

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURMiscellaneous Appeal No. 989 OF 2004

National Insurance Co. Ltd., Through Assistant Manager, National Insurance Co. Limited, B-1, Taha Complex, First Floor, Ring Road, Priyadarshini Nagar, Bilaspur, Chhattisgarh.

---- Appellant

Versus

1. Laxman S/o Shiv Balak aged about 55 years Caste Gond
2. Smt. Hirnemiya W/o Laxman aged about 48 years Caste Gond, Occupation Housewife
- Both residents of village Katnaipara, P.S. Sitapur Tahsil Ambikapur Distt. Surguja (Chhattisgarh).
3. Triloki Singh, S/o Parshu Ram Singh, Occupation Bus Owner, R/o Bouripara P.O. and Tehsil Ambikapur, District Surguja, Chhattisgarh.
4. Ram Chandra Kashyap.....(Deleted)
5. Yogesh Kumar Gupta, S/o Nandlal Gupta, Occupation Jeep Owner, District Surguja, Chhattisgarh.
6. United India Insurance Co. Ltd., Branch Ambikapur, District Surguja, Chhattisgarh.

-----Respondents

For National Insurance Co. Ltd.	:	Shri Goutam Khetrapal, Advocate
For Claimants	:	Smt. Anubhuti Marhas, Advocate
For Jeep owner	:	Shri Manoj Paranjpe, Advocate
For United India Insurance Co. Ltd.	:	Shri Ghanshyam Patel, Advocate

Hon'ble Shri Sanjay Agrawal, J.Judgment on Board25/11/2016

1. This appeal filed by the National Insurance Company Limited is directed against the award dated 31/07/2004 passed by the Second Additional Motor Accident Claims Tribunal, Ambikapur (Surguja) Chhattisgarh (hereinafter called as "Claims Tribunal") in Claim Case No. 42 of 2002, whereby the Claims Tribunal has awarded a total compensation to the tune of Rs.5,47,000/- with 6% interest per annum from the date of filing of the claim petition i.e. 25/08/1999 till its realization by fastening the liability upon the appellant/National Insurance



Company Limited as well as the owner of the Jeep and United India Insurance Company Limited.

2. Brief facts, necessary for disposal of the appeal, is that on 08/05/1999, the Jeep bearing its registration No. MP-27-D/0492 driven by Kera, owned by Yogesh Kumar Gupta and insured by the United India Insurance Company Limited was coming from Katghora to Sursitapur at about 5.30 AM. At the relevant time, the Jeep was dashed vehemently from its opposite side by another vehicle i.e. Bus bearing its registration No. MP-27/7876, which was owned by Triloki and insured by the appellant/National Insurance Company Ltd. It is stated in the claim petition that the alleged accident has been occurred due to rash and negligent driving of the Bus driver, as a result of which, Jeep driver- Dharam Pal Singh @ Kera had expired on the spot including some other persons.

3. On account of the aforesaid accident, the claimants being the parents of the deceased-Jeep driver has submitted a claim petition as per the provisions prescribed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter called as 'M.V. Act') by claiming a total compensation of Rs.9,30,000/- with 18% interest per annum.

4. The non-applicants have contested the claim. The non-applicants No. 1 & 2 have stated in their reply that their vehicle (Bus) was being driven slowly and cautiously and the alleged accident was occurred because of rash and negligent driving of the Jeep driver. Therefore, they are not liable to pay any amount of compensation as claimed by the claimants with regard to the said accident.

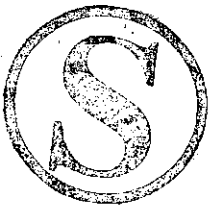
5. The non-applicant 3/appellant-National Insurance Company Limited has contested the claim mainly on the ground that since the vehicle in question was not insured by them, therefore, they are not at all liable to indemnify the insured.

