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HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 1703 of 2018**Judgment Reserved on: 6.11.2025Judgment Delivered on: 20.1.2026

- Rajesh Soni S/o O.P. Soni, Aged About 26 Years R/o Baisagarpara, Baikunthpur, District Koriya Chhattisgarh.....Non Applicant No. 2, District : Koriya (Baikunthpur), Chhattisgarh

... Appellant(s)**versus**

1. Rajni Jaiswal Wd/o Late Shri Shyam Bihari Jaiswal, Aged About 34 Years R/o Sirgitti, P.S. Sirgitti, Tahsil And District Bilaspur Chhattisgarh.....Claimant, District : Bilaspur, Chhattisgarh.
2. Manyata D/o Late Shri Shyam Bihari Jaiswal, Aged About 2 Years Minor, Hence Impleaded Through Her Natural Guardian Mother Rajni Jaiswal Wd/o. Late Shri Shyam Bihari Jaiswal, Aged About 34 Years, R/o Sirgitti, P.S. Sirgitti, Tahsil And District Bilaspur Chhattisgarh.....Claimant, District : Bilaspur, Chhattisgarh.
3. Aditya S/o Late Shri Shyam Bihari Jaiswal, Aged About 03 Months. Minor, Hence Impleaded Through His Natural Guardian Mother Rajni Jaiswal Wd/o. Late Shri Shyam Bihari Jaiswal, Aged



About 34 Years, R/o Sirgitti, P.S. Sirgitti, Tahsil And District Bilaspur Chhattisgarh.....Claimant, District : Bilaspur, Chhattisgarh.

4. Vivek Jaiswal S/o Girish Jaiswal, Aged About 26 Years R/o Kevra, Bhaiyathan, District Surajpur Chhattisgarh.....Driver Of Bullet No. C.G.15 C.V. 6885, District : Surajpur, Chhattisgarh.
5. The Oriental Insurance Company Ltd. Old Bus Stand, P.S. City Kotwali, Bilaspur, District Bilaspur Chhattisgarh.....Insurer Of Bullet No. C.G.15 C.V. 6885, District : Bilaspur, Chhattisgarh

... Respondent(s)

For Appellant(s)	: Mr. Amiyakant Tiwari, Advocate.
For Respondents No. 1 to 3	: Ms. Sonali Kesharwani, Advocate on behalf of Ms. Bhagwati Kashyap, Advocate.
For Respondent No. 4	: Mr. Pravesh Sahu, Advocate.
For Respondent(s) No. 5	: Mr. Sudhir Agrawal, Advocate.

Hon'ble Mr. Justice Amitendra Kishore Prasad

C A V Judgment

1. The present is owner appeal assailing the award dated 22.11.2017 passed by the learned 1st Upper Motor Accident Claims Tribunal, Bilaspur (C.G.) in Claim Case No. 497/2015, whereby the Claims Tribunal has awarded a compensation of Rs. 28,37,530/- with interest @ 6% per annum in favour of claimants/respondents No. 1 to 3 herein.



2. Brief facts of the case, is that, the present appellant is the registered owner of vehicle bearing registration No. C.G.-15-CV-6885 and has been held liable to pay compensation to the extent of Rs. 28,37,530/- along with interest @ 9% per annum from the date of application, in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by respondent/claimants Nos. 1, 2 and 3, who had claimed compensation of Rs. 46,05,000/- on account of the death of Late Shyam Bihari Jaiswal. As per claim averments, on 14.02.2015 the deceased was travelling as a pillion rider on a motorcycle driven rashly and negligently by respondent No. 4, and upon reaching near Khadan Bachav Kendra at Vishrampur, the said motorcycle was dashed by another motorcycle coming from the opposite direction, resulting in the deceased being thrown off and sustaining grievous injuries, to which he succumbed during treatment; the Learned Claims Tribunal framed four issues for adjudication, including an issue relating to breach of policy conditions, and thereafter, since the present appellant and respondent No. 4 were proceeded ex-parte, passed the impugned ex-parte award dated 22.11.2017, exonerating the insurance company from liability and fastening the entire liability upon the present appellant; it is submitted that the appellant, being a permanent resident of District Koriya while the proceedings were conducted at Bilaspur, could not effectively instruct his counsel in time and, therefore, failed to adduce rebuttal evidence, despite the fact that the vehicle was duly



