IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE ACHAL KUMAR PALIWAL

MISC. APPEAL No. 902 of 2023

BETWEEN:-

PRADEEP SINGH PARIHAR S/O SHRI BRIJMOHAN SINGH PARIHAR, AGED ABOUT 40 YEARS, OCCUPATION: BUS OPERATOR R/O GRAM POST MOTIGAW KOTWALI TAH GOPADBANAS DISTRICT SIDHI M.P. (MADHYA PRADESH)

.....APPELLANT

(BY SHRI S.K PANDEY, ADVOCATE)

AND

1. **SMT. RUBINA W/O MOHD. AKHTAR RASOOL, AGED ABOUT 29 YEARS, BICHHIYA REWA POLICE STATION CITY KOTWALI REWA DISTRICT REWA (MADHYA PRADESH)**

2. **GUL MOHD. S/O NIZAM KHAN, AGED ABOUT 77 YEARS, RESIDENT OF BICHHIYA REWA POLICE STATION CITY KOTWALI REWA DISTRICT REWA (MADHYA PRADESH)**

3. **SADRUNNISHA D/O GUL MOHD., AGED ABOUT 70 YEARS, RESIDENT OF BICHHIYA REWA POLICE STATION CITY KOTWALI REWA DISTRICT REWA (MADHYA PRADESH)**

4. **AKHATRI KHAN D/O LATE AKHTAR RASOOL, AGED ABOUT 2 YEARS, OCCUPATION: (MINOR) THROUG ITS NATURAL GUARDIAN (MOTHER) RUBINA W/O MOHD. AKHTAR RASOOL RESIDENT OF BICHHIYA REWA POLICE STATION CITY KOTWALI REWA DISTRICT REWA (MADHYA PRADESH)**

5. SUKHNANDAN PRAJAPATI S/O RAMLAL PRAJAPATI, AGED ABOUT 27 YEARS, OCCUPATION: DRIVER R/O VILLAGE HARIHARPUR, POST BANJARI, P.S. SARAI, DISTRICT SIDHI (MADHYA PRADESH)

6. THE NATIONAL INSURANCE COMPANY LIMITED THROUGH ITS LOCAL BRANCH OFFICE AT REWA OFFICE AT REWA BEHIND SAVITRI NURSING HOME SHYAM COMPLEX OPP. NEW BUS STAND ALLAHABAD ROAD REWA DISTRICT REWA (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI PRABHANSHU SHUKLA ADVOCATE)

RESERVED ON : 1.03.2024

PRONOUNCED ON : 23. 04.2024

This appeal having been heard and reserved for orders and on this day the Court passed the following:-

ORDER

This appeal has been filed by the appellant under section 173 (1) of the Motor Vehicles Act, 1988 against the award dated 15.11.2022 passed in MACC No.629/2018 passed by IInd MACT, Rewa, seeking aside principle of pay and recover applied by the Tribunal.

2. Learned counsel for the appellant, after referring to para 14 of impugned award, submits that Tribunal has returned findings without taking into consideration deposition of non-applicant witness Pratap Singh. It is also urged that para 5 of non-applicant witness has remained uncross examined. Therefore, relying upon **Rishi Pal Singh**

Vs. New India Assurance Co. Ltd. & Others, 2022 Live Law SC 646, it is submitted that appeal filed by the appellant be allowed and principle of pay and recover applied by the Tribunal be set aside.

3. Learned counsel for the respondent insurance company submits that Tribunal, after taking into consideration overall evidence on record and after examining the witnesses has returned findings and hence, no interference in required in the same. Therefore, appeal filed by the appellant be dismissed.

4. I have heard learned counsel for the parties & perused the record of the case.

5. Perusal of the record of the case reveals that in the instant case, learned Tribunal has applied the principle of pay and recover on the ground that it was found that driver of offending vehicle was not having any valid and effective driving licence at the time of accident while driving the vehicle.