It is contested further on the ground that since the premium amount was received after the occurrence of the alleged accident and as the policy was issued much after the alleged accident i.e. in the month of June-1999, therefore, the appellant/National Insurance Company Limited cannot be held liable to pay any amount of compensation.

6. The non-applicant No. 4 i.e. the owner of the Jeep has contested the claim on the ground that the claim as made is extremely in higher side and stated further that on account of the alleged accident, his driver namely Dharam Pal Singh @ Kera has also died on the spot. In any case, he is entitled to be indemnified by the insurer (United India Insurance Company Limited.), if his liability is found by the learned Claims Tribunal. While, the insurer of the Jeep i.e. United India Insurance Company Ltd, the non-applicant No.5 has contested the claim on the ground that the vehicle in question (Jeep), insured exclusively for the private use, was being used for commercial purposes by carrying passenger on hire in utter violation of its policy, therefore, he is entitled to be exonerated from any of the liability.

7.1 After close scrutiny of the evidence available on record and that upon hearing the parties, the Claims Tribunal by its impugned award dated 31/07/2004 has come to the conclusion that the alleged accident has been occurred due to rash and negligent driving of both the drivers. It held further that since the premium amount was received by the employee of the National Insurance Company Ltd. on 07/05/1999 under the *Challan* (Exhibit D/2) prior to the alleged accident, therefore, it cannot be held that the alleged Bus was not insured by it, in consequence, the National Insurance Company Limited cannot be exonerated from its liability.

7.2 It observed further by examining the statement of Ransai (NAW-2) who was an eye-witness and that by relying upon the FIR (Exhibit P/1), that as both



the vehicles were collided in front of each other and since the road was widened enough where two trucks could be passed easily, therefore, the Jeep driver was equally responsible for the alleged accident. It held further that the insurer of the Jeep, i.e., the United India Insurance Company Limited is also liable to indemnify the insured/owner of the Jeep.

7.3 In consequence, based upon the aforesaid analysis, the Claims Tribunal while fastening liability upon the driver, owner and Insurance Company of the Bus i.e. the National Insurance Company Limited as well as the owner of the Jeep and insurer of the Jeep i.e. United India Insurance Company Limited, has awarded a total compensation of Rs. 5,47,000/- with 6% interest per annum from the date of filing of the claim petition i.e. 25/08/1999 till its realization.

8.1 Shri Goutam Khetrapal, learned counsel for the appellant-National Insurance Company Ltd. has argued that the appellant has filed this appeal mainly on the ground that since the vehicle in question was not insured, therefore, the National Insurance Company Limited cannot be held liable to pay any amount of compensation. He further argued that that since the insurance policy was insured in the month of June-1999 much after the occurrence of the alleged accident, therefore, in view of the provisions prescribed under Section 145(b) of the M.V. Act and that by virtue of Section 64-VB of the Insurance Act, 1938, no liability as such could be fastened upon the Insurance Company.

8.2 Shri Manoj Paranjpe, learned counsel for Yogesh Kumar Gupta (owner of the Jeep) has argued that the finding of the Claims Tribunal with regard to the contributory negligence is not at all sustainable. He invites my attention to the evidence of eye-witness, Ransai (NAW-2), who was sit just besides the driver, pointed out that he had stated very specifically that the driver of the Jeep had given the side to the driver of the offending vehicle (Bus), however, the driver of the said vehicle had virtually not given any side. He further argued that since the



driver and/or owner has not produced any evidence in this regard, therefore, an adverse inference ought to have been drawn against them. Having failed so and that by ignoring this material piece of evidence, the Claims Tribunal has erred in holding that the Jeep driver was equally responsible for the alleged accident. He argued further that the burden of proof has wrongly been placed upon the owner of the Jeep to establish the fact that the same was being driven in violation of the policy.

9. Smt. Anubuti Marhas, learned counsel for the claimants has supported the impugned award as passed by the Claims Tribunal.

