NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 1025 of 2003

- Oriental Insurance Company through its Divisional Manager, Opposite High Court, Bilaspur (insurer)

---- Appellant

Versus

1. Shravan Kumar, s/o Chetram, aged 32 years,r/o Gram – Tekari, P.S. Abhanpur, district – Raipur (C.G.) (Driver)

2. Anil Rao, S/o Ambalal Rao, r/o Gram Palod, Post-Tekari, P.S. Abhanpur, district Raipur (C.G.)

3. Triveni Bai w/o Gulalram, aged 35 years.

4. Gulalram s/o Sukhram, aged 40 years.

   Both r/o Gram-Chhachhanperi, P.S. Abhanpur, district Raipur (C.G.) (claimants)

---- Respondents

For Appellant	:	Shri Vinay Harit, learned Senior Advocate with Shri V.B.Singh, Advocate
For Respondents No.1 & 2:		Ms. Shriya Mishra appears on behalf of Shri Kishore Bhaduri, learned Advocate.
For Respondents No.3 & 4:		Shri Amiya Kant Tiwari, learned Advocate

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Hon'ble Shri Justice Sanjay Agrawal

Award On Board

22/02/2017

1. This is an appeal filed by the appellant / insurance company while exercising the powers enumerated under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988' in brevity) against the award dated 08.08.2003 passed by the 6th Additional Motor Accidents Claims Tribunal, Raipur, in Claim Case No. 152/2002, by which, the Claims Tribunal while fastening the liability upon the insurance company, has awarded the claimants a sum of Rs.1,64,000/- with interest @ 6% per annum from the date of claim petition till its

realisation.

2. The undisputed facts of the case are that on 10.09.2002 at 9.30 pm the deceased Damendra Kumar @ Devendra was coming along with his uncle and other persons by the offending vehicle (Metador) bearing its registration No.MP-23-DA/4370 (CG-04-ZB-693) from village Chhechhanperi, by carrying idol of Lord Ganesha. The vehicle in question was owned by Anil Rao and insured with the appellant/insurance company. At the relevant time, the said offending vehicle was being driven by its driver Shravan Kumar rashly and negligently, as a result of which, he has lost his control over the vehicle, resulting in the occurrence of the alleged accident, in which, the deceased Damendra Kumar has expired while others sustained injuries.

3. On account of the aforesaid accident, a claim enumerated under Section 166 of the Act of 1988 has been made by the claimants by submitting, inter alia, that deceased Damendra Kumar was 18 years old, was a *Rajmistry* by profession and used to earn Rs.150/- per day, and therefore, they are entitled to total amount of compensation to the tune of Rs.7,05,000/-.

4. The non-applicants No. 1 & 2 have contested the aforesaid claim by saying that the vehicle in question was duly insured by the appellant/insurance company and stated further that the offending vehicle, i.e., Metador was not involved in the alleged accident.

5. The non-applicant No.3 has contested the claim on the ground that the vehicle in question (Metador) was insured as a Goods Vehicle whereas at the relevant time, it has been used in utter violation of the terms and conditions of the insurance policy by carrying passengers. It was contested further on the ground that the driver of the offending vehicle was not holding the effective and valid driving licence, therefore, in such circumstances, no liability could be fastened upon the appellant/insurance company.

6. Upon hearing the parties, the Claims Tribunal, while considering the evidence led by the parties, has arrived at a conclusion that the alleged accident had occurred due to rash and negligent driving of its driver and, held further that the insurance company, the appellant herein, has failed to establish the fact that the driver was not holding the effective and valid driving licence at the relevant time. In consequence, while fastening the liability upon the insurance company, the Claims Tribunal has awarded total compensation to the tune of Rs.1,64,000/- with interest @ 6% per annum from the date of Claim Petition till its realisation.

7. Being aggrieved by the aforesaid findings of the Claims Tribunal, the appellant / insurance company has filed this appeal. Shri Vinay Harit, learned Senior Advocate with Shri V.B.Singh, submitted that the findings of the Claims Tribunal are perverse in nature. He argued that the vehicle in question, which was insured as Goods Vehicles, was being used by carrying passengers, as evidenced by the First Information Report and also on the basis of the averments made in the claim petition, and therefore, the vehicle in question was being used in utter violation of the terms and conditions of the insurance policy. He argued further that the driver of the offending vehicle was not possessing the effective and valid driving licence, therefore, under such circumstances, the insurance company cannot be held liable to indemnify the insured. In support of his contention, Shri Vinay Harit has placed his reliance upon the decision rendered in the case of ***United India Insurance Company Limited*** *vs.* ***Chouvaram and others,*** reported in **2008 (2) C.G.L.J. 219.**

8. On the other hand, Ms. Shreya Mishra, learned counsel for respondents No. 1 & 2 and Shri Amiya Kant Tiwari, learned counsel for respondents No. 3 & 4 have supported the impugned award as passed by the Claims Tribunal.

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

10. The only question which requires to be determined by this Court is, as to whether the vehicle in question insured admittedly as a Goods Vehicle was being used in utter violation of the terms and conditions of its policy by carrying passengers at the relevant time? and/or, was being driven by the driver without possessing valid and effective driving licence?

11. In order to determine the aforesaid questions, the defence of the appellant/insurance company and the evidence of Mr. Pradeep Shukla (N.A.W.3), Assistant Divisional Manager of the Oriental Insurance Company Limited are required to be examined. The evidence adduced by him reveals that he has not stated anywhere that the driver of the offending vehicle was not holding the effective and valid driving licence. Consequently, it cannot be held that the driver of the offending vehicle was driving the vehicle without holding valid and effective driving licence at the relevant time. The statement of Mr. Pradeep Shukla (N.A.W.3) also does not show anywhere that the vehicle in question was being used by carrying the passengers well within the knowledge of the owner of the vehicle in question. The insurance company has thus failed to establish this particular fact that the driver of the offending vehicle was carrying the passengers well within the knowledge of the owner. Pertinently to be noted here further that the insurance company has even not pleaded in their written statement that the vehicle in question was being used by carrying passengers well within the knowledge of the owner. On perusal of the entire evidence, it cannot be held that the insured of the offending vehicle has willfully violated any of the terms and conditions of the insurance policy, so as to entitling the appellant/insurance company from exoneration of its liability.

12. As far as the case law as relied upon by Shri Vinay Harit is concerned, the same is noted to be distinguishable from the facts involved in the present matter. That is the case where the vehicle in question was hired by one Mr. Vishal from its owner, and therefore, with that factual scenario, it was held that the vehicle in

question was being used in violation of the policy. However, in the present case, the appellant/insurance company has failed completely to establish the fact that the vehicle in question (Metador) was being used in utter violation of the insurance policy by carrying passengers well within the knowledge of the owner, and therefore, the case law cited above is distinguishable and would not come as a rescue for the appellant/insurance company.

13. In view of the aforesaid discussions, I find no merit in this appeal, and therefore, the same being devoid of merit is hereby dismissed. No order as to costs.

Sd/-

(**Sanjay Agrawal**)
Judge

Anjani