

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on: 19th February, 2015

+ **MAC.APP. 651/2013**

BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LTD

..... Appellant

Through Ms. Neerja Sachdeva, Advocate

versus

LAL SINGH & ORS

..... Respondents

Through Mr. S.N. Parashar, Advocate for
Respondent (owner)

+ **MAC.APP. 662/2013**

BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LTD

..... Appellant

Through Ms. Neerja Sachdeva, Advocate

versus

SMT SUMITRA DEVI AND ORS

..... Respondents

Through Mr. S.N. Parashar, Advocate

+ **MAC.APP. 73/2015**

NEERAJ

..... Appellant

Through None

versus

SUMITRA DEVI & ORS

..... Respondents

Through Mr. S.N. Parashar, Advocate

+ **MAC.APP. 74/2015**

NEERAJ

..... Appellant

Through None

versus

BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LTD

..... Respondent

Through Ms. Neerja Sachdeva, Advocate

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

1. These four appeals arise out of common judgment dated 16.05.2013 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby the claim petition preferred by the three legal representatives of deceased Virender Yadav and the claim petition filed by injured Lal Singh were disposed of. Compensation of Rs.59,400/- was awarded in favour of Lal Singh, injured (Respondent no.1 in MAC.APP.651/2013) and compensation of Rs.7,53,500/- was awarded in favour of Respondents no.1 to 3 in MAC.APP.662/2013. Two appeals

(MAC App.651/2013 and MAC APP.662/2013) have been filed by the Insurance Company while the other two appeals (MAC.APP.73/2015 and MAC. APP.74/2015) have been filed by Smt. Neeraj against granting of recovery rights to the Insurance Company.

2. Before advertng to each of the appeal, it will be appropriate to mention a few facts. A Detailed Accident Report(DAR) was filed by SHO, P.S. Saket in respect of the motor vehicular accident which took place on 25.03.2011 at 2:50 p.m. at Press Enclave Road resulting in registration of FIR no.117/2011. As per the information given in the DAR, on 25.03.2011, Dinesh, deceased Virender Yadav and Lal Singh were carrying marble slabs from Satbari to New Friends Colony on a tempo bearing no.DL-1L-K-9789. Respondent Neetu Singh was driving the tempo and Dinesh was sitting beside him. Neetu Singh was driving the tempo at a very fast speed. A cyclist Ranjit was going ahead on the road. On seeing the cyclist and in order to avoid collision with the cyclist, Neetu Singh suddenly applied break. As a result, the persons sitting on the tempo(along with

the marble slabs) got sandwiched in between the marble slabs. The injured were removed to the hospital, where Virender Yadav was reported brought dead. In respect of injured Ranjeet and Lal Singh, compensation of Rs.18,100/- and Rs.59,400/- respectively for having suffered injuries was granted whereas compensation of Rs.7,53,500/- was awarded in favour of legal representatives of deceased Virender Yadav.

3. For the sake of convenience, appellant Bajaj Allianz General Insurance Company Ltd. in MAC.APP.651/2013 and MAC.APP.662/2013 shall be referred to as the Insurance Company and the Appellant in Cross-Appeals being MAC.APP.73/2015 and MAC.APP.74/2015 shall be referred to as the owner of the offending vehicle involved in the accident.
4. The contention raised on behalf of the Insurance Company is that the vehicle involved in the accident is a goods vehicle covered by insurance policy (Ex.R3W1/A). As per the provision of Section 147(1) of the Motor Vehicles Act, 1988, risk towards the owner of the goods or the authorised representative of the owner of the goods travelling in a goods

vehicle is covered only when the said owner/representative of the owner of the goods is travelling in the cabin along with the driver. It is urged that in the instant case, injured Lal Singh and deceased Virender Yadav were admittedly travelling in the rear portion of the tempo meant for carrying the goods alongwith the goods and therefore, their risk was not covered under the policy of insurance. In support of her contention, the learned counsel placed reliance on the report of the Supreme Court in *National Insurance Co. Ltd. v. Cholleti Bharatamma*, 2008 ACJ 268(SC). The learned counsel therefore, urges that the Claims Tribunal erred in making the Insurance Company liable to pay compensation in the first instance with the right to recover the same from the owner of the offending vehicle later on. It is stated that since injured Lal Singh and deceased Virender Yadav were travelling in the rear of the tempo along with the goods, they were not covered under the policy of insurance and the Insurance Company had no liability at all.

5. On the other hand, the learned counsel for the owner submits that since the Insurance Company charged an additional

premium for covering legal liability for operation and maintenance of two persons, the liability of two persons apart from the driver of the vehicle would stand covered under the policy. The Insurance Company ought not to have been granted recovery rights.

