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HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 254 of 2005

- National Insurance Company Ltd. Through its Assistant Manager, B-1, Taha Complex, 2nd Floor, Ring Road No.2, Priyadarshini Nagar, Bilaspur, Chhattisgarh.

---- Appellant/Insurer

Versus

1. Naresh Kumar Agrawal, S/o Ved Prakash Agrawal (owner)

2. Dinesh Kumar Agrawal, S/o Ved Prakash Agrawal, Occupation : Driver/Business (Driver)

   Respondents No. 1 and 2, both residents of Village: Ludeg, Tehsil: Pathalgaon, District: Jashpur, Chhattisgarh.

3. Smt. Juni Bai, Widow of Late Sundar Ram, Aged about 32 years, R/o Village: Kukricholi, Tehsil: Pathalgaon, District: Jashpur, Presently R/o Village: Bangaon, Tehsil: Kunkuri, Distt.: Jashpur, Chhattisgarh (Claimant)

---- Respondents

For Appellant	:	Shri Gautam Khetrapal, Advocate.
For Respondent No.1 & 2	:	Ms. Reena Singh, Advocate.
For Respondent No.3	:	None appears.

Hon'ble Shri Justice Sanjay Agrawal

Award On Board

09/12/2016

1. This is an appeal filed by the Insurance Company against the award dated 12.01.2005 passed by the Additional (Uppar) Motor Accidents Claims Tribunal, Jashpur, in claim case No.56/2004, whereby the Claims Tribunal while allowing the claim in part has awarded total compensation of Rs.4,04,000/- by fastening the liability upon the appellant/Insurance

Company.

2. Brief facts of the case are that on 21.05.1999, the deceased Sundar Ram was coming from village Kukurgaon to Chiknapani by the offending vehicle, Truck, bearing its registration No. M.P.-27-6386, owned by respondent No.2 – Dinesh Kumar Agrawal and insured with the appellant/Insurance Company. At the relevant time, the vehicle in question was being driven by its driver – Naresh Kumar Agrawal, respondent No.1 herein, in a rash and negligent manner. As a result of which, the vehicle in question was tilted down and because of the said accident, the deceased Sundar Ram, who was *Rajmistry* by profession, has expired.

3. On account of the aforesaid accident, Smt. Juni Bai, the widow of the deceased – Sundar Ram, has instituted a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to 'the Act of 1988' in short) claiming total compensation of Rs.13,20,000/- by submitting, inter alia, that her husband was coming by the said vehicle by carrying the goods of *Baaratees* from village Kukurgaon to Chiknapani.

4. The respondents No.1 & 2, Driver and Owner of the vehicle in question, have contested the claim on the ground that the deceased was not expired from the alleged accident, and therefore, they are not liable to pay any amount of compensation, while the appellant/Insurance Company has contested the claim on the ground that the vehicle in question was not insured by it as the policy was issued after the occurrence of the said accident. It is pleaded in the written statement that the policy was issued in the month of June, 1999 by covering the risk w.e.f. 01.06.1999 upto 31st May, 2000 and since the alleged accident occurred on 21.05.1999, prior to the insurance of said policy, therefore, at the relevant time, it was not insured. It was further pleaded that the vehicle in question insured as a goods vehicle,

was being used in violation of the insurance policy by carrying the *Baaraatees.*

5. The Claims Tribunal, vide its impugned award dated 12.01.2005, has come to the conclusion that the alleged accident has occurred due to rash and negligent driving of the driver, namely, Naresh Kumar Agrawal; held further that though the policy was issued in the month of June, 1999, but the premium was collected prior to the alleged accident by its employee on 20.05.1999 by issuing a challan in this regard, therefore, it cannot be held that the vehicle in question was not insured on the date of accident. It held further that the Company has failed to prove that the vehicle in question was used in violation of the insurance policy. In consequence, the Claims Tribunal has awarded a sum of Rs.4,04,000/- with 9% interest per annum from the date of claim petition, i.e., 05.11.2001 till its realisation.

6. Shri Goutam Khetrapal, learned counsel for the appellant/Insurance Company has argued that the vehicle in question was not insured as the policy was issued much after the occurrence of the incident. He argued further that the vehicle in question, which was insured as a goods carrying vehicle, was being used by carrying the *Baaraatees,* and therefore, the vehicle in question was used in violation of the insurance policy.

7. Ms. Reena Singh, learned counsel for the respondents No. 1 & 2 has argued and supported the order impugned passed by the Claims Tribunal by submitting that the deceased was not travelling as a *Baaraatee* but, in fact, he was travelling while carrying luggage of the *Baaraatees.* She argued further that the premium amount was paid to the employee of the Insurance Company before the alleged accident and by paying the premium amount, they have insured their vehicle (truck).

8. I have heard learned counsel for the respective parties and perused the record carefully.

9. As far as the question with regard to policy of the Insurance Company is concerned, it is clear from the record that the premium amount was paid by the owner on 20.05.1999, i.e., prior to the alleged accident, which took place on 21.05.1999, therefore, it cannot be said that the vehicle in question was not insured on the date when the alleged accident took place. Moreover, the employee of the Insurance Company – Mr. B. L. Khess, had issued a challan while collecting the premium amount, therefore, it cannot be said that the vehicle in question was not insured on the said date. In any case, the owner being a stranger cannot be held to suffer on account of any mistake or wrongdoing committed by the employee of the appellant/National Insurance Company Limited as the relationship of the employer and employee was in existence at the time of accident and the premium amount was collected by the appellant/Insurance Company through its employee. Therefore, the finding of the Claims Tribunal in this regard is not liable to be set aside. I, therefore, affirm the same.

10. So far as the question with regard to the using of the vehicle in violation of insurance policy is concerned, it is also clear from the record that the deceased – Sundar Ram was travelling not as a *Baaraatee* but in fact, he was travelling while carrying the goods of the *Baaraatees* in the cabin. The burden was heavily upon the Insurance Company to establish this fact. However, Mr. John Toppo, who was examined on behalf of the Insurance Company has not stated anywhere in his statement that the vehicle in question was being used in violation of the policy by carrying the *Baaraatees*. Even, if we examine the first information report, which was marked as Ex.P.3, it would also reveal the fact that the vehicle in question was hired from one Dinu Agrawal and not from the owner of the vehicle in question, and

therefore, from any angle, it cannot be held that the vehicle in question was being used in violation of the insurance policy. I, therefore, affirm the finding of the Claims Tribunal in this regard also.

11. In view of the foregoing discussions, the appeal is devoid of merit and is hereby dismissed. There shall be no order as to costs.

Sd/-
(**Sanjay Agrawal**)
Judge

Anjani