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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal No. 1153 of 2005

Oriental Insurance Company Limited through its Branch Manager Oriental Insurance Company Banaras Chowk Ambikapur District Sarguja Chhattisgarh

---- Appellant

Versus

1. Smt. Sandhya Gayin wife of Shri Manoranjan Gayin aged 45 years Occupation House wife

2. Manoranjan Gayin S/o Madho Gayin aged 52 years (Dependant because of being mentally retarded) through next kin Smt. Sandhya Gayin (wife)

(Both r/o village Chithirma Tehsil Ambikapur District Sarguja Chhattisgarh

3. Rohit Kumar Agrawal S/o Nirmal Kumar Agarwal aged 18 years (Previously minor and now major) through his guardian and father Nirmal Kumar Agrawal R/o Brahma Path Ambikapur District Sarguja Chhattisgarh

4. Santan Yadav S/o Mukandi Yadav aged 24 years R/o village Amba P.S. Kansabel Tehsil Bagicha District Jashpur Chhattisgarh

5. Ramnivas Sharma S/o Baijnath Sharma aged 45 years Occupation Driver R/o Bajrang Furniture Sangam Chowk Ambikapur District Sarguja Chhattisgarh

---- Respondents

For Appellant	:	Shri Ghanshyam Patel, Advocate.
For Respondent No.1 & 2	:	Shri D.N. Prajapati, Advocate.
For Respondent No. 3	:	Shri Sunil Tripathi, Advocate.
For Respondent No. 4	:	Smt. Indira Tripathi, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice

CAV Judgment

24/06/2016

1. This appeal by the Insurance Company is directed against the award dated 5.4.2005, passed by the First Additional Motor Accident Claims Tribunal, Ambikapur, District Sarguja (hereinafter called "the Tribunal"), whereby the Learned Tribunal awarded compensation of Rs.1,37,500/- alongwith interest in favour of the claimants and held the Insurance Company liable to pay the same.

2. In this appeal filed by the Insurance Company, the only grievance is that at the time of accident, the offending vehicle truck was being driven by one Santan Yadav who did not have a valid driving license and later on a false case was built up by the owner that the vehicle was being driven by one Ramniwas Sharma.

3. Learned Counsel for the Appellant/Insurance Company urges that since the driver was driving the vehicle at the time of accident, did not have a valid driving license, the Insurance Company could not be held liable to pay the amount of compensation.

4. The facts relevant for disposal of this appeal are that, admittedly an accident took place on 7.1.2003 at about 8.30 AM in which deceased Shyamlal Gayin who was going on a bicycle, was hit by the truck bearing registration No. CG-15/ZC/0674 and died as a result of the injuries sustained in the accident. The truck was owned by Respondent No.3-Rohit Kumar Agrawal. It is not disputed that the truck was insured with the Appellant-Oriental Insurance Company Limited. In the claim petition, it is alleged that the truck was being driven by Santan Yadav, but Respondents No.3 and 4 had conspired to show that the said vehicle was being driven by one Ramniwas Sharma and therefore he was also arrayed as party- respondent to the claim petition.

5. The stand of the Respondents other than the Insurance Company was that the vehicle was being driven by Ramniwas Sharma. There are two eyewitnesses to the accident, namely, Vijay and Ranjit. According to them, after the accident took place the truck driver fled away with the truck; they followed the truck along with others; Vijay was on his motorcycle; truck haulted in a field; one person who ran out of the truck was caught by the public and said person disclosed his name to be Santan Yadav. The statement of Ranjit is similar to that of Vijay. These two witnesses do not say that any other person ran away from the truck and therefore, it is apparent that at the time accident it was only Santan Yadav who was present in the truck.

6. Ramniwas Sharma stepped into the witness box and stated that he was infact driving the truck, but after the accident he got scared and ran away. However, he was never seen by the two eyewitnesses, Vijay and Ranjit.

7. Learned Tribunal after elaborate discussion of the entire evidence has come to a finding of fact that the truck was infact being driven by Santan Yadav and not by Ramniwas Sharma. Neither Ramniwas Sharma nor owner of the truck- Rohit Kumar Agrawal have filed any appeal against the award though they have also been held jointly and severally liable to pay the compensation. From the evidence on record, it is apparent that name of Ramniwas Sharma was shown as driver of the vehicle after one week of the accident. It is also apparent that later on a false case was set up after one week realising that the owner of the vehicle may be held liable to pay compensation. This was done with a view to transfer the liability to pay compensation upon the Insurance Company.

8. Surprisingly, Learned Tribunal after having held that the vehicle was being driven by Santan Yadav, who did not have a valid driving licence, went to hold that the Insurance Company was liable to pay compensation by purportedly following the judgments of the Apex Court in *Skandia Insurance Company Limited vs. Kokilaben Chandravadan and others (1987 (AIR) 1184)* and *Sohan Lal Passi vs. P. Sesh Reddy and others {(1996) 5 S.C.C. 21}.* In these case, the law laid down is that the third party should not suffer for the breach of conditions of the policy by the insured and further more it has been held that it is for the Insurance Company to prove that there was wilful breach of the conditions of the policy.

9. As far as the present case is concerned, there is a finding of fact based on evidence that the vehicle was not being driven by Ramniwas Sharma. As pointed out earlier, the case now purposely set up by the owner is obviously a false case and adverse inference has to be drawn against such owner. It is apparent that the owner knew that the vehicle at the time of accident was being driven by Santan Yadav, but after one week he went to the police station to get the name of

Ramniwas Sharma recorded as driver of the vehicle. Earlier to that, name of Santan Yadav was mentioned in the police record as driver of the vehicle. At the same time, it is also relevant that the claimants should not suffer in such a case.

10. Therefore, I am of view that ends of justice would be served if the Appellant-Insurance Company is directed to pay the awarded amount of compensation, however liberty should be given to the Insurance Company to recover the same from the owner of the vehicle-truck.

11. In view of above discussion, the appeal is partly allowed. The award passed by the Learned Tribunal is modified to the extent that the Insurance Company after paying/depositing the entire awarded amount of compensation, shall be at liberty to initiate the proceedings for recovery of the same from the owner of the vehicle-truck. It is also made clear that for this purpose it would not be required to file a separate suit, but can initiate certificate proceedings under Section 174 of the Motor Vehicles Act, 1988 for recovery of the amount of compensation from the owner of the vehicle.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

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