10. I have heard learned counsel appearing for the parties and perused the entire record carefully.

11. The question which arise for determination in this appeal is that whether appellant/National Insurance Company Limited has insured the Bus and therefore, the liability could be fastened upon it? And/or whether the driver of both the vehicles were responsible for the alleged accident?

12. As far as fastening the liability upon National Insurance Company Ltd. is concerned, it is clear that the premium amount was collected by the Officer of the appellant/National Insurance Company Ltd. namely Mr. B.L. Khesh on 07/05/1999 by insuring a *Challan* (Exhibit D/2). True, it is that the insurance policy was issued in the month of June-1999 much after the occurrence of the alleged accident, but it is also clear from the record, particularly, *Challan* (Exhibit D/2), that the premium amount was recovered by Mr. B.L. Khesh on 07/05/1999 acting as a Development Officer of the appellant/National Insurance Company Limited, therefore, it cannot be held that the vehicle in question, i.e. the Bus, was not insured with the appellant/National Insurance Company Limited.

13. It is pertinent to mention here that although the appellant/National Insurance Company Ltd. has pleaded in his written statement that all the powers for issuance of policies have been withdrawn from Mr. B.L. Khesh on 22/05/1999, however, despite of providing sufficient opportunities, the Insurance Company has failed completely to adduce any evidence in order to establish the said fact. Therefore, it cannot be held that he was suspended on 22/05/1999 as pleaded by the appellant/National Insurance Company Limited.

14. Be that as it may, the premium amount was not only collected prior to the alleged accident by Mr. B.L. Khesh as an employee of the Insurance Company but was collected even prior to his suspension on 22/05/1999, if presumed so, though not found to be proved as discussed above, therefore, under such circumstances, it cannot be held that the vehicle in question, i.e. the Bus was not insured by the appellant/National Insurance Company Limited.

15. Besides, the owner being a stranger cannot be held to suffer on account of any mistake or wrong doing committed by the employee of the appellant/National Insurance Company Limited as the relationship of employer-employee was in existence at the time of accident and the premium amount was collected by the appellant-Insurance Company through its employee. Thus, from any angle, it cannot be held that the vehicle in question (Bus) was not insured with the appellant/National Insurance Company Limited and the provisions prescribed under Section 149(b) of the M.V. Act and the provisions of Section 64-VB of the Insurance Act, 1938 would not be of any help for the appellant/National Insurance Company Limited as argued by Shri Khetrpal in this regard. Consequently, findings recorded by the Claims Tribunal while fastening the liability upon the appellant/National Insurance Company Limited are just and proper and do not require to be interfered.

16. As far as the findings recorded by the Claims Tribunal regarding the contributory negligence of the Jeep driver is concerned, it is clear from a bare perusal of the statement of eye-witness Ransai (NAW-2), that the Bus driver alone was responsible for the alleged accident. The said eye-witness, who was sit just besides the driver, has stated very specifically that he (Jeep-driver) had given the side to the said "Rajdhani Bus" which was coming from the opposite side. In cross-examination, he has stated *suo motu* further that the driver of the said Bus had virtually not given the side. All these material piece of evidence were not scanned in its true perspective by the Claims Tribunal while arriving to a said conclusion. Therefore, the findings of the Tribunal holding that the Jeep driver was also and equally responsible for the alleged accident cannot be upheld. I, therefore, set aside the same and consequently held that the alleged accident was occurred solely on account of rash and negligent driving of the Bus driver. Resultantly, the driver of the Bus (since deceased, hence deleted from the cause-title), owner and appellant/National Insurance Company Limited of the Bus alone would jointly and severally be liable for the alleged accident and would liable to pay the entire amount of compensation as assessed by the Tribunal to the claimants.

17. Consequently, the appeal filed by the appellant/National Insurance Company Limited is dismissed.

18. There shall be no order as to cost(s).

Sd/-

(Sanjay Agrawal)
Judge