

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 499 of 2009**

Durga Prasad Gupta S/o late Thakurdin Gupta, aged about 52 years,
R/o Baikunthpur, Tahsil Baikunthpur, District -Korea (CG)

---- Appellant**Versus**

1. Dhanmatiya Bai widow of Bihari, aged about 32 years, Caste – Ahir
2. Shiv Kumar S/o late Bihari, aged about 15 years, Caste Ahir
3. Devkumar S/o late Bihari, aged about 8 years, caste Ahir
4. Indra Kumar S/o late Bihari, aged about 7 years, caste Ahir
5. Bharat S/o late Bihari, aged about 4 years, Caste Ahir
6. Batur S/o late Bihari aged about 0.4 years, Caste Ahir

Respondents 2 to 6 are minor through their natural guardian Smt.
Dhanmatiya Bai (respondent no.1)

All resident of village – Keshavpur, Police Station Ramanujnagar, Tahsil
Surajpur, District Surguja (CG)

7. Suresh Chandra Singh S/o Girvar Prasad, Caste – Khatriya, aged about
46 years, (driver of jeep) R/o Bazaar Para, Jainagar, PS Jainagar,
Tahsil – Surajpur, District Suruja (CG)
8. Bahadur Singh Gond S/o Ramesh Singh, Occupation Driver, Village
Mahora, P/S Patna, Tahsil – Baikunthpur, District Korea (CG) driver of
truck no. CG 16 ZC/0346
9. Brijlal S/o Ramsai, Harijan, aged about not known R/o village Mahora,
PS Patna, Tahsil – Baikunthpur, District -Korea (CG)
10. The Oriental Insurance Company Ltd. Branch Ambikapur District
Surguja (CG)

---- Respondents**Writ Petition (227) No. 2150 of 2009**

Durga Prasad Gupta S/o late Thakurdin Gupta, aged about 52 years,
R/o Baikunthpur, Tahsil Baikunthpur, District -Korea (CG)

---- petitioner**Versus**

1. Kunti Bai Widow of late Ramprasad, aged about 55 years
2. Maniram S/o late Ramprasad, aged about 38 years
3. Dhaniram S/o late Ramprasad, aged about 33 years

All resident of village – Mahuwapara, Surajpur, PS & Tahsil Surajpur,
District – Surguja (CG)

4. Bahadur Gond S/o Ramesh Singh, Occupation Driver, Village Mahora,
P/S Patna, Tahsil – Baikunthpur, District Korea (CG) driver of truck no.
CG 16 ZC/0346
5. Brijlal S/o Ramsai, Harijan, aged about 25 years, R/o village Mahora, PS
Patna, Tahsil – Baikunthpur, District -Korea (CG)
6. Suresh Chandra Singh S/o Girvar Prasad, Caste – Khatriya, aged about
46 years, R/o Bazaar Para, Jainagar, PS Jainagar, Tahsil – Surajpur,
District Surguja (CG) (driver-cum-owner of jeep)
7. The Oriental Insurance Company Ltd. through Branch Manager, the
Oriental Insurance Company Ltd. Manendragarh Road, Ambikapur,
District Surguja (CG)

---- Respondents

For Appellant	:	Shri Palash Tiwari, Advocate
For Respondent Oriental Insurance Co.:		Shri Pankaj Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

14/11/2017

Both the cases arise out of the same accident that took place on 29.02.2004 and the challenge in both the cases is to the award dated 09.01.2009 passed by the 2nd Additional Motor Accident Claims Tribunal (FTC), Surajpur, District Surguja (CG) in Motor Accident Claim Case Nos. 87/2006 and 17/2006. Vide the impugned award the Tribunal in Claim Case No.87/06 in respect of death of Bihari has awarded a compensation of Rs.2,94,975/- and in Claim Case No.17/06 in respect of injury sustained by

Ramprasad has awarded a compensation of Rs.5,000/-. In both the cases, interest @ 7% per annum from the date of application has been awarded.

2. While passing the said award the Tribunal has exonerated the Insurance Company of its liability and has fastened the liability of payment of compensation upon the present appellant i.e. the owner of the offending vehicle.