insured and the driver was holding a valid and effective driving licence, resulting in no breach of policy conditions; the Learned Tribunal further failed to conduct the mandatory enquiry as contemplated under Section 168 of the Motor Vehicles Act, thereby failing to exercise its lawful jurisdiction and passing a paper decree, which has caused grave injustice to the bereaved widow and minor children of the deceased as well as to the present appellant; the Tribunal ought to have held the insurer/respondent No. 5 liable in view of Sections 147(5) read with 149(2) of the Motor Vehicles Act, 1988, especially when the insurer neither led any evidence to establish breach of policy conditions nor proved any conscious violation on the part of the insured, and also failed to examine the owner or driver as witnesses; consequently, the shifting of liability upon the present appellant is illegal and unsustainable. Although the appellant filed an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 for setting aside the ex-parte award dated 22.11.2017, the same was dismissed on 03.07.2018, compelling the present appeal challenging both the impugned award dated 22.11.2017 passed in Claim Case No. 497/2015 and the order dated 03.07.2018 passed in M.C.C. No. 23/2018.

3. Learned counsel for the appellant submits that the learned Tribunal has gravely erred in fastening liability upon the present appellant merely on the ground that neither a written statement was filed nor the driving licence was produced by the appellant



and the driver of the offending vehicle. He further submits that once the insurance company specifically pleaded breach of policy condition on the allegation that the driver did not possess a valid and effective driving licence, the burden squarely lay upon the insurer to prove such breach by leading cogent evidence, firstly by examining the driver of the offending vehicle and thereafter by examining the concerned RTO official. He further submits in the absence of any such evidence on record, non-filing of written statement or non-production of the driving licence by the driver cannot be held to be fatal. He further submits that though the appellant and the driver were proceeded ex parte and an application under Order 9 Rule 13 CPC was rejected, the objection of the insurance company regarding maintainability of the present appeal is misconceived, as the law does not provide for filing a miscellaneous appeal under Order 43 Rule 1(d) CPC against rejection of an application under Order 9 Rule 13 CPC. He further submits that Rule 240 of the Chhattisgarh Motor Vehicles Rules, 1994 does not provide for any appeal under Order XLIII of the Code of Civil Procedure, and in the absence of any specific statutory provision enabling the filing of an appeal under Order XLIII, no such appeal is maintainable, as the right to appeal is a creature of statute and cannot be assumed or inferred. He has placed reliance upon the judgment passed by the High Court of Madhya Pradesh in the matter of **Ram Shiromani Mishra vs. Shiv Mohan Singh**, reported in **AIR 1997 MP 202**, wherein the



Hon'ble Court had the occasion to consider an identical issue, namely, whether an appeal under Order XLIII Rule 1(d) of the Code of Civil Procedure would be maintainable against an order passed by the Motor Accident Claims Tribunal rejecting an application under Order IX Rule 13 of the Code. He further submits that the High Court of Madhya Pradesh, after examining the scheme of the Motor Vehicles Act and the relevant rules, categorically held in paragraph 10 of the said judgment that in the absence of a specific statutory provision providing for such an appeal, the same would not be maintainable. He has also placed reliance a judgment passed by this Court in the matter of ***Dinesh Kumar Golechha vs. Meena Bai Yadav, 2014 (3) CGLJ478.***

That, in view of the submissions made hereinabove, the objection raised by the Insurance Company deserves to be rejected outright. It is further submitted that the respondent No. 4 has placed on record the valid and effective driving licence of the driver by way of an application under Order 41 Rule 27 of the Code of Civil Procedure, which conclusively establishes that the driver possessed a valid and effective driving licence at the time of the accident, therefore, the appeal deserves to be allowed and the liability be shifted upon the Insurance Company.

