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**(2009) 11 JH CK 0008**  
**Jharkhand High Court**  
**Case No:** None

Om Prakash Barnwal

APPELLANT

Vs

Sudha Devi and Others

RESPONDENT

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**Date of Decision:** Nov. 18, 2009

**Hon'ble Judges:** M.Y. Eqbal, J; Jaya Roy, J

**Bench:** Division Bench

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**Judgement**

M.Y. Eqbal, J.

This appeal, by the owner of the vehicle, is directed against the award dated 11.3.2008 passed by Motor Accident Claims

Tribunal, Koderma in Claim Case No. 4/2006, whereby he has awarded a sum of Rs. 5,85,500/- by way of compensation and held that the

appellant is jointly liable to pay the compensation amount.

2. The facts of the case lie in a narrow compass.

The claimants-respondents are the widow, son and daughter of the deceased Ram Kumar Modi. It appears that while the deceased was returning

to his house on a motorcycle, a truck bearing registration No. BR 1G 8283 dashed the deceased, as a result of which he sustained injury and was

brought to the hospital. While the deceased was coming to hospital at Ranchi he died in the way. The appellant, owner of the vehicle, filed a

written statement stating, inter alia, that the above truck was Insured with the respondent-United India Insurance Company and the said vehicle

was being driven by a competent driver having a valid driving licence No. 82/2001. The appellant-owner of the vehicle, therefore, contended that

the Insurance Company is liable to pay the compensation.

3. The respondent-Insurance Company, on the other hand, took a defence that If Is the primary duty of the owner of the vehicle to produce the document including the valid driving licence of the driver driving the vehicle. The Tribunal held that the owner of the vehicle had not met the challenge of the insurance Company by producing the driving licence of the driver nor the assertion made in the written statement about the driving licence will exonerate the owner of the vehicle to prpve the driving licence. Since the onus to prove that the driver was holding a valid driving licence could not be discharged by the owner of the vehicle, the Tribunal held that the owner is liable to pay the compensation amount.

4. In the instant appeal, a separate application has been filed by the appellant being I.A. No. 102/2009 under Order 41, Rule 27 CPC with a prayer to allow the appellant to lead additional evidence and prove the original copy of the driving licence of the driver driving the vehicle at the relevant time. The original driving licence has been filed along with the application. In the said application it is stated by the appellant that in the written statement it was specifically pleaded that the driver was holding a driving licence being licence No. 84/2001 but after filing of the written statement the driver left the services of the appellant and in spite of several requests the driving licence was not handed over for filing it before the Tribunal. However, after much efforts the appellant managed to get the original copy of the driving licence during pendency of the present appeal.

5. We have heard Mr. A.K. Das, learned Counsel appearing for the appellant and Mr. H.K. Singh, learned Counsel for the respondent-Insurance Company.

6. Mr. H.K. Singh, learned Counsel, submitted that the driving licence cannot be entertained at the appellate stage and the same cannot be looked into without proving the same by the witnesses. The learned Counsel submitted that the genuineness of the driving licence can be proved by leading evidence and the finding has to be arrived at with regard to the genuineness of the driving licence.

7. It has not been disputed that the deceased was a Government employee and his monthly income was Rs. 9,328/-. He died leaving behind a

widow, one son and unmarried daughter. The claimants examined witnesses in support of the income of the deceased. No evidence was adduced

on behalf of the owner or insurer of the vehicle denying or disputing the monthly earnings of the deceased. The Tribunal, on the basis of monthly

earnings of the deceased, assessed the compensation amount. The respondent-Insurance Company has not challenged the quantum of compensation

by preferring any appeal. The owner of the vehicle has also not challenged the quantum of compensation awarded by the Tribunal. In the aforesaid

premises, so far as the quantum of compensations assessed by the Tribunal, needs no interference by this Court.

8. The only question that falls for consideration is as to whether the owner of the vehicle or the Insurance Company is liable to pay the

compensation amount. The tribunal, after recording a finding that the owner of the vehicle failed to prove that the driver was holding a valid driving

licence, fasten the liability on the owner of the vehicle and exonerated the Insurance Company.

9. As noticed above, the appellant only pleaded in the written statement filed before the Tribunal that the driver driving the vehicle at the relevant

time was holding a valid driving licence. However, the licence number has been mentioned in the written statement but the appellant neither

examined himself or other witnesses nor produced any documentary evidence to prove all the facts that the driver was holding a valid driving

licence. The respondent-Insurance Company also save and except pleading has not adduced any evidence to show that driver was holding a valid

driving licence.

10. In the aforesaid circumstances, if it is proved that the original driving licence filed by the appellant along with the application, by adducing

additional evidence, is proved to be genuine, then the Insurance Company will become liable to pay the compensation amount. On the other hand,

the driving licence is proved to be not a genuine document, then the owner of the vehicle is liable to pay the compensation amount. In both the

cases the compensation amount shall have to be paid either by the appellant-owner of the vehicle or by the Insurance Company. It would,

therefore, be necessary for the Tribunal to record a finding with regard to genuineness of the driving licence. The matter, therefore, needs to be remitted back to the Tribunal on the issue of driving licence.

11. As noticed above, because of the dispute between the owner of the vehicle and the insurer, the most sufferers are the claimants, who have not been paid the compensation amount.

12. We, therefore, remit the matter back to the Tribunal with the following directions:

(1) The Tribunal shall decide only the genuineness and validity of the driving licence so produced by the appellant by allowing him to adduce evidence.

(2) After deciding the genuineness of the driving licence, after recording a finding with regard to the driving licence, the Tribunal shall decide as to who is liable to pay the compensation amount.

(3) In the meantime both the appellant and the respondent-Insurance Company shall deposit the compensation amount in equal share before the Tribunal and the same shall be paid to the claimants-respondents.

(4) In the event the liability is decided in favour of one party, the other party shall recover the amount so paid to the claimants.

13. This appeal is disposed of with the aforesaid observations and directions.