

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Miscellaneous Appellate Jurisdiction)
M.A. No.219 of 2020

Iffco Tokio General Insurance Co. Ltd. having office at 4th Floor,
Office No.401 and 402, Eastern Mall, Near Dangratoli chowk,
Lalpur, Ranchi, Head Office 42A Shakespleme Saakhi Exmess
Tower, Kolkata West Bengal through its Authorized signatory,
Vijay Kumar Devgan, son of Surindra Kumar, aged about 40
years, working as Deputy General Manager, having office at 4th
Floor, Office No.401 and 402, Esatern Mall, Near Dangratoli
Chown, P.O. Lalpur, P.S. Lalpur, District-Ranchi

.... Opposite Party No.3/ Appellant(s)
Versus

1. Hemanti Devi, wife of Late Dinesh Kumar Choudhary.
2. Priti Kumari, daughter of Late Dinesh Kumra Choudhary
3. Amit Kumar, son of Late Dinesh Kumar Choudhary
4. Puja Kumari, daughter of late Dinesh Kumar Choudhary
Respondent Nos. 2, 3 and 4 being minor and represented through
their mother and natural guardian Hemanti Devi(respondent
No.1)
5. Jaymani Devi, wife of Naresh Choudhary
6. Naresh Choudhari, son of late Ratho Chouhdary
All residents of villae Balidih Tola, P.O. Balidih, P.S. Balidih,
District, Bokaro

.... Claimants/Respondents

7. Sikandar Kumar Singh, son of Satya Narayan Singh resident of
Chalana, P.O. Bishnugarh, P.S. Bishnugarh, District
Hazaribagh(Jharkhand) (owner of Trailer bearing Reg. No.NL-
02D-9751)
8. Shankar Bediya, son of not known to the appellant, C/o Sikandar
Kumar Singh, resident of Chalanga, P.O. Bishnugarh, P.S.
Bisnhugarh, District Hazaribagh(Jharkhand)
(Driver of Trailor bearing Reg. No.NL-02D-9751)

.... Opposite parties/Respondent(s)

PRESENT

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellants	: Mr. Bibhash Sinha, Advocate
For the Resp. Nos.1-6	: Mr. Nikhil Ranjan, Advocate
For the O.P. No.7	: Mr. Nilesh Kumar, Advocate
	Ms. Khusboo Kumari, Advocate

JUDGMENT

C.A.V. ON 12/12/2023

Pronounced On 11 / 03/2024

Heard learned counsel for the parties.

2. This miscellaneous appeal has been preferred on behalf of the appellant-Iffco Tokio General Insurance Co. Ltd. for setting aside the award dated 28.11.2019 passed by Sri Mohammad Shakir, learned

Principal District Judge-cum-MACT, Bokaro, in Motor Accident Claim Case No.16 of 2018, whereby and whereunder the learned Tribunal has allowed the claim of the claimants/respondent Nos.1-6 to pay sum of Rs.12,19,132/- along with interest @ 7 % per annum from the date of institution of claim i.e. 21.02.2018 till its realization within 30 days from the date of the order.

3. Learned counsel for the appellant has submitted that as per the order of this Hon'ble Court dated 07.09.2021 passed in L.A. No.4320 of 2021, the appellant had deposited the principal award amount along with interest before the Registrar General, which has also been permitted to be withdrawn by the claimants vide order No.4 dated 16.01.2023 passed in I.A. No.7578 of 2022.

4. Learned counsel for the appellant has challenged the award mainly on the grounds that the learned Tribunal has failed to appreciate the initial onus to prove all the vehicular documents lies upon the owner-cum-insured to specifically pleaded but in the instant case, the insured has not produced the valid and effective permit of the vehicle on the date of accident, hence, the insurance company is entitle for right of recovery.

5. Per contra, learned counsel appearing on behalf of respondent No.7 has submitted that she could not contact with the respondent No.4 nor bring on record of any relevant documents. Moreover, there is no issue in the impugned award regarding violation of terms and conditions of the policy unless the specific issue is settled and decided on the basis of evidence produce by the party. Such type of right of recovery should not be given to the insurance company specifically when the matter was raised at the appellate stage for the first time, hence, this case is fit to be remitted back to the concerned Tribunal for the purpose of deciding the issue raised by the appellant, so that justice may be done.