6. This Court in *Oriental Insurance Co. Ltd. v. Kaushalya Devi & Ors.*, MAC.APP. 19/2005 decided on 14.12.2011 referred to the judgments of *National Insurance Company v. Baljit Kaur & Ors.* (2004) 2 SCC 1, *New India Assurance Company Limited v. Asha Rani & Ors.* (2003) 2 SCC 223 and *New India Assurance Company v. Satpal Singh* (2000) 1 SCC 237 and held that the Insurance Company has no liability at all in respect of injury to gratuitous passengers travelling in a goods vehicle and therefore, the Insurance Company will not be under an obligation to first pay the compensation and then recover from the insured. Paras 7 to 9 and 11 of the report in *Oriental Insurance Co. Ltd. v. Kaushalya Devi & Ors.*(supra) are extracted hereunder:

“7. A close reading of Baljit Kaur (supra) reveals that the judgment in Asha Rani (supra) which was passed on 03.12.2002 was to have a prospective effect. Since the position was uncertain because of the earlier decision of the Supreme Court in Satpal Singh (supra) it was observed that the Appellant National Insurance Company Limited would satisfy the award in favour of the claimant, if not already satisfied and recover the same from owner of the vehicle. It was not laid down as a proposition of law that even in the case of gratuitous passengers travelling in a goods vehicle, the Insurance Company will first pay the compensation awarded and would then recover from the insured.

8. Reliance on Swaran Singh (supra) for making the Insurance Company liable to pay the compensation in the first instance was also misplaced because Swaran Singh (supra) related to the cases where the driver did not possess a valid driving licence or the driving licence held by him was a fake. In Swaran Singh (supra) the Insurance Company was made liable to pay the compensation because it had liability to pay on account of insurance of the vehicle and it could avoid liability only because of the breach of the condition of the policy.

9. In the case of gratuitous passengers travelling in a goods vehicle, there is no liability of the insurance company at all to pay the compensation, it is not required to prove any breach of the terms of the policy as the passengers travelling in the goods vehicles are not covered as the premium therefor is not paid by the insured. It is important to note that the judgment by the three Judges Bench in Swaran Singh (supra) was delivered on January 05, 2004 while judgment in

Baljit Kaur (supra) was delivered on January 06, 2004. The Hon'ble Chief Justice presided over both the Benches with Hon'ble Mr. Justice S.B. Sinha being the common author in both the judgments. If the Supreme Court had any intention to make the Insurance Company liable to pay the compensation, it would have so mentioned in Baljit Kaur (supra) also.

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11. In the instant case also, the Tribunal committed grave error in interpreting Baljit Kaur (supra) so as to enable the Tribunals and the Courts to make the Insurance Company liable to pay the compensation awarded in the first instance and then to recover from the insured even in the cases where gratuitous passengers, not covered by the Insurance policy, were travelling in a goods vehicle. The Appeals, therefore, have to be allowed.”

7. However, in the instant case, the deceased and the injured were not gratuitous passengers but were custodian of the goods. At the same time, they travelling in the rear portion of the tempo along with the goods. They were not travelling in the cabin of the vehicle along with the driver. This question was examined by the Supreme Court in *Cholleti Bharatamma(supra)* where it was held that the owner of the goods would be only covered if he travels in the cabin of the vehicle. Since deceased Virender

Yadav and injured Lal Singh were travelling in the rear portion of the tempo, their risk was not covered and the Insurance Company would not be liable to pay the compensation at all as it was clearly not a case of breach of the terms and conditions of the insurance policy where the Insurance Company should be first made liable to pay the compensation with a right of recovery.

8. By an order dated 23.07.2013 passed by this Court in MAC.APP.651/2013 and MAC.APP.662/2013, the entire amount was ordered to be deposited with the Registrar General of this Court by the Insurance Company. Claimant/claimants who is Respondent no.1 in MAC.APP.651/2013 and Respondents no. 1 to 3 in MAC.APP 662/2013 preferred not to contest the proceedings despite sufficient service. In view of the observations made above, since the Insurance Company had no liability at all to pay the compensation, the compensation already deposited shall be refunded to the Appellant Insurance Company. The compensation, however, shall be recoverable from Respondent no.3 in MAC.APP.651/2013 and Respondent

no.5 in MAC.662/2013, who was the owner of the offending vehicle.

9. Consequently MAC.APP.651/2013 and MAC.APP.662/2013 are allowed.
10. MAC.APP.73/2015 and MAC.APP.74/2015 are hereby dismissed.
11. Pending applications stand disposed of.
12. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

FEBRUARY 19, 2015
pst