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HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 872 of 2017

Ayodhya Soni S/o Basudev Soni, Aged About 47 Years Occupation Owner Of Vehicle, R/o Village Bagra, Police Station & Tahsil Ramanujganj, District Balrampur-Ramanujganj, Chhattisgarh ....(Owner)

---- Appellant

Versus

1. Smt. Kismatiya W/o Late Jagarnath, Aged About 45 Years Caste Agariya, R/o Village Kaknesha, Thana Basantpur, Tahsil Wadrafnagar, District Balrampur-Ramanujganj, Chhattisgarh
2. Rajaram S/o Late Jagarnath, Aged About 28 Years Caste Agariya, R/o Village Kaknesha, Thana Basantpur, Tahsil Wadrafnagar, District Balrampur-Ramanujganj, Chhattisgarh
3. Rajkumar S/o Late Jagarnath, Aged About 24 Years Caste Agariya, R/o Village Kaknesha, Thana Basantpur, Tahsil Wadrafnagar, District Balrampur-Ramanujganj, Chhattisgarh
4. Raj Ram S/o Late Jagarnath, Aged About 22 Years Caste Agariya, R/o Village Kaknesha, Thana Basantpur, Tahsil Wadrafnagar, District Balrampur-Ramanujganj, Chhattisgarh
5. Rajkumari D/o Late Jagarnath, Aged About 26 Years Caste Agariya, R/o Village Basantpur, Thana Basantpur, Tahsil Wadrafnagar, District Balrampur-Ramanujganj, Chhattisgarh ....(Claimants)
6. Kamlesh Soni S/o Sarju Soni, Aged About 22 Years Occupation Vehicle Driver, R/o Bagara, Police Chouki Vijaynagar, Thana & Tahsil Ramanujganj, District Balrampur-Ramanujganj, Chhattisgarh ....(Driver)
7. The New India Insurance Company Limited, Micro Branch, Ambika Transport Camps, Ambedkar Chouk, Ambikapur, District Sarguja, Chhattisgarh ....(Insurer)

---- Respondent

MAC No. 720 Of 2017

Ayodhya Soni S/o Basudev Soni, Aged About 47 Years Occupation Owner Of Vehicle, R/o Village Bagra, P.S. And Tahsil Ramanujganj, District Balrampur-Ramanujganj, Chhattisgarh ....(Owner)

---- Appellant

Versus

1. Smt. Kamala W/o Late Ramlakhan, Aged About 35 Years R/o Village Shardapur, Khuthanpara, Tahsil Wadrafnagar, District Balrampur-Ramanujganj, Chhattisgarh.
2. Shravan S/o Late Ramlakhan, Aged About 25 Years R/o Village Shardapur, Khuthanpara, Tahsil Wadrafnagar, District Balrampur-Ramanujganj, Chhattisgarh
3. Smt. Shakunti W/o Ramkumar, Aged About 28 Years R/o Village Shardapur, Khuthanpara, Tahsil Wadrafnagar, District Balrampur-Ramanujganj, Chhattisgarh
4. Shilvanti D/o Late Ramlakhan, Aged About 18 Years R/o Village Shardapur, Khuthanpara, Tahsil Wadrafnagar, District Balrampur-Ramanujganj, Chhattisgarh
5. Sunita D/o Late Ramlakhan, Aged About 13 Years Minor Through Natural

Guardian Mother Kamala W/o Late Ramlakhan, Respondent No.3 Is R/o Village Mendhari, P.S. Basantpur, District Balrampur-Ramanujganj, Chhattisgarh, R/o Village Shardapur, Khuthanpara, Tahsil Wadrafnagar, District Balrampur-Ramanujganj, Chhattisgarh

6. Krishna S/o Late Ramlakhan, Aged About 10 Years Minor Through Natural Guardian Mother Kamala W/o Late Ramlakhan, Respondent No.3 Is R/o Village Mendhari, P.S. Basantpur, District Balrampur-Ramanujganj, Chhattisgarh, R/o Village Shardapur, Khuthanpara, Tahsil Wadrafnagar, District Balrampur-Ramanujganj, Chhattisgarh ....(Claimants)
7. Kamlesh Soni S/o Sarju Soni, Aged About 22 Years Occupation Vehicle Driver, R/o Village Bagara, Police Chouki Vijaynagar, Thana & Tahsil Ramanujganj, District Balrampur-Ramanujganj, Chhattisgarh .... (Driver)
8. The New India Insurance Company Limited, Micro Branch, Ambika Transport Camps, Ambedkar Chouk, Ambikapur, District Sarguja, Chhattisgarh ....(Insurer)

