(3)

10 Rs. COURT FEE भारत INDIA दस रुपये TEN RUPEES CANCELLED

5 Rs. COURT FEE भारत INDIA पांच रुपये FIVE RUPEES CANCELLED

C.F. 15/-

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A.No. 239 /2002

APPELLANT : United India Insurance Company Ltd., Ambikapur, District-Sarguja, through Divisional Manager, Divisional Office, Korba(C.G.).

NON APPLICANT NO. 1

-Versus -

RESPONDENTS: 1. Ram Kumar,
S/o Chandan Ram,
Aged about 60 years,
Occupation- agriculturist
R/o Prem Nagar,
Tehsil-Soorajpur, Distt. Sarguja
- Claimant-

APPLICANT

P. R. No. 5-8-02
Presented by Shri Ashish Mishra
dated ...

NON-APPLICANT NO. 2

2. Baba @ Rajeshwer,
S/o Narmada Prasad Yadav,
R/o Tikarapara, Prem Nagar,
Soorajpur, Sarguja(C.G.)
- Driver-

NON-APPLICANT NO. 3

3. Ghanshyam Das Agarwal,
Aged about 35 years,
S/o Dhani Ram Agarwal,
R/o Prem Nagar, Soorajpur,
Sarguja(C.G.)
-Owner-

R-5

APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLES ACT, 1988.

Appeal valued at Rs. 15,000/-.

NOTARY ... NARAD ADVOCATE KORBA ... MADHYA PRADESH

HIGH COURT OF CHHATTISGARH

Single Bench: Hon'ble Shri Justice Sanjay K. Agrawal

Miscellaneous Appeal No.235 of 2002

Appellant — United India Insurance Company Ltd.

versus

Respondents — Dhaneshwari and others

Miscellaneous Appeal No.237 of 2002

Appellant — United India Insurance Company Ltd.

versus

Respondents — Indal and others

Miscellaneous Appeal No.239 of 2002

Appellant — United India Insurance Company Ltd.

versus

Respondents — Ram Kumar and others

Miscellaneous Appeal No.240 of 2002

Appellant — United India Insurance Company Ltd.

versus

Respondents — Matrania and others

Miscellaneous Appeal No.238 of 2002

Appellant — United India Insurance Company Ltd.

versus

Respondents — Urmila and others

Appeals under Section 173 of the Motor Vehicles Act, 1988

Appearances of the counsel in all the appeals:

Shri Shailendra Sharma, counsel for the appellant/United India Insurance Company Ltd.
Shri Upendra Bharat and Shri Neeraj Choubey, counsel for the respondent/owner Ghanshyam Das Agrawal.
Shri Atanu Ghosh, counsel for the respondents/claimants.
None appears for the respondent/driver Baba alias Rajeshwar.

ORAL ORDER

(Passed on 1st January, 2014)

(1) These appeals were heard analogously and are disposed of by this common order as they arise out of one and the same accident and common questions of fact and law are involved therein. For the sake of convenience, Miscellaneous Appeal No.235/2002 is taken-up as the lead case. Miscellaneous Appeal No.235/2002 arises out of the common award dated 26-11-2001 passed by the 1st Additional Motor Accidents Claims Tribunal, Baikunthpur, Link Court Surajpur, District Surguja (henceforth 'the Claims Tribunal') in Claim Case No.173/2001.

(2) The accident in question occurred on 6-5-1999 on account of rash and negligent driving of Mini Truck bearing registration No.MP 27 B 0935. On the date of accident, the offending truck was owned by respondent Ghanshyam Das Agrawal, insured with appellant United India Insurance Company Limited and was being driven by respondent Baba alias Rajeshwar.

(3) Miscellaneous Appeal No.235/2002 arises out of the impugned award passed in Claim Case No.173/2001 preferred by dependents of deceased Sukhlal, who died in the accident in question. Miscellaneous Appeal No.237/2002 arises out of the impugned award passed in Claim Case No.124/2001 preferred by injured Indal. Miscellaneous Appeal No.239/2002 arises out of the impugned award passed in Claim Case No.122/2001 preferred by injured Ramkumar. Miscellaneous Appeal No.240/2002 arises out of the impugned award passed in Claim Case No.110/2001 preferred by injured Matrania. Miscellaneous Appeal No.238/2002 arises out of the impugned award passed in Claim Case No.168/2001 preferred by dependents of deceased Shivshankar, who died in the accident in question.

(4) The Claims Tribunal awarded compensation as under:

Sl. No.	Miscellaneous Appeal Number	Miscellaneous Appeal arises out of Claim Case Number	Death or Injury Case	Compensation Awarded by the Claims Tribunal (₹)
1	235/2002	173/2001	Against Death of Sukhlal	180000
2	237/2002	124/2001	Injury Case	25000
3	239/2002	122/2001	Injury Case	15000
4	240/2002	110/2001	Injury Case	12000
5	238/2002	168/2001	Against Death of Shivshankar	200000

(5) The Claims Tribunal has, by the impugned award, held that the appellant/insurance company has failed to prove breach of any condition of the policy of insurance and, therefore, the appellant/insurance company is liable to make payment of the compensation.

(6) Shri Shailendra Sharma, learned counsel appearing for the appellant/insurance company would submit that the impugned award fastening liability of payment of compensation on the appellant/insurance company is bad in law as there is overwhelming evidence on record to prove breach of conditions of the policy of insurance.

(7) On the other hand, Shri Upendra Bharat and Shri Neeraj Choubey, learned counsel appearing for the respondent/owner and Shri Atanu Ghosh, learned counsel appearing for the respondents/claimants would support the impugned award stating that the insurance company has failed to prove the alleged breach of the conditions of policy of insurance.

