

HIGH COURT OF MADHYA PRADESH**BENCH AT GWALIOR****SINGLE BENCH****BEFORE JUSTICE S.K.AWASTHI****Misc. Appeal No.1210/2014**

IFFCO Tokyo General Insurance Co.Ltd.

Versus

Ghasiram and others

Shri S.N.Gajendragadkar, learned counsel for the appellant.
Shri S.S.Rajput, learned counsel for the respondents No.1 to 5.
Shri R.K.Singh Kushwaha, learned counsel for the respondent
No.6.

J U D G M E N T**(04.11.2016)**

This appeal by Insurance Company takes exception of the portion of the award dated 28.8.2014 passed in Claim Case No.02/2013 by Member, Motor Accident Claims Tribunal (for brevity, the 'Tribunal'), Sironj District Vidisha, whereby the appellant/Insurance Company has been hastened with the liability to satisfy the claim and make payment to the claimants. However, the liberty has been extended to the Insurance Company to recover the same from the vehicle owner and driver. It is this direction of pay and recover, which is assailed by way of present appeal.

2. The facts which lead to filing of claim case before the Tribunal are that on 19.7.2011, at around 8.45 pm, Lajwanti, the wife of the claimant/respondent No.1 Ghasiram, along with her daughter Preeti was going to natural call when the offending vehicle Sujuki

Motorcycle having registration No. MP40-MF-1208 rashly and negligently driven by driver Dharmendra Singh, dashed the wife of respondent No.1, due to which she succumbed to the head injury during treatment in hospital. The incident was duly reported to the Police Station Pathariya and FIR bearing Crime No.98/2011 was registered for the commission of offence punishable under Sections 279, 337, 338 and 304-A of Indian Penal Code, 1860 (for brevity, the 'IPC'). The police later filed charge sheet before the competent court where the trial is pending.

3. The family members/dependents of deceased Lajwanti filed the claim application under Section 166 of the Motor Vehicles Act, 1988 (for brevity, the 'Act'), claiming compensation amounting to Rs.19,58,000/- against the non-applicants as jointly and severally, which was decided vide impugned award dated 28.8.2014. Being aggrieved by the finding recorded by the Tribunal, appellant IFFCO Tokyo General Insurance Company Limited has filed the instant appeal.

4. The primary contention of the appellant is that the Tribunal committed error in applying the principle of pay and recover from the owner as there was a breach of policy due to the fact that the driver of the offending vehicle did not had valid driving licence at the time of accident. Accordingly, the award deserves to be modified by wholly exonerating the appellant/insurance company. In support of the contention, the insurance company has placed reliance on the judgments in the

cases of **United India Insurance Co.Ltd. vs. Gian Chand and others, 1997 ACJ 1065; New India Assurance Co., Shimla vs. Kamla and others (2001) 4 SCC 342; National Insurance Co. Ltd. vs. Swaran Singh and others, 2004 ACJ 1; Malla Prakasarao vs. Malla Janaki and others, (2004) 3 SCC 343; Sardari and others vs. Sushil Kumar and others, 2008 ACJ 1307; and, National Insurance Co. Ltd. vs. Kaushalya Devi and others, 2008 ACJ 2144.**

5. The respondents on the other hand have supported the impugned award and submitted that the same is based on some reasoning and is in accordance with the provisions of law.

6. Having examined the contentions of the parties, according to me, the legal position canvassed by the Apex Court in the case of **Jawahar Singh vs. Bala Jain, (2011) 6 SCC 425**, will determine the fate of this case. The Apex Court in the case of **Jawahar Singh (supra)** held that in the case of absence of valid driving licence the insurance company cannot be immune from application of pay and recover provision. The relevant portion of the judgment is reproduced below :-

"10. On behalf of Respondent No.6, National Insurance Company Ltd., it was sought to be urged that at the time of the accident, the motorcycle was being driven in breach of the terms and conditions of the Insurance Policy and, accordingly, the Insurance Company could not be held liable for making payment of the compensation awarded by the Motor Accident Claims Tribunal. Apart from the fact that Jatin, who was riding the motorcycle, did not have a valid driving licence, it had also been established that he was a minor at the time of the accident and consequently the Insurance Company had been rightly relieved of the liability of payment of compensation to the Claimants and such liability had been correctly fixed on the

owner of the motorcycle, Jawahar Singh.

11. It has been well settled that if it is not possible for an awardee to recover the compensation awarded against the driver of the vehicle, the liability to make payment of the compensation awarded fell on the owner of the vehicle. It was submitted that in this case since the person riding the motorcycle at the time of accident was a minor, the responsibility for paying the compensation awarded fell on the owner of the motorcycle. In fact, in the case of *Ishwar Chandra Vs. Oriental Insurance Co. Ltd.* [(2007) 3 AD (SC) 753], it was held by this Court that in case the driver of the vehicle did not have a licence at all, the liability to make payment of compensation fell on the owner since it was his obligation to take adequate care to see that the driver had an appropriate licence to drive the vehicle.

12. Before the Tribunal reliance was also placed on the decision in the case of *National Insurance Co. Ltd. Vs. G. Mohd. Vani & Ors.* [2004 ACJ 1424] and *National Insurance Co. Ltd. Vs. Candingeddawa & Ors.* [2005 ACJ 40], wherein it was held that if the driver of the offending vehicle did not have a valid driving licence, then the Insurance Company after paying the compensation amount would be entitled to recover the same from the owner of the vehicle. It was submitted that no interference was called for with the judgment and order of the High Court impugned in the Special Leave Petition.

13. Having heard learned counsel for the respective parties, we are inclined to agree with the Respondents that this is not a case for interference in view of the fact that admittedly the motorcycle belonging to the Petitioner was being driven by Jatin, who had no licence to drive the same and was, in fact, a minor on the date of the accident. While issuing notice on 2nd April, 2009, we had limited the same to the question regarding liability to pay compensation on account of contributory negligence by the deceased who was riding a scooter, in causing the accident to happen.

14. We cannot shut our eyes to the fact that it was Jatin, who came from behind on the motorcycle and hit the scooter of the deceased from behind. The responsibility in causing the accident was, therefore, found to be solely that of Jatin. However, since Jatin was a minor and it was the responsibility of the Petitioner to ensure that his motorcycle was not misused and that too by a minor who had no licence to drive the same, the Motor Accident Claims Tribunal

quite rightly saddled the liability for payment of compensation on the petitioner and, accordingly, directed the Insurance Company to pay the awarded amount to the awardees and, thereafter, to recover the same from the Petitioner. The said question has been duly considered by the Tribunal and was correctly decided. The High Court rightly chose not to interfere with the same."

7. In view of the discussion made above, upon consideration of the fact that the violation of Section 149 of the Motor Vehicles Act, 1988 has not been canvassed, the appeal of the insurance company is dismissed, which has been filed for seeking exoneration from the liability under pay and recover principle.

8. Consequently, the appeal is dismissed. Parties to bear their respective cost.

(S.K.Awasthi)
Judge.

(yogesh)