HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 187 of 2007

M/s Baghel Gas Agency Through Proprietor Ravi Kant Baghel S/o Shri Shambhu Lal, Aged about 42 years, GE Road, Charoda Durg (C.G.)

---- Appellant

Versus

1. R.K.Kumar, S/o R.S. Rao, Aged about 49 years.
2. Smt. R.K. Ratna Kumari, W/o R.K. Kumar, Aged about 44 years

(Both R/o 489-B, zone-1, B.M.Y. Charoda, Tahsil Patan, Distt. Durg (C.G.)

3. Shamim Khan, S/o Peer Mohammad, Aged about 40 years, R/o Hirapur, Rotary Nagar, House No.1/5, Raipur P.S. Amanaka, Distt. Raipur (C.G.)
4. The New India Insurance Company Ltd. – Through Divisional Manager, Power House, Bhilai (C.G.)

---- Respondents

And

MAC No. 232 Of 2007

M/s Baghel Gas Agency - Through Proprietor Ravi Kant Baghel S/o Shri Shambhu Lal, Aged about 42 years GE Road, Charoda Durg (C.G.)

---- Appellant

Vs

1. Kumari Akshika, S/o R.K. Kumar, Aged about 21 years, R/o 489 B, Zone-1, B.M.Y. Charoda, Tahsil Patan, Distt. Durg (C.G.)
2. Shamim Khan, S/o Peer Mohammad, Aged about 40 years, R/o Hirapur, Rotary Nagar, House No.1/5, Raipur P.S. Amanaka, Distt. Raipur (C.G.)
3. The New India Insurance Company Ltd. – Through Divisional Manager, Power House, Bhilai (C.G.)

---- Respondents

For appellant -Shri Utsav Mahishwar, Advocate.
For respondent/claimants - Shri Wasim Miyan, Advocate.
For respondent/insurance company – Shri Sudhir Agrawal, Advocate.
For respondent/driver Shamim Khan no representation is made though served.

Hon'ble Shri Justice Goutam Bhaduri

Order

31/08/2015

1. Both these appeals are being tried together as they are arising out of the same accident. One claim petition is filed for death and another claim petition for injury. Both the appeals are preferred by owner of the vehicle on whom liability has been fastened.

2. Brief facts of the case are that Claim Case No.139/2005 was filed by R.K. Kumar and Smt. R.K. Ratna both father and mother of deceased R. Avinash whereas Claim Case No.138/2005 was filed by Kumari Akshika, sister of the deceased R. Avinash being the injured. Common facts is the way the accident happened. On 23/04/2005, the deceased R. Avinash along with his sister Kumari Akshika were going on their cycle to their house Zone-1 BMY Charoda. While R. Avinash was driving the cycle and Kumar Akshika was sitting as pillion rider. While they were moving on their cycle they were dashed by Maruti Wagon R bearing No.C.G.07-6111. The deceased R. Avinash and injured Kumari Akshika were taken to hospital, and on 24/04/2005 one of the injured R. Avinash died because of the injury suffered by accident. At the relevant time, offending vehicle was driven by Shamim Khan original non-applicant No.1 and vehicle was owned by M/s Baghel Gas Agency original non-applicant No.2. Claim Case No.139/2005 was preferred by mother and father namely R.K. Kumar and Smt. R.K. Ratna for death of their son and amount of Rs.81,15,000/- was claimed. As against this, for death of son an award of Rs.4,22,500/- was passed. Likewise, Kumari Akshika the injured had also preferred a Claim Case No.138/2005 wherein as against the claim of Rs.72,000/-, award of Rs.10,000/- was passed. In both the claim cases

liability was fastened over the owner of the vehicle i.e. M/s Baghel Gas Agency and the insurance company was exonerated to pay the liability on the ground that at the relevant time the car by which the accident had happened was driven by CNG gas kit. Consequently, it lead to breach of the condition of policy. Therefore liability was fastened over the owner. Both the instant appeals are by the owner of the vehicle against such finding whereby insurance company was exonerated.

