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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No.1235 of 2007

- Bajaj Alliance General Insurance Company Limited, Airport Road, Yerawada, Pune 411006 (MS)

---- Appellant

versus

1. Smt. Kaushalya, Wd/o Late Mahnguram Sahu aged about 25 years,
2. Mukesh Kumar, S/o Late Mahnguram Sahu, aged 08 years though Natural Guardian mother Smt. Kaushalya R-1
3. Gangaram, S/o Late Shri Jayamangal Sahu, aged about 65 years.

   All R/o village and post Devadant, P.S. Khadgawa, Tahsil – Manendragarh, District Korea (C.G.) (Claimants)
4. M/s. Rungta Project Limited, Manualam – 301-24, Basu Sarani, Kolkata 700001, presently – Charcha Basti, Tahsil Baikunthpur, District Korea (C.G) (Owner)
5. Mantu Kumar Ravi, S/o Shrr Nandlal Ravi, aged about 22 years, Occupation Driver, Present Address – M/s. Rungta Project Limited, Charcha Basti, Charcha Colliery, Tahsil Baikunthpur, District Korea (C.G.) (Driver)
6. Smt. Savitri, W/o Gangaram Sahu, aged about 60 years, R/o village Devadant, Police Station Khadgawa, Tahsil Manendragarh, District Korea (C.G.)

---- Respondents

For Appellant	:	Shri Sachin Singh Rajput, Advocate
For Respondents	:	None

Hon'ble Shri Deepak Gupta, Chief Justice

Judgment on Board

23.12.2016

1. This appeal by the Insurance Company is directed against the award dated 31.08.2007 passed by the Learned 2nd Additional Motor Accidents Claims Tribunal, (F.T.C.) Manendragarh in Claim Case No.50 of 2007, whereby the Claims Tribunal has awarded Rs.3,75,000/- in favour of the claimants and held the Insurance Company liable to pay this amount.

2. The undisputed facts are that the claimants had filed a claim petition claiming compensation with regard to the death of Mahnguram. In the claim petition, it was alleged that the deceased was aged about 30 years and was engaged as a cook with M/s Rungta Project Limited (Respondent No.4), the owner of the vehicle. The deceased was travelling in one Mahindra Pickup Van bearing registration No. J.H. 02/A-7706, owned by M/s Rungta Project Limited and driven by Mantu Ram Ravi (Respondent No.5). The stand of the Insurance Company before the Claims Tribunal as well as before this Court is that since the vehicle in question is a goods vehicle and the deceased was neither the owner of the goods nor the representative of the owner of the goods nor the driver of the vehicle nor the cleaner of the vehicle, the Insurance Company could not be held liable to pay compensation. Learned Claims Tribunal held that since the deceased was a cook, employed with the owner of the vehicle and the Insurance Company in the Policy had covered liability in respect of two persons, therefore, the Insurance Company was liable to pay compensation.

3. Shri Sachin Singh Rajput, Advocate appearing on behalf of the Insurance Company submits that the award of learned Claims Tribunal is totally against the law and the facts of the case. He further submits that the Insurance Policy only guaranteed extended cover in respect of two persons, who were concerned with the operation and maintenance of the offending vehicle. He also contended that the award of the learned Claims Tribunal insofar as penal interest is concerned, is illegal.

4. The learned Claims Tribunal has directed that in case the awarded amount is deposited within a period of one month the interest would be 9% per annum from the date of filing of the claim petition, but, if it was not deposited within a period of 30 days, interest would be 12% per annum. This part of the award is totally illegal under Section 171 of the Motor Vehicles Act. The learned Claims Tribunal has only power to award the interest and it has no power to award penal interest. This has been clearly laid down in case of *National Insurance Co. Ltd. vs. Keshav Bahadur and Others,* AIR 2004 SC 1581.

5. I have gone through the Insurance Policy and as per the Policy the legal liability is of two persons engaged in operation / maintenance of the vehicle. Therefore, it obviously covers the unlimited liability of two persons engaged / employed by the owner of the vehicle, who were directly connected with the operation and maintenance of the vehicle. Neither the claimants nor the owner of the vehicle have said that the deceased was connected with the operation and maintenance of the vehicle. Admittedly, he was a cook and therefore, his job has nothing to do with the operation and maintenance of the vehicle. As such, the Insurance Company could not be held liable to pay the compensation.

6. In view of the above discussion, the appeal is partly allowed. The Insurance Company is exonerated of the liability to pay compensation. However, it is directed to pay the compensation, if not already paid, but it shall be entitled to recover the same from the owner and the driver of the vehicle. For this purpose, the Insurance Company will not be required to file a civil suit or a separate proceeding, but can execute the order of this Court under Section 174 of the Motor Vehicles Act. It is further directed that the claimants are entitled to interest on the awarded amount at the rate of 9% per annum from the date of filing of the claim petition till payment / deposit of the awarded amount.

Sd/-
(**Deepak Gupta**)
CHIEF JUSTICE

Chandra