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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal No. 1251 of 2004

1. Amrit Lal Giri S/o Lagan Giri Aged about 35 years, R/o village Balampur, PS and Tahsil Sitapur, District Sarguja, Chhattisgarh.
2. Pinky Giri S/o Amriti Giri (Adopted Son) aged 9 years, Minor Through Guardian father Amritgiri R/o village Balampur, PS and Tahsil Sitapur, District Sarguja, Chhattisgarh.

---- Appellants

Versus

1. Pingal Ram S/o Dheelar Ram Aged 50 years, R/o Village Kherwar, PS and Tahsil Ambikapur, District Sarguja, Chhattisgarh.
2. Bhagwan Kushwaha S/o Satyanarayan Kushwaha, aged about 40 years, Occupation Agriculture and Transporter, R/o Kedarpur Mohalla, Near Pratappur Naka, Ambikapur, Sarguja, Chhattisgarh.
3. Pancham Ram S/o Ghuran Ram, Aged about 36 years, Occupation Driver, R/o village Ghutarapara, PS and Tahsil Ambikapur, District Sarguja, Chhattisgarh.
4. United India Insurance Company Limited, Through Divisional Manager, United India Insurance Company Near Ram Mandir, Ambikapur, District Sarguja, Chhattisgarh.

---- Respondents

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Miscellaneous Appeal No. 1346 of 2004

United India Insurance Company Limited, Through Branch Manager, United India Insurance Company Limited, Near Ram Mandir, Ambikapur, District Sarguja, Chhattisgarh.

---- Appellant

Versus

1. Pingal Ram Son of Dhilar Ram, aged 50 years, Occupation Agriculturist, resident of Khairwar PS and Tahsil Ambikapur, District Sarguja, Chhattisgarh.
2. Bhagwan Kushwaha son of Satyanarayan Kushwaha, aged 40 years, Resident of Kedarpur Mohalla, Ambikapur, District Sarguja, Chhattisgarh.

3. Pancham Ram son of Ghurun Ram, aged 35 years, Occupation Driver, Resident of Ghutrapara PS and Tahsil Ambikapur, District Sarguja, Chhattisgarh.
4. Amrit Giri S/o Lagan Giri aged 35 years, resident of Balampur, Tahsil Sitapur, District Sarguja, Chhattisgarh.
5. Pinki Giri son of Amrit Giri (said to be adopted son) aged 9 years, minor through his guardian father Amrit Giri, resident of village Balampur, Tahsil Sitapur, Ambikapur, District Sarguja, Chhattisgarh.

---- Respondents

For Appellant/Claimants : Shri D.N.Prajapati and Shri Vasant Zokarkar Advocate.
For Respondent/Insurance Company : Shri H.B.Agrawal, Senior Advocate with Shri Pankaj Agrawal, Advocate.
For Respondent-Driver : Shri Rakesh Kumar Jha, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice

Judgment on Board

26/08/2016

1. These two appeals are being disposed of by a common judgment since they both arise out of a common award dated 09.09.2004 passed by the learned 4th Additional Motor Accident Claims Tribunal, Ambikapur (hereinafter called 'the Tribunal').

2. The claims petitions relate to death of Shyampati Bai. Pingal Ram filed a claim petition being Motor Accident Claims Case No. 6 of 2002, claiming that Shyampati Bai was his unmarried daughter. On the other hand, Amrit Lal Giri, Appellant in Miscellaneous Appeal No. 1251 of 2004, filed Motor Accident Claims Case No. 8 of 2002 claiming that Shyampati Bai was his legally wedded wife and he being the husband was entitled to compensation. The deceased was admittedly travelling in a Tractor and the stand of the Insurance Company was that the deceased was a gratuitous passenger on a tractor and that it was not liable to pay compensation. The learned Tribunal held that the deceased was not the wife of Amrit

Lal Giri but was the daughter of Pingal Ram and awarded an amount of Rs. 1,43,000/- as compensation holding Pingal Ram alone to be entitled for the same. The Insurance Company was held liable to pay the compensation.

3. Miscellaneous Appeal No. 1251 of 2004 has been filed by Amrit Lal Giri challenging the award of the Tribunal on the ground that he being the legally wedded husband of the deceased was entitled to compensation. Miscellaneous Appeal No. 1346 of 2004 has been filed by the Insurance Company in which the main argument is that the Insurance Company has wrongly been held liable to pay compensation and it was not liable to pay compensation in respect of gratuitous passenger on a Tractor. It is also urged that the Tractor was registered for agriculture purpose but was being used for commercial purposes i.e. carrying cement, sand etc. and hence, the Insurance Company was not liable to pay compensation.

4. Firstly, coming to the Appeal of Amrit Lal Giri, and in this case, it would be pertinent to mention that before the Tribunal, Amrit Lal Giri also claimed that he and the deceased had adopted Pinky Giri as their daughter. However, Pingal Ram, father of the deceased denied that his daughter was married. Therefore, there was a dispute *inter-se* parties. Amrit Lal Giri failed to lead any evidence to prove that any legal marriage had taken place between him and the deceased. He also failed to lead any evidence to show that Pinky Giri was their adopted daughter. The main argument of Amrit Lal Giri was that oral evidence has been led to show that the deceased was residing alongwith him. Even if that is accepted to be correct, under Section 166 of the Motor Vehicles Act, it is only the legal representatives of the deceased who are entitled to claim compensation and even if two persons are living together, the second person cannot be said to be the legally wedded husband or legal representative of the deceased. The case may have been different if there were no other legal representative. But here the father of the deceased has set up a counter case that his daughter was never married to the Appellant-Amrit Lal Giri. In this situation, some evidence in the nature of ration card, voter ID card or any other documents where the deceased may have been described as wife of the claimant, was required to be produced. No evidence has been led before the Tribunal in this regard. Therefore, the appeal (MA No. 1251 of 2004) filed by Amrit Lal Giri being without merit, is dismissed.

5. So far as the appeal filed by the Insurance Company is concerned, the Insurance Company did not take any steps to prove the policy of insurance. This Court is not going into the question whether the Insurance Company is liable for payment of compensation to a passenger travelling on a tractor or not. However, if the Insurance Company wants to prove an exception, it must prove from the policy and show that it is not liable to pay compensation. Nothing in law prevents the Insurance Company from giving wider coverage than that provided in the policy. Once the Insurance Company admitted that the vehicle was insured, it should have produced the insurance policy to show what are the limits of liabilities and if it is not shown, it cannot escape from its liability.

6. In view of above, the appeal by the Insurance Company is also dismissed.

7. No order asto costs.

8. Send down the lower Court records forthwith.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

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