(8) A bare perusal of the written statement filed by the insurance company before the Claims Tribunal would show that the insurance company has simply taken a plea that the offending truck was unauthorisedly being plied on the date of accident with the consent of the respondent/owner.

(9) The respondent/owner has entered the witness-box and deposed that he had not permitted carrying of passengers for marriage of the son of Gangaram, the applicant/claimant of Claim Case No.160/2001. Gangaram has been examined in Claim Case No.160/2001 in which he has clearly stated that he never met the respondent/owner Ghanshyam Das Agrawal. The Claims Tribunal, after appreciating the evidence available on record, held that on the date of accident, the respondent/owner of the offending truck was out of station and the driver of the offending truck was in charge of the offending truck and Gangaram had hired the offending truck without consent of the respondent/owner of the offending truck. As such the respondent/owner did not have any information with regard to alleged use of the offending truck for carrying passengers. The Claims Tribunal further held that the driver of the offending truck was not examined and the driver remained *ex parte* before the Claims Tribunal. Resultantly, the Claims Tribunal held that the passengers were being carried without there being any consent of the respondent/owner and, therefore, the insurance company cannot escape from its liability.

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(10) A bare perusal of the written statement filed by the insurance company would further show that the insurance company has not taken specific plea that the offending truck was being plied in breach of the terms of the policy of insurance. Unspecific plea was raised that the deceased and the injured persons were unauthorisedly travelling in the offending truck on the date of accident. Separate written statements have been filed by the insurance company in the claim cases. It was incumbent upon the insurance company to take a specific plea in the written statements with regard to breach of the terms of the policy of insurance. Apart from this, it is found established before the Claims Tribunal that the respondent/driver used the offending truck for carrying passengers, if any, without knowledge and consent of the respondent/owner, which is clear from the statement of Gangaram who was examined in Claim Case No.160/2001. Not only this, the respondent/driver of the offending truck, who could be the best witness to explain the position, has not been examined.

(86)

(11) The Supreme Court, in **S.V.Nagaraju v. M/s Oriental Insurance Co. Ltd. Divisional Officer, Hassan**[1], referring to its earlier decision in **Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan**[2], observed thus:

> "**7.** It is plain from the terms of the Insurance Policy that the insured vehicle was entitled to carry 6 workmen, excluding the driver. If these 6 workmen when travelling in the vehicle, are assumed not to have increased any risk from the point of view of the Insurance Company on occurring of an accident, how could those added persons be said to have contributed to the causing of it is *poser*, keeping apart the load it was carrying. Here, it is nobody's case that the driver of the insured vehicle was responsible for the accident. In fact, it was not disputed that the encoming vehicle had collided head-on against the insured vehicle, which resulted in the damage. Merely by lifting a person or two, or even three, by the driver or the cleaner of the vehicle, without the knowledge of owner, cannot be said to be such a fundamental breach that the owner should, in all events, be denied indemnification. The misuse of the vehicle was somewhat irregular though, but not so fundamental in nature so as to put an end to the contract, unless some factors existed which, by themselves, had gone to contribute to the causing of the accident. In the instant case, however, we find no such contributory factor. In *Skandia's* case (supra) this Court paved the way towards reading down the Contractual Clause by observing as follows (at pp. 1191 and 1992 of AIR):
>
> "... When the option is between opting for a view which will relieve the distress and misery of the victims of accidents or their dependants on the one hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational hazard undertaken by him by way

1 **1996 AIR SCW 2466**

2 **AIR 1987 SC 1184**

(87)

of business activity, there is hardly any choice. The Court cannot put opt for the former view. Even if one were to make a strictly doctrianairs approach, the very same conclusion would emerge in assistance to the doctrine of 'reading down' the exclusion clause in the light of the 'main purposes' of the provision so that the 'exclusion clause' highlighted earlier. The effort must be to harmonise the two instead of allowing the exclusion clause to snip successfully at the main purposes. The theory which needs no support is supported by Carter's "Breach of Contract" *vide* páragraph 251. To quote:

Notwithstanding the general ability of contracting parties to agree to exclusion clauses which operate to define obligations there exists a rule, usually referred to as the "main purpose rule", which may limit the application of wide exclusion misuses defining a premiser's contractual obligations. For example, in *Siva v. Marasteen & Co.* [1993 AC 351 (387)], Lord Malsbury L.C. stated: It seems to us that in construing this document, which is a contract of carriages between the parties, one must in the first instance look at the whole instrument and not at one part of it only. Looking at the whole instrument, and seeing what one must regard on its main purpose, one must reject words, indeed whole provisions; if they are inconsistent with what one assumes to be the main purpose of the contract.

Although this rule played a role in the development of the doctrine of fundamental breach, the continued validity of the rule was acknowledged when the doctrine was rejected by the House of Lords in Suissee Atlantigua Societod' *Armament Ravities S.A.* v. *M.V. Battarossecha Kolen Sontrals,* (1967 I AC 361). Accordingly, wide exclusion clauses will be read down to the extent to which they are inconsistent with the main purpose, or object of the contract."

(12) Thus, by any stretch of imagination, the finding of the Claims Tribunal holding that the alleged breach of the terms of the policy of insurance has

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not been proved by the insurance company, cannot be faulted with and the finding so arrived at is hereby affirmed.

(13) Consequently, all the appeals are hereby dismissed. No order as to costs.

Sd/-
Sanjay K. Agrawal
Judge

Gopal