6. With respect to issue involved in the case, it would be appropriate to reproduce testimony of owner of offending vehicle i.e Pradeep Singh, which is as follows:-

मैं प्रदीप सिंह परिहार तनय वृजमोहन सिंह परिहार उम्र 46 वर्ष पेशा–ग्राम मोटिगमा तहसील गोपदबनास जिला सीधी म.प्र. का निवासी हूं व निम्नलिखित कथन कशपथपूर्वक करता हूं किः–

1. यह कि शपथपूर्वक कथन करता हूं कि आवेदन में दर्ज वाहन बस का पंजीकृत वाहन स्वामी हूं।

2. यह कि शपथपूर्वक कथन करता हूं कि मेरे वाहन से कोई दुर्घटना कारित नहीं हुई है क्लेम राशि पाने के लिए आवेदकगण द्वारा मेरे वाहन के विरूद्ध थाने में झूठी शिकायत कर धारा 166 मो. व्ही. एक्ट अधिनियम के तहत माननीय न्यायालय के समक्ष आवेदन प्रस्तुत किया गया है।

3. यह कि शपथपर्वूक कथन करता हूं कि कोई भी अनुतोष आवेदक मुझे अनावेदक से पाने के अधिकारी नहीं है।

4. यह कि शपथपूर्वक कथन करता हूं कि मेरे वाहन बस का वैध परमिट वैध बीमा राजिस्ट्रेशन व वैध चालक व फिटनेस व ड्राविंग लाईसेंस प्रस्तुत किये गये हैं।

5. मेरे द्वारा प्रकरण में दुर्घटना कारित वाहन का रजिस्ट्रेशन जारी दिनांक 04.10.2011 की छायाप्रति जो मूल प्रकरण पृष्ठांकित करायी गयी है जो प्रडी. 1 सी है। दुर्घटनाकारित वाहन का अनुज्ञा पत्र दिनांक 13.06.2017 से 30.06.2017 तक वैध व प्रभावी है मूल से पृष्ठांकित कराकर प्रस्तुत किया गया है जो प्रडी. 2 सी है। दुर्घटना कारित वाहन का बीमा दिनांक 25.01.2017 से 27.07.2017 तक वैध के संबंध में मूल दस्तावेज से पृष्ठांकित कराकर प्रस्तुत किया गया है जो प्रडी. 3 सी है। उक्त वाहन का फिटनेस वैधता दिनांक 16.10.2016 से 15.10.2017 तक के संबंध में मूल दस्तावेज से पृष्ठांकित कराकर प्रस्तुत किया गया है जो प्रडी. 4 सी है। उक्त वाहन के फिटनेस की द्वितीय प्रति प्रडी. 5 सी है। मेरे द्वारा वाहन चालक द्वारा दिये गये चालक लाइसेंस की फोटोप्रति प्रभावी दिनांक 05.11.2015 से 04.11.2018 तक भारी वाहन चलाने का वैध व प्रभावी लाइसेंस था जिसकी फोटोप्रति प्रस्तुत की जा रही है।

<u>प्रतिपरीक्षण द्वारा श्री ऋषि तिवारी अधिवक्ता वास्ते अनावेदक क्रमांक 3:–</u>

6. मैं दुर्घटनाकारी बस का मालिक हूं। मेरे वाहन का नंबर एमपी 17 पी 0509 है। मुझे दुर्घटना की तारीख याद नहीं है। मेरी गाडी का चालक सुखनंदन प्रजापति था। स्वतः कहा कि मेरे वाहन से कोई दुर्घटना घटित नहीं हुयी। यह कहना गलत है कि दुर्घटना दिनांक को वाहन चालक सुखनंदन के पास ट्रासंपोर्ट वाहन चलाने का वैध लाइसेंस नहीं था। स्वतः कहा कि चालक द्वारा लाइसेंस की फोटो प्रति दी गयी थी। मैंने वाहन चालक के लाइसेंस का पर्टिकुलर सीधी आरटीओ से जारी नहीं करवाया है। यह कहना गलत है कि मैं क्षतिपूर्ति के दायित्व से बचने के लिये आज झूठा कथन कर रहा हूं।