---- Respondents

MAC No. 878 Of 2017

Ayodhya Soni S/o Basudev Soni, Aged About 47 Years Occupation Owner Of Vehicle, R/o Village Bagra, Police Chouki Vijaynagar, Tahsil Ramanujganj, District Balrampur-Ramanujganj, Chhattisgarh.

---- Appellant

Versus

1. Rati Agariya S/o Dhunsi Ram, Aged About 50 Years Caste Agariya, R/o Village Chaki, P.S. Ramanujganj, District Balrampur-Ramanujganj, Chhattisgarh
2. Smt. Ompati W/o Rati Agariya, Aged About 48 Years Caste Agariya, R/o Village Chaki, P.S. Ramanujganj, District Balrampur-Ramanujganj, Chhattisgarh
3. Smt. Shakunti W/o Late Ramsurat, Aged About 28 Years Caste Agariya, R/o Village Chaki, P.S. Ramanujganj, District Balrampur-Ramanujganj, Chhattisgarh
4. Virendra Kumar S/o Late Ramsurat, Aged About 11 Years Caste Agariya, R/o Village Chaki, P.S. Ramanujganj, District Balrampur-Ramanujganj, Chhattisgarh
5. Upendra Kumar S/o Late Ramsurat, Aged About 9 Years Caste Agariya, R/o Village Chaki, P.S. Ramanujganj, District Balrampur-Ramanujganj, Chhattisgarh
6. Manju Kumari D/o Late Ramsurat, Aged About 7 Years Caste Agariya, R/o Village Chaki, P.S. Ramanujganj, District Balrampur-Ramanujganj, Chhattisgarh ....(Claimants)
7. Kamlesh Soni S/o Sarju Soni, Aged About 22 Years Occupation Vehicle Driver, R/o Village Bagara, Police Chouki Vijaynagar, Thana & Tahsil Ramanujganj, District Balrampur-Ramanujganj, Chhattisgarh .... (Driver)
8. The New India Insurance Company Limited, Micro Branch, Ambika Transport Camps, Ambedkar Chouk, Ambikapur, District Sarguja, Chhattisgarh ....(Insurer)

---- Respondents

And

MAC No. 1716 Of 2016

Ayodhya Soni S/o Basudev Soni, Aged About 49 Years Occupation Owner Of Vehicle, R/o Village Bagra, Police Chouki, Vijaynagar Tahsil

Ramanujganj, District Balrampur-Ramanunganj, Chhattisgarh. (Owner)

---- Appellant

Vs

1. Smt. Phoolpati W/o Sudhuram Agariya, Aged About 45 Years R/o Village- Medhari, P.S. Basntpur, Tahsil Wadrafnagar, District Balrampur-Ramanujganj, Chhattisgarh
2. Manraj S/o Sudhuram Agariya, Aged About 25 Years R/o Village- Medhari, P.S. Basntpur, Tahsil Wadrafnagar, District Balrampur-Ramanujganj, Chhattisgarh
3. Hansh Lal S/o Sudhuram Agariya, Aged About 23 Years R/o Village- Medhari, P.S. Basntpur, Tahsil Wadrafnagar, District Balrampur-Ramanujganj, Chhattisgarh
4. Devraj S/o Sudhuram Agariya, Aged About 19 Years R/o Village- Medhari, P.S. Basntpur, Tahsil Wadrafnagar, District Balrampur-Ramanujganj, Chhattisgarh ....(Claimants)
5. Kamlesh Soni S/o Saryu Soni, Aged About 22 Years Occupation Driver Of Vehicle, R/o Village Bagra, Police Chouki, Vijaynagar Tahsil Ramanaujganj, District Balrampur-Ramanujganj, Chhattisgarh .... (Driver)
6. New India Insurance Company Limited, Micro Branch Ambika Transport Campus, Ambedkar Chouk, Banars Road Ambikapur, District- Surguja, Chhattisgarh ....(Insurer)