6. I have gone through the impugned judgment/award in the light of contentions raised on behalf of the both sides, it appears that Sikandar Kumar Singh O.P. No.1/R-7 registered owner of the offending vehicle bearing Reg. No. NL-02D-9751, in his written statement has taken plea that at the time of relevant accident, the offending vehicle was insured with appellant- Iffco Tokio General Insurance Co. Ltd vide insurance policy No.5098141 w.e.f 07.03.2017

to midnight on 06.03.2018. The driver of the vehicle was holding valid and effective driving license vide driving license No.JH022-0020058833 valid up to 27.12.2019, as such the insurance company is liable to satisfy the compensation amount claimed by the claimants.

7. Per contra, the insurance company-Iffco Tokio General Insurance Co. Ltd in its written statement has taken ground for violation of terms and conditions of the policy due to absence of valid driving license of the driver of the offending vehicle and also absence of permit.

8. It appears that all on the basis of pleadings of the parties, the learned Tribunal has settled the following issues for adjudication:

(i) Whether this claim petition is without any cause of action and same is liable to be dismissed:

(ii) Whether this claim petition is bad for miss-joinder or non-joinder of necessary party?

(iii) Whether the death of Dinesh Kumar Choudhary was caused on 18.12.2017 at about 6:30 pm near Chitarpur Petrol Pump, P.S. Rajrappa, Ramgarh in road accident by the offending tailor bearing Reg. No.NL02D-9751 or not?

(iv) What was the age, occupation and monthly income of the deceased Dinesh Kumar Choudhary at the time of this death?

(v) Whether at the time of accident, the offending Tractor bearing Reg. No.NL02D-9751 was insured with M/s Iffco Tokio General Insurance Co. Ltd and its Insurance Policy No.50958141 was valid or not?

(vi) Whether the claimants are entitled for compensation for the accidental death of deceased Dinesh Kuar Choudhary or not? If yes, then what would be the quantum of compensation and who would pay the same?

(vii) Whether claimants are entitled for any other relief(s)?

9. It appears that learned Tribunal has taken issue Nos.4, 6 and 7 together for adjudication out of which issue No.6 pertains to question as to from whom the compensation amount has to be paid but there is not discussion about any violation of terms and conditions of the policy as has been raised by the appellant in his written statement itself. There is no anomaly regarding assessment of quantum of compensation and the interest component as the same

has not been challenged either by the appellant or the respondent Nos.1-6.

10. It is also settled law that the use of vehicle in a public place without permit (if required) is fundamental statutory infraction and amounts to violation of terms and conditions of the insurance policy as has been held in the case of *Amrit Paul Singh and Anr. Vs. TATA AIG General Insurance Co. Ltd.* reported in (2018) 7 SCC 558, paragraph No.24 of which reads as under:-

*“24.In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in *Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733]* and *Lakhmi Chand [Lakhmi Chand v. Reliance General Insurance, (2016) 3 SCC 100 : (2016) 2 SCC (Civ) 45]* in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the “Tripitaka”, that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a*

permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the Tribunal as well as the High Court had directed that the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] and other cases pertaining to pay and recover principle."

11. In the present case, it would be highly prejudicial to the interest of justice to presume that non-production of permit would entail the consequence of recovery of award amount from the insured, particularly where the appellant has fully contested the case before the learned Tribunal but never filed any application for production of permit by the insured for processing the claim amount. Even no issue was settled by the learned Tribunal regarding violation of terms and conditions of the policy and the appellant has not raised any objection at the time of settlement of issue or at any stage of the trial before the Tribunal.

12. In view of the aforesaid circumstances, the dispute is only between the insurer and insured regarding violation of terms and conditions of the policy. Therefore, it is directed that the matter to be remitted back to the learned Tribunal for framing issue as to whether there is any violation of terms and conditions of the policy by the insured/owner of the offending vehicle and decide the same.

13. The decision on the above issue will be taken after giving opportunity to both parties to lead their evidence and to be decided on merits and appropriate order may be passed regarding right of recovery of the appellant.

14. In view of the aforesaid discussion and reasons the impugned award is set aside to the above extent only and the matter is remitted back to the concerned Tribunal for fresh decision on the issue as pointed out above.

15. Accordingly, this appeal is disposed off.

16. Let a copy of this order be sent to court below for information and needful.
17. Pending I.As. if any, accordingly disposed off.

(Pradeep Kumar Srivastava, J.)

High Court of Jharkhand, Ranchi

Date 11/03/2024

Pappu-N.A.F.R./