4. Learned counsel for respondents No. 1 to 3/claimants submits that the claims Tribunal has awarded a sum of Rs. 28,37,530/- which is not in accordance with law and the same is required to be enhanced in accordance with law. She further submits that the



compensation awarded under other heads is also on lower side and needs to be enhanced. Hence, this appeal may be allowed by enhancing the compensation amount suitably.

5. Learned counsel for respondent No. 4 submits that he has placed on record the valid and effective driving licence of the driver by way of an application under Order 41 Rule 27 of the Code of Civil Procedure, which conclusively establishes that the driver possessed a valid and effective driving licence at the time of the accident, and supports the submission made by learned counsel for the appellant at bar, therefore, the liability should be on the part of the insurance company and as a result the driver and owner of the offending vehicle may be exonerated.
6. Learned counsel for respondent No. 5 submits that the present appeal has been preferred by the owner of the vehicle and is wholly misconceived and not maintainable in law. It is contended that, as evident from the memorandum of appeal, the challenge is directed against the order dated 03.07.2018 passed in MCC (Miscellaneous Civil Case) No. 23/2018, which order arose out of an application filed under Order IX Rule 13 of the Code of Civil Procedure, 1908. The said application, jointly filed by the owner (Rajesh) and the driver (Vivek), was dismissed, and against such dismissal the statutory remedy available was to prefer a Miscellaneous Civil Appeal under Order XLIII Rule 1(d) CPC before the competent court. Instead of availing the said remedy, the owner has erroneously invoked Section 173 of the Motor



Vehicles Act by filing the present appeal, which provision is applicable only against a final award and not against an order dismissing an application under Order IX Rule 13 CPC. It is further submitted that the appeal has been wrongly registered under the head of MAC by the Registry under the mistaken impression that it challenges the final award dated 22.11.2017, whereas no such challenge has been laid. In view of the clear legal position and the settled provision of law, including the judgment reported in 2023 (15) S.C.R. 841 (The Kaushik Mutually Aided v. Aminna Begum, decided on 01.12.2023), the present appeal under Section 173 of the Motor Vehicles Act is not tenable and is liable to be dismissed at the threshold. Accordingly, the application filed by respondent No. 5 seeking dismissal of the appeal deserves to be allowed.

7. I have heard learned counsel for the parties and perused the material available on the record.
8. Upon a bare perusal of the record, it emerges that the impugned order dated 3rd July, 2018, which is under challenge, pertains to the dismissal of an application questioning the earlier dismissal of the claim petition for non-prosecution on 22.11.2017 by the learned First Upper Motor Accident Claims Tribunal, Bilaspur, wherein an ex parte award was passed against the owner and driver of the offending vehicle. By the said award, the owner and driver were held jointly and severally liable to pay compensation quantified at Rs. 28,37,530/-, on the finding that the offending



vehicle was being plied in breach of the terms and conditions of the insurance policy, as the driver did not possess a valid and effective driving license. As the appellant and respondent No. 4, being the owner and driver of the offending vehicle, respectively, remained ex parte before the Tribunal, the ex parte award came to be passed against them. Aggrieved by the said ex parte award, the present appellant/owner preferred an application under Order IX Rule 13 read with Section 151 of the Code of Civil Procedure, which, however, was dismissed by order dated 03.07.2018 on the ground that the reasons assigned by the appellant were not found to be plausible. Consequently, the present appeal has been filed by the owner of the offending vehicle assailing both the award dated 22.11.2017 as well as the subsequent order dated 03.07.2018 passed by the First Upper Motor Accident Claims Tribunal, Bilaspur, contending inter alia that the application under Order IX Rule 13 CPC was dismissed without due consideration of the vital aspects of the matter and that the finding fixing liability upon the owner and driver on the ground of absence of a valid driving license suffers from serious infirmities.

9. In the present appeal, the driver of the offending vehicle bearing registration No. C.G.-15-CV-6885 has filed an application under Order 41 Rule 27 of the Code of Civil Procedure seeking to place on record an additional document obtained from the District Transport Officer, Baikunthpur. It is stated therein that the driver of the offending vehicle, namely Vivek Jaiswal, was holding a valid



driving license for the period commencing from 15.03.2013 and valid up to 13.03.2033, and, therefore, if the said document is taken into consideration, it clearly establishes that the driver of the offending vehicle, i.e. respondent No. 4, was duly and validly licensed on the relevant date, and consequently, it cannot be contended that the driver of the offending vehicle was not possessing a valid driving license at the time of the accident.

10. The sole basis on which liability has been fastened upon the owner of the offending vehicle is the finding that the driver of the said vehicle was not holding a valid driving license at the relevant point of time; however, it is pertinent to note that the owner and the driver were proceeded against ex parte before the learned Tribunal, and due to their absence, the driving license could not be produced or brought on record for consideration. Consequently, in the absence of any material placed on behalf of the owner and the driver, the learned Tribunal proceeded to draw an adverse inference and, on that premise alone, passed the impugned award fastening liability jointly and severally upon the driver and the owner of the offending vehicle, namely Vivek Jaiswal and Rajesh Soni, respectively.
11. The preliminary objection raised by the Insurance Company regarding the alleged non-maintainability of the present appeal under Section 173 of the Motor Vehicles Act, 1988 deserves to be rejected, inasmuch as the record clearly demonstrates that the challenge laid by the appellant is not confined merely to the order



passed under Order IX Rule 13 of the Code of Civil Procedure, but also squarely extends to the substantive award dated 22.11.2017 itself; therefore, the appeal is directed against the final adjudication determining the rights and liabilities of the parties, and in such circumstances, the statutory remedy of appeal under Section 173 of the Motor Vehicles Act is clearly available, rendering the present appeal legally maintainable.

12. Order 41 Rule 27 of the CPC reads as under:-

“27. Production of additional evidence in Appellate Court- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the



*decree appealed against was passed,
or]*

*(b) the Appellate Court requires any
document to be produced or any
witness to be examined to enable it to
pronounce judgment, or for any other
substantial cause,*

*the Appellate Court may allow such
evidence or document to be produced,
or witness to be examined.*

*(2) Wherever additional evidence is
allowed to be produced by an
Appellate Court, the Court shall record
the reason for its admission.”*

13. So far as the application filed under Order 41 Rule 27 of the Code of Civil Procedure by respondent No. 4, namely the driver of the offending vehicle, is concerned, it is evident that the driving license has now been brought on record after being duly obtained from the concerned District Transport Officer, Baikunthpur; therefore, in the interest of justice and for a complete and effective adjudication of the controversy, the matter warrants reconsideration, though strictly limited to the aspect of liability alone, without reopening or unsettling any other findings recorded in the case.

14. As the application preferred under Order 41 Rule 27 of the Code



of Civil Procedure has been allowed by this Court, the additional document, namely the driving licence, being germane and essential for the just and effective adjudication of the controversy involved in the present case, the matter warrants reconsideration by the learned Claims Tribunal so as to arrive at a fair and just conclusion. This Court finds that the learned Tribunal had fastened the liability upon the insurance company solely on the ground that the driver could not appear before it and had failed to produce his driving licence, and on that basis concluded that the vehicle was being driven without a valid licence. In view of the fact that this Court has permitted the production of the additional evidence in the form of the driving licence under Order 41 Rule 27 of the CPC, which goes to the root of the issue relating to liability, it is necessary that the matter be remanded for fresh consideration confined to the question of liability, after duly taking into account the said additional document, so as to ensure that justice is not defeated on technical grounds.

15. In the matter of ***Sanjay Kumar Singh vs. State of Jharkhand, (2022) 7 SCC 247*** while allowing an application under Order 41 Rule 27 of the CPC, the matter has been remanded back to prove the existence, authenticity and genuineness of driving license which reads as under:-

“9. Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand, we are of the opinion that while considering the application



for additional evidence, the High Court has not at all adverted to the aforesaid relevant consideration i.e. whether the additional evidence sought to be adduced would have a direct bearing on pronouncing the judgment or for any other substantial cause. As observed hereinabove, except sale deed e 29-12-1987, which as such was rejected, there was no other material available on record to arrive at a fair market value of the acquired land. Therefore, in the facts and circumstances of the case, the High Court ought to have allowed the application for additional evidence. However, at the same time, even after permitting to adduce the additional evidence, the applicant has to prove the existence, authenticity and genuineness of the documents including contents thereof, in accordance with law and for the aforesaid purpose, the matter is to be remanded to the Reference Court.”

16. Accordingly, while maintaining and leaving undisturbed all other findings and components of the impugned award, the matter is remanded back to the concerned Claims Tribunal solely for the limited purpose of reconsideration and fresh adjudication of the issue relating to liability, strictly in accordance with law, after affording due, fair, and adequate opportunity of hearing to the owner, the driver and the Insurer of the offending vehicle, namely the present appellant and respondent No. 4 & 5 herein, who were



arrayed as respondent Nos. 1, 2 and 3 respectively before the learned Claims Tribunal, so as to ensure that the principles of natural justice are fully complied with and the controversy is decided on its own merits.

17. In view of the application preferred under Order 41 Rule 27 of the Code of Civil Procedure having been duly considered and allowed by this Court, it is held that the additional evidence sought to be produced is necessary for the just and effective adjudication of the controversy involved, and permitting the same would subserve the ends of justice without causing prejudice to any of the parties; accordingly, the application stands allowed and the additional material is taken on record to be considered in accordance with law at the appropriate stage.
18. The cross-objection preferred by the Insurance Company, upon careful consideration of the record and the submissions advanced, is found to be wholly devoid of substance and merit; accordingly, the same fails to disclose any justifiable ground warranting interference by this Court and is, therefore, rejected and dismissed.
19. The Registry is hereby directed to return the original driving licence of respondent No. 4, namely Vivek Jaiswal, which was filed along with the covering memo dated 08.10.2025, after retaining on record a duly attested photocopy thereof, such photocopy having been obtained after securing the endorsement of respondent No. 4 on the same, so as to ensure proper



compliance with procedural requirements while safeguarding the authenticity and completeness of the judicial record.

20. The appellant herein and respondent No. 4, who were arrayed as respondent Nos. 1 and 2 before the learned Claims Tribunal, are hereby directed to produce and file the original driving licence before the learned Motor Accident Claims Tribunal for due verification and consideration; accordingly, the matter stands remanded to the learned Motor Accident Claims Tribunal, Bilaspur, for proceeding further in accordance with law, and all concerned parties are directed to remain present and appear before the learned Claims Tribunal on 9th February, 2026, on which date the Tribunal shall take up the matter for appropriate orders and further proceedings.
21. The Registry is hereby directed to transmit, without any delay and with due promptitude, the complete and original record of the learned Claims Tribunal forthwith, ensuring that the same is properly compiled, duly authenticated, and sent in accordance with the prescribed procedure so as to facilitate expeditious consideration and further proceedings in the matter.
22. It is clarified, for the avoidance of any ambiguity, that the present order of remand is being passed strictly and exclusively for the limited purpose of fresh adjudication of the issue relating to liability alone and for no other aspect whatsoever of the matter; accordingly, the learned Claims Tribunal concerned is specifically directed to confine and restrain itself while reconsidering the



liability aspect, which pertains solely to Issue No. 2 as framed and decided in the award dated 22.11.2017, and shall not reopen, reappraise, or interfere with any other findings or conclusions recorded in the said award.

23. Accordingly, all the parties concerned are hereby directed to extend full and effective cooperation in the conduct of the proceedings so as to facilitate their smooth and uninterrupted progress, and the learned Claims Tribunal is expected to adjudicate and dispose of the matter with due promptitude and in an expeditious manner, particularly keeping in view the fact that the award in question was passed as far back as 22.11.2017 and that any further delay would defeat the ends of justice.

24. With this observation and direction, the appeal is disposed of.

Sd/-

(Amitendra Kishore Prasad)
Judge

The date when the judgment is reserved	The date when the judgment is pronounced	The date when the judgment is uploaded on the website	
		Operative	Full
6.11.2025	20.1.2026	-	20.1.2026