3. Learned counsel for the appellant/owner of the vehicle would submit that the court below has wrongly exonerated the insurance company as nothing has come on record that what breach was actually committed. He further submits that evidence adduced by the insurance company was a hear say in nature and it was not proved by the evidence any breach of policy of insurance. It was further contended that for the sake of argument even if it is presumed that vehicle was driven with CNG kit it will not lead to breach of the terms of the agreement of policy as the Motor Vehicles Act also do not permit such defence to be raised under Section 149 of the Act. Consequently, it is submitted that liability which has been fastened over the owner of the vehicle may be set aside and the insurance company will be held liable to make good the payment.

4. Learned counsel for the claimants would submit that just compensation has not been awarded and further submits that according to the evidence on record liability should have been fastened over the insurance company too and prays that award should be accordingly modified.

5. I have heard learned counsel for the parties and perused the documents and the evidence.

6. Learned tribunal in its award has held that at the relevant time offending vehicle i.e. Maruti Wagon R bearing registration No.C.G.07-6111 being driven in a rash and negligent manner had caused the accident. The said finding of rash and negligent driving of the vehicle is not under any challenge by either of the parties. Consequently, same is affirmed.

7. Now coming to the second part wherein the liability has been fastened over the owner of the vehicle on the ground that there has been breach of policy, respective evidence and the documents were perused. Learned tribunal in its award has held that at the relevant time vehicle was driven by the use of LPG kit instead of petrol, therefore it will lead to breach of policy. The insurance company on its behalf had examined one witness namely Lyod Johnson as DW-1. He has stated that according to the policy which is marked as Ex.D-1 the vehicle was to be driven by petrol only. He further stated that on the date of accident offending vehicle was driven by CNG. Therefore there has been breach of policy. Witness has referred to the charge sheet filed of the criminal case wherein section 39 and 192 of the Motor Vehicles Act was clamped along with section 279, 337 and 304-A of IPC. In the cross examination of this witness he stated that he has not himself seen that whether car was fitted with the gas kit. He further stated that he has not got it verified by any surveyor that whether car was fitted with any gas kit but could presume the fact that car was used by using a gas kit on the basis of document placed by the owner of the vehicle. He stated that he has also not made any enquiry from the RTO and only on the basis of police final report such statement has been made about use of gas kit in the car.

8. Perusal of the record would show that no documents like nature of registration book have been exhibited in evidence to show the nature of

the vehicle that the car was driven by gas kit at the time of accident. Therefore, it appears only statement have been made on the basis of police report of the criminal case which is marked as Ex.P-1. Since apart from the sections of IPC, Section 39 and 192 of the Motor Vehicles Act were added. Section 39 purports that no person shall drive the motor vehicle without registration.

9. Registration book in this case has not been produced or has been called in evidence by the insurance company by summoning the RTO. Further perusal of section 192 of the Motor Vehicles Act further shows that for use of vehicle without registration punishment has been provided. So the document of the criminal case which are placed on record except the final report, wherein Section 39 and 192 of the Motor Vehicles Act is stated to have been infringed no other document is available on record to establish that car was being driven without any registration. Merely since section has been quoted in the final report, therefore it cannot be conclusively held that at the relevant time car was not having the registration. Insurance company in its defence has raised the plea that vehicle was driven by gas kit instead of petrol, therefore there was breach of terms of the policy. So, in view of the specific averments made, it was the duty of the insurance company to establish the fact that there has been breach of policy. Statement of the insurance witness would show that it is completely hear say. The witness has neither inspected the vehicle nor any surveyor from the insurance company was examined to prove such facts. It appears the witness has made the statement only on the basis of entry in the final report of the police of the criminal case. Therefore, the insurance company has failed to establish the fact the nature of breach of policy committed by the owner of vehicle. No specific

facts are on record to hold that what breach was actually committed qua the insurance policy. Therefore in absence of any evidence it cannot be held that at the relevant time vehicle was being driven in breach of the condition of the policy.

10. In a result, finding arrived at by the learned court below that vehicle having been driven by use of LPG on the basis of statement of the hear say witness of insurance Lyod Johnson cannot be sustained.

11. Consequently, both the appeals are allowed. Liability fastened over the appellant/owner of the vehicle is set aside. It is directed that insurance company along with the appellant/owner of the vehicle shall be liable to make good payment to the claimants and the liability of the appellant/ owner of the vehicle would be joint and several with that of respondent /insurance company.

Sd/-
(Goutam Bhaduri)
JUDGE

Gouri