hence, the impugned award deserves to be set aside so far as it fastens liability upon the appellant Insurance Company.

5. None for the respondents, though served.

6. I have heard learned counsel for the appellant and perused the record.

7. The principal grounds of challenge raised by the appellant are that the learned Tribunal committed grave illegality in fastening liability upon the Insurance Company despite there being clear evidence on record that the driver of the offending vehicle was holding a fake and forged driving licence. It is further contended that the owner of the vehicle failed to prove that he had taken reasonable care and exercised due diligence in verifying the genuineness of the driving licence before employing respondent No.4 as driver. It is also argued that the income of the deceased was assessed on the higher side without any reliable evidence.

8. From perusal of the impugned award and the evidence available on record, it is evident that the learned Tribunal itself recorded a categorical finding that the driving licence produced on behalf of respondent No.4 was not genuine. Once such finding regarding fake and forged licence stands established, the burden shifted upon the owner of the vehicle to prove that he had verified the licence and had employed the driver after due care and caution. No such evidence

has been adduced by the owner. Thus, there has been a clear breach of the terms and conditions of the insurance policy.

9. In view of the settled legal position laid down by the Hon'ble Supreme Court in a catena of decisions, when the driver is not holding a valid and effective driving licence and the owner fails to prove due diligence, the Insurance Company cannot be made directly liable to satisfy the award. Therefore, the finding of the learned Tribunal fastening liability upon the appellant Insurance Company cannot be sustained in law.

10. The Supreme Court in ***National Insurance Co. Ltd. vs. Swaran Singh & Others****,* reported in ***(2004) 3 SCC 297*** has categorically held that even if the driver's licence is found invalid or fake, the insurer must first satisfy the award to protect the rights of the third-party victims, and thereafter recover the same from the insured.

> *"**104**. It is, therefore, evident from the discussions made hereinbefore that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time.*
>
> ***110**. The summary of our findings to the various issues as raised in these petitions is as follows:*
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> *xxx xxx xxx*
>
> *xxx xxx xxx*
>
> *(iii) The breach of policy condition e.g.*

disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

xxx xxx xxx

xxx xxx xxx

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of

the Act.”

11. However, considering that the claimants are third parties and in order to protect their interest, this Court is of the opinion that the principle of “pay and recover” deserves to be applied. The appellant Insurance Company can be directed to satisfy the award in the first instance with liberty to recover the same from the owner and driver of the offending vehicle.

12. So far as the quantum of compensation is concerned, although the assessment made by the Tribunal appears to be on the higher side, the claimants are legal heirs of the deceased and the accident occurred in the year 2014. In the facts and circumstances of the case, instead of entering into a detailed recalculation at this stage, it would be just and proper to maintain the amount awarded by the Tribunal.

13. Accordingly, the appeal filed by the appellant Insurance Company is **allowed in part**. The finding of the learned Tribunal fastening direct liability upon the appellant Insurance Company is hereby **set aside** and the same has been shifted to owner and driver of offending vehicle. The appellant Insurance Company is directed to pay the awarded amount to the claimants in the first instance, along with interest as awarded by the Tribunal. After making such payment, the appellant Insurance Company shall be entitled to recover the entire amount so paid from non-applicants No.1 and 2 (driver and

owner of the offending vehicle) by initiating appropriate proceedings in accordance with law. Except to the extent indicated above, the award dated 26.03.2018 passed by the learned Tribunal is affirmed.

14. No order as to costs.

sd/-
(Amitendra Kishore Prasad)
Judge

Vishakha