---- Respondents

For Appellant	:	Shri Akath Kumar Yadav, Advocate.
For Claimants	:	Shri Arun Kumar Shukla, Advocate.
For Insurance Company	:	Shri Shivendu Pandya, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

10/08/2017

1. Since in two appeals, Shri Shivendu Pandya, Advocate, was already engaged by the insurance company, this court directs Shri Pandya to represent the insurance company in the remaining two appeals also as the stand of the insurance company would be the same in all the cases.
2. These are four appeals preferred by the owner under Section 173 of the Motor Vehicles Act against the award dated 20.02.2017 passed by the IInd Additional Judge to Motor Accident Claims Tribunal, Ramanujganj (in short, the Tribunal) in Claim Case Nos.28/2015, 27/2015, 25/2015 and 09 of 2016 respectively. So far as claim case

No.9 of 2016 is concerned, the impugned award is dated 04.11.2016. Vide the impugned award, the Tribunal in claim applications preferred by the claimants under Section 166 of the Motor Vehicles Act, have decided the claim applications and awarded compensation of Rs.5,77,000/-, 4,68,000/-,6,85,000/- and Rs.3,73,000/- respectively in each of the claim cases.

3. The brief facts of the case is that, all the four deceased persons and about 15-16 more persons while travelling in a Pick up (Bolero Maxi of Mahendra Company) bearing registration No.CG-15-AC-3346 which his a goods carriage commercial vehicle, met with an accident on 19.12.2014 resulting into death of the deceased persons. The claimants, legal representatives of the deceased persons, filed claim cases and which came to be decided by the Tribunal vide impugned award dated 20.02.2017 and 04.11.2016. While passing the award, The Tribunal has exonerated the insurance company of its liability in payment of compensation and have fastened the liability of payment of compensation upon the owner-appellant. Thus, the owner has preferred these appeals challenging the liability.

4. The sole grievance of the appellant-owner is that the Tribunal has wrongly exonerated the insurance company of its liability. It ought to have been fastened the liability upon the insurance company as the vehicle involved in the accident was duly insured at the relevant point of time. He further submits that the policy taken was also a package policy which also should have been the reason for fastening the liability upon the insurance company. Having not done so, the

Tribunal has committed error in facts and in law. It was further contended that the present case is squarely covered with the decision of Division Bench of this High Court in case of Smt. Rambati Madiya & Ors. Vs. Budanti @ Danteshar Rao & Ors. And other connected cases, 2008 (3) CGLJ 413, wherein under similar circumstances, the liability has been fastened upon the insurance company for payment of compensation and therefore in the present case also the liability should be shifted upon the insurance company and thus prayed for appeals being allowed accordingly.

5. Counsel for the insurance company however opposes the appeals and submits that there is clear breach of policy conditions inasmuch as, indisputably the vehicle is Pick Up which was a goods carriage commercial vehicle and it could not have carried passengers except for the worker required for loading and unloading of the said vehicle. He further submits that the risk covered under the policy issued by the insurance company was for 1+1 i.e. driver and cleaner apart from the fact that it was a package policy. Thus, the policy does not cover the risk of any passengers who were illegally or without any permission being taken by the appellant in his vehicle. Therefore, the Tribunal was justified in exonerating the insurance company of its liability and fastening the liability upon the appellant-owner of the offending vehicle.

6. Having heard the rival contentions put forth on either side and on perusal of records, what is necessary to be seen is the fact that indisputably the vehicle is goods carriage vehicle and which has been

registered for commercial purpose. This by itself establishes the fact that it is not meant for carrying passengers. Another aspect which has to be accepted is that none of the witnesses or claimants have made statement before the Tribunal that the deceased persons were travelling as workers of the said vehicle. Infact there is admission on the part of the appellant himself in his evidence that there were about 20-21 persons that he was carrying in his vehicle. This admission on the part of the appellant proves the fact that at the relevant point of time the appellant was using the vehicle not as goods carriage, but for carrying passengers and as such they would fall within the category of gratuitