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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 202 of 2007

Ritesh Kumar S/o Krishna Yadav, aged 23 years, R/o Main Road Bhanpuri, Tahsil Jagdalpur, District Bastar

---- Appellant

Versus

1. Smt. Nem kumari (wrongly printed Nam Kumari), wife of Trilochan Singh Thakur, aged about 40 years, casts Dhakod, Resident of village Karandula-Bhanpuri, P.S. Bhanpuri, Distt. Bastar (C.G.)
2. The New India Insurance Company Limited, through its Branch Manager, Branch office, Jagdalpur, Distt. Bastar (Chhattisgarh)
3. Sudhir Sharma, son of Late Om Prakash Sharma, aged about 38 years, resident of Maitri Sangh Road, Kumharpara, Jagdalpur, Distt, Bastar (C. G.)

---- Respondents

For Appellant	:	Mr. Subhash Yadav, Advocate.
For Respondent No.2	:	Mr. B.M. Roy, Advocate on behalf of Mr. Anand Kumar Gupta, Advocate None for other respondents.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

14/03/2016

Heard.

1. This is owner's appeal directed against award dated 16.11.2006 passed by the Claims Tribunal by which the Insurance Company has been exonerated and the liability for payment of compensation has been fastened upon the appellant/owner.

2. The appellant's vehicle was registered and insured.

3. The aspect of registration and insurance with the Insurance

Company respondent is not in dispute.

4. The appellant's vehicle Commander Jeep No.CG 17 ZD 0989 met with an accident on 15.10.2003, in which, Sanjay Singh said to be employee/ conductor died.

5. Dependant of deceased Sanjay Singh filed application under Section 163(A) of Motor Vehicles Act, 1988 against the owner, driver as well as insurer.

6. The Insurer sought to evade the liability on the premise that the vehicle was being driven in breach of policy. According to the insurer, the vehicle was insured as a private vehicle but it was being used as a tourist vehicle resulting in breach of policy, therefore, Insurance Company sought to be exonerated. The stand of the owner had been that the appellant/owner had taken the vehicle to a picnic spot along with his family members, in which, the deceased was sitting as his employee.

7. Learned Claims Tribunal exonerated the Insurance Company recording a finding that the vehicle was being used as a tourist vehicle carrying passenger which was in breach of policy, therefore, the Insurance Company is not liable to indemnify the insured.

8. Learned counsel for the appellant argued that the Claims Tribunal has recorded a finding without there being any clinching evidence led by the Insurance Company or emerging from the facts and circumstances of the case that the vehicle was being used as tourist vehicle to carry passenger. He submits that the appellant owner has categorically deposed before the Claims Tribunal that he had taken the vehicle to a picnic spot and he was moving with the members of his family. As against this only on the basis of an FIR lodged by a third person that an accident of tourist vehicle had happened, without anything more, without examination of the person who lodged FIR, has jumped to the conclusion based only on conjunctures and surmises that the vehicle was carrying passenger.

It is submitted that the vehicle was duly insured for one employee and premium was paid which is clear from the Insurance Company therefore, in these circumstances, on account of death of the employee of the appellant, the Insurance Company was liable to indemnify.

9. Learned counsel for the Insurance Company opposes the prayer and submitted that the deployment of a conductor in the vehicle itself shows that the vehicle was being used as a passenger vehicle which was clearly a breach of policy. He submits that the FIR has also clearly recorded that the accident was of a tourist vehicle. These established facts have been rightly relied upon by the Claims Tribunal to draw inference that the vehicle was carrying passenger and the story that the appellant was taking his family members to picnic has rightly been rejected.

10. The entire case of the Insurance Company that the vehicle was being used for carrying passenger is based solely on FIR (Ex. P/1), which is said to have been lodged by one Damru, son of Son Singh that the vehicle was being driven by Ritesh Yadav, and he was sitting in the vehicle along with deceased Sanjay Singh. In this FIR , the vehicle has been termed as tourist vehicle. However, first information informant Damru has not been examined as witness.

11. On the other hand, the owner of the vehicle, the appellant has examined himself as a witness, in which, he has categorically stated that he had taken the vehicle to picnic spot along with his family members.

12. Learned Claims Tribunal has also placed reliance upon the statement of Karan Singh (AW-2) that he was informed by deceased Sanjay Singh that he was working as conductor in the vehicle used for carrying passenger.

13. In the considered opinion of this Court, the finding of vehicle used for carrying passenger could not be drawn on such a weak evidence which is more in the nature of conjunctures and surmises. In order to hold that the vehicle was carrying passenger, much more higher degree of evidence was required because the finding of vehicle being used as a passenger vehicle results in exonerating the Insurance Company from its liability. Moreover, the burden was on the Insurance Company to prove breach of policy. This could be done only by leading cogent evidence that the vehicle was actually being used as a passenger vehicle and not as a private vehicle. The witness of the Insurance Company namely Ajay

Rawat (DW-2) has admitted in his cross-examination that Insurance Company of its own, did not hold any enquiry to find out whether the vehicle was being used as passenger vehicle at the time of accident.

14. Therefore, it is clear that the vehicle was being used as a passenger vehicle has been recorded on more on conjuncture and surmise than on a clinching and reliable evidence. The issue of breach of policy is required to be decided on weighty and substantive evidence and finding of exoneration of Insurance Company on such kind of evidence may not be permissible under the law.

15. In the result, the finding of the Tribunal that there was breach of policy resulting in exoneration of Insurance Company from its liability is held illegal and set aside and it has to be held that Insurance Company failed to prove that there was breach of policy.

16. The insurance certificate Ex. D-3(C) clearly shows that the owner was paying premium of Rs.25/- towards one employee carried in the vehicle. It is not in dispute that the deceased Sanjay Singh was the employee of the owner. Therefore, in view of the above, the liability ought to be fastened on the Insurance Company and it is the Insurance Company which is liable to indemnify the owner for compensation payable to the claimants.

17. The impugned award is, therefore, modified in the manner that it is the Insurance Company which is liable for payment of compensation as awarded by the Claims Tribunal.

18. Whatever amount has been deposited by the appellant, the appellant shall be entitled to be reimbursed. The Insurance Company shall deposit the entire amount of compensation before the Claims Tribunal within a period of three months and the compensation amount shall be disbursed as per award to the claimants.

19. The appeal is accordingly allowed.

Sd/-

(**Manindra Mohan Shrivastava)**
J U D G E

Rekha