3. For better appreciation of the case, the brief facts in the instant case are that on 29.02.2004 when the deceased Bihari was travelling along with Ram Prasad on a truck bearing no. CG16 SC 0346 owned by the present appellant Durga Prasad and driven by respondent no.8 Bahadur Singh Gond dashed with a vehicle coming from the opposite direction i.e. Jeep bearing registration no. CG 15ZB 0295 belonging to respondent no.7 Suresh Chandra Singh and driven by respondent no.9 Brijlal. As a result of the accident the deceased Bihari who was sitting in the truck fell down and sustained grievous injuries to which he later succumbed. Similarly the co-passenger Ram Prasad also received injuries from the said accident. During pendency of the matter before the Tribunal, injured Ram Prasad also died on account of some other reason. The legal representatives of deceased Bihari filed a claim case registered as Motor Accident Claim Case No.86/06 and the LRs of Ramprasad filed a claim case registered as Motor Accident Claim Case No.17/06 before the Second Additional Motor Accident Claims Tribunal (FTC), Surajpur.

4. The Tribunal taking into consideration the fact that it was a truck which was meant for carrying goods and the deceased was travelling on the said vehicle as a gratuitous passengers for whom no premium was paid by the appellant-owner, exonerated the Insurance Company of its liability and the

entire liability was fastened upon the driver and the owner of the offending truck.

5. Counsel for the appellant challenging the award submits that the Tribunal has not properly appreciated the statement of an eyewitness-AW-2, who has given specific details in respect of how the accident occurred and that the offending vehicle was not involved in the accident and that it was an accident which occurred from the Jeep coming from the opposite direction. He submits that the Tribunal failed to take note of the fact that as per the evidence of AW-2-Ashok Sori, the offending vehicle i.e. the Truck belonging to the present appellant was in stationary position when the accident arose. The deposition of AW-2 reflects that there was a break down of the Truck belonging to the appellant and in order to catch a different vehicle for going to the destination, the deceased and the injured Ramprasad were trying to cross the road when the accident arose. Thus, the offending vehicle cannot be saddled with the responsibility of covering the risk of the two persons. It was contended by the counsel for the appellant that the Tribunal further failed to take notice of the fact that there was an element of contributory negligence on the part of the deceased as well as the injured in as much as if the deceased and the injured would had been more cautious while crossing the road, the accident could have been avoided.

6. Counsel for the appellant relied upon the decision of the Rajasthan High Court reported in **2003 (2) TAC 347 (RAJ) “United India Insurance Company Limited vs. Master Sodari Devi & Others”**. The counsel for the appellant further referring to the aforesaid judgment submitted that the deceased person in the instant case should fall within the ambit of “any person” under Section 147(1)(b)(i) of the Act of 1988 and therefore the Insurance Company cannot be absolved of its liability.

7. Having heard the contention put forth by the counsel for the appellant if we look into the records, it clearly reflects that the present appellant and the driver of the vehicle i.e. respondent No.9-Brijlal, both have in their written statement which was filed before the Tribunal contended that the accident arose because of the negligence and fault on the part of the Jeep coming from the opposite direction. Both these persons have not disputed the accident to have occurred. Both these persons in their written statement have also not taken the stand as has been stated by the alleged eyewitness AW-2 Ashok Sori.

8. From the cross-examination of AW-1, the claimant Dhanmatiya on a question being put by the counsel, she has stated that she was informed by the villagers that the Truck in which her husband was travelling met with an accident. Further, from the criminal case, which has been lodged pursuant to the accident i.e. Crime No. 59/2004, it was the driver of the present appellant, who was made an accused. Another aspect, which cannot be lost sight is that the said Ashok Sori has for the first time deposed before the Tribunal and that there was no statement made whatsoever earlier before any of the authorities. If AW-2 had been the eyewitness, his statement would have been recorded before the police authorities as well as he would have been cited as a witness in the Criminal case also. It is also pertinent to mention that undisputedly the policy which was issued by the Insurance Company was in respect of a goods carrying transport vehicle and that no extra premium was paid by the appellant for covering the risk of any such passengers which were likely to be travelling on the said Truck.