7. <u>प्रतिपरीक्षण द्वारा श्री निकेत अग्निहोत्री अधिवक्ता वास्ते आवेदक:–</u>

कुछ नहीं।

पुनः परीक्षण – कुछ नहीं।

7. From perusal of para 5 of deposition of non applicant Pradeeep Singh, it is evident that he has filed photocopy of driving licence, which was given to him by driver of offending vehicle and it was effective from 5.11.2015 to 4.11.2018. Perusal of non applicant insurance company's witness K.K. Dwivedi and Chetan and documents Ex.D/1 to D/5 reveals that Sukhnandan, Driver of offending vehicle was not having any valid and effective driving on the date of accident ie. 24.6.2017.

8. Crux of learned counsel for the appellant's arguments is that Sukhnandan, Driver of offending vehicle had given him photocopy of his driving licence and he was not required to verify the same as he was competent to drive the offending vehicle.

9. With respect to issue involved in the case, facts and principle laid down in Rishi Pal Singh (Supra) are required to be referred to. Relevant paras of above judgment are being reproduced as under:-

2. The brief facts are that the truck owned by the appellant met with an accident on 27.04.2015. The appellant appeared as R2W1. He deposed in his affidavit Ex. R2W1/A that before employing the driver, he had taken his driving test and that he was driving the vehicle satisfactorily. In cross examination, he stated that the driver was employed with him for 3 years before the date of

the accident. He reaffirmed in the cross-examination that he had taken driving test of the driver before his employment. He produced his driving license as Ex. R2W1/3. Though he deposed that the driving license was obtained from the driver and it was issued from Nagaland, but no such license was produced on record. Both the Courts have held that the owner has alleged that the driver had a driving license from Nagaland but the same was not produced and therefore, the Insurance Company is entitled to recover the awarded amount from the owner.

3. Before this Court, learned counsel for the appellant relied upon United India Insurance Co. Ltd v. Lehru & Ors.2 (2003)3 SCC 338 as also three-Judge Bench judgment reported as National Insurance Co. Ltd. v. Swaran Singh and Others (2004) 3 SCC 29 that the owner has no mean to verify the genuineness of driving license produced before him, provided that the owner finds the driver is competent to drive the vehicle. Hence, once the appellant has deposed that he had taken test of the driver before employing him, he has taken sufficient precaution before employment. Therefore, there could not be any direction to recover the amount from the appellant.

5. Thus, it was the claimant alone who relied upon the license issued by Licensing Authority Mandi. The same was not found to be genuine. The statement of the owner, that the license was from Nagaland is without any supporting documents and is thus meaningless. The fact remains, having appointing driver after

taking test, the appellant was not expected to make enquiries from the licensing authority as to whether driving license shown to him is valid or not.

7. To appreciate the contention of the appellant, the observations of this Court in Lehru (supra) have been reproduced as under:

"20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that insurance companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The insurance company would not then be absolved of liability. If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly, even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured.

This is the law which has been laid down in Skandia [(1987) 2 SCC 654] , Sohan Lal Passi [(1996) 5 SCC 21 : 1996 SCC (Cri) 871] and Kamla [(2001) 4 SCC 342 : 2001 SCC (Cri) 701] cases. We are in full agreement with the views expressed therein and see no reason to take a different view."

8. The issue has been examined by a larger Bench in Swaran Singh (supra) wherein it was argued that the observations in Lehru were in conflict with the earlier judgment in New India Assurance Co. v. Kamla and Ors (2001 4 SCC 342 This Court held as under:

"92. It may be true as has been contended on behalf of the petitioner that a fake or forged licence is as good as no licence but the question herein, as noticed hereinbefore, is whether the insurer must prove that the owner was guilty of the wilful breach of the conditions of the insurance policy or the contract of insurance. In Lehru case [(2003) 3 SCC 338 : 2003 SCC (Cri) 614] the matter has been considered in some detail. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of the law in terms whereof the insurer is to establish wilful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or for the owners to be absolved from any liability whatsoever. We would be dealing in some detail with this aspect of the matter a little later.

xxx xxx xxx

99. So far as the purported conflict in the judgments of Kamla [(2001) 4 SCC 342 : 2001 SCC (Cri) 701] and Lehru [(2003) 3 SCC 338 : 2003 SCC (Cri) 614] is concerned, we may wish to point out that the defence to the effect that the licence held by the person driving the vehicle was a fake one, would be available to the insurance companies, but whether despite the same, the plea of default on the part of the owner has been established or not would be a question which will have to be determined in each case.

100. This Court, however, in Lehru [(2003) 3 SCC 338 : 2003 SCC (Cri) 614] must not be read to mean that an owner of a vehicle can under no circumstances have any duty to make any enquiry in this respect. The same, however, would again be a question which would arise for consideration in each individual case."

9. Similar question again came up for consideration before a three-Judge Bench in a judgment reported as Pappu and Ors. v. Vinod Kumar Lamba and Anr (2018) 3 SCC 208 wherein it was held that the onus would shift on the Insurance Company after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorized by him to drive the vehicle and was having a valid driving license at the relevant time. The valid driving license is the

license which is produced before the owner. This Court held as under:

> ***"12. This Court in National Insurance Co. Ltd. [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] 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.***
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> ***xxx xxx xxx***
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> ***17. This issue has been answered in National Insurance Co. Ltd. [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] In that case, it was contended by the insurance company that once the defence taken by the insurer is accepted by the Tribunal, it is bound to discharge the insurer and fix the liability only on the owner and/or the driver of the vehicle. However, this Court held that even if the insurer succeeds in***

establishing its defence, the Tribunal or the court can direct the insurance company to pay the award amount to the claimant(s) and, in turn, recover the same from the owner of the vehicle. The three-Judge Bench, after analysing the earlier decisions on the point, held that there was no reason to deviate from the said wellsettled principle. In para 107, the Court then observed thus: (SCC p. 340)

"107. We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued, despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it had not been able to do so, the insurance company may initiate a separate action therefor against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given an opportunity to defend

at all. Such a course of action may also be resorted to when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage."

10. The owner of the vehicle is expected to verify the driving skills and not run to the licensing authority to verify the genuineness of the driving license before appointing a driver. Therefore, once the owner is satisfied that the driver is competent to drive the vehicle, it is not expected from the owner thereafter to verity the genuineness of the driving license issued to the driver.

10. Thus, if deposition of Pradeep, owner of offending vehicle is considered and examined in the light of facts and principles of Rishi Pal Singh (Supra), then, it is evident that Pradeep, owner of offending vehicle has nowhere mentioned/deposed in his testimony and has not produced any evidence to establish that before employing Sukhnandan, as driver of offending vehicle, he verified the skills of driver Sukhnandan and thereby, he satisfied himself that Sukhnandan is competent to drive the vehicle. Further, there is nothing on record to show that when Pradeep Singh Parihar employed driver Sukhnandan on offending vehicle and since when he was driving the same, prior to present accident.

11. Therefore, principles of law laid down in Rishi Pal Singh (Supra) do not help the appellant in any manner/way.

12. Further, perusal of paras 13 to 16 of impugned award reveals that learned Tribunal has returned its findings after taking into consideration submission of learned counsel for the appellant and also pronouncements relied upon by the learned counsel for the appellant.. In this Court's considered opinion, learned tribunal has returned its findings, which are justified by evidence on record and no interference is required in same.

13. Hence, in view of discussion in the forgoing pars, no grounds are made out to interfere in the findings recorded by the Tribunal.

14. Resultantly, appeal filed by the appellant is ***dismissed***.

(ACHAL KUMAR PALIWAL)
JUDGE

Hashmi