9. From the records which have come before this Court it clearly reflects that the policy which was issued by the Insurance Company was a liability only policy and that the risk covered under the liability only policy was for the

third party and an extra premium was paid covering the risk of the employee and the driver of the said vehicle. So far as the liability of Insurance Company is concerned, it would only be subject to the receipt of any premium. In the absence of any premium being received by the Insurance Company, it cannot be expected from the Insurance Company to indemnify the owner. The role of the Insurance Company is always on the basis of the contract which is entered into between the insurer and the insured and the contract would depend upon the terms of the policy taken by the insured which would depend upon the premium paid.

10. The supreme Court in the case of **New India Assurance Company Ltd. Vs. Sadanand Mukhi and others, 2009 (1) TAC 425 (SC)** referring to the contract of the Insurance Company with the owner of the motor vehicle in paragraph-15 held as under:

“Contract of insurance of motor vehicle is governed by the provisions of the Insurance Act. The terms of policy as also the quantum of premium both for insuring the vehicle in question depends not only upon the carrying capacity of the vehicle but also on the purpose for which the same was being used and the extent of the risk covered thereby. By taking an 'act policy', the owner of a vehicle fulfills his statutory obligation as contained in Section 147 of the Act. The liability of the insurer is either statutory or contractual. If it is contractual its liability extends to the risk covered by the policy of insurance. If additional risks are sought to be covered, additional premium has to be paid. If the contention of the learned counsel is to be accepted, then to a large extent, the provisions of the Insurance Act becomes otiose. By reason of such an interpretation the insurer would be liable to cover risk of not only a third party but also others who would not otherwise come within the purview thereof. It is one thing to say that the life is uncertain and the same is required to be covered, but it is another thing to say that we must read a statute so as to grant relief to a person not contemplated by the Act. It is not for the Court, unless a statute is found to be unconstitutional, to consider the rationality thereof. Even otherwise the provisions of the Act read with the provisions of the Insurance Act to be wholly rational.”

11. The Insurance Company always have various plans and packages catering the need of the respective vehicle owners and it is the vehicle owner

to decide as to which policy he should take with which he would be secured in the event of an eventuality. The basic requirement for the Insurance Company to cover the risk of the owner is the receipt of premium. In the instant case, perusal of the policy would reveal that it is an act only policy covering the basic risk of the third party. In addition, an extra premium was paid covering the risk of an employee and the driver of the said vehicle which by itself means that the owner never intended for a policy which would also cover the risk of any gratuitous passenger or a paid or unpaid person travelling in the truck other than the employee or the driver. Under such circumstances, in case the driver and the owner or for that matter the driver without consent of the owner permits some person to travel in the truck, the Insurance Company cannot be expected to cover those persons or such category of persons for whom the premium has not been paid.

12. The liability of the Insurance Company is contractual liability and unless there is a premium paid while issuance of policy, the liability of the Insurance Company would be confined only to the extent of covering the risk of only those persons for whom there is a statutory coverage i.e. third party or for whom the extra premium has been paid. The Insurance Company cannot be expected to protect the owner to the extent of covering those persons who are not otherwise covered under the terms of the contract and there can only be enforcement of contract between the insurer and the insured qua the contract and not beyond that. Under the circumstances, it would clearly reflect that the Insurance Company is not liable to indemnify the insured in the case in hand for the reason of non-payment of any extra premium.

13. Given the factual matrix and the fact that the Insurance Company has not received any extra premium, in the opinion of this Court, the Tribunal has rightly exonerated the Insurance Company and saddled the liability upon the

present appellant i.e. the owner and driver of the offending vehicle. For the said reason this Court also does not find any strong case made out by the appellant/petitioner calling for an interference with the impugned award. Thus, the appeal and the writ petition being devoid of merits, deserve to be and are accordingly dismissed.

**Sd/-
(P. Sam Koshy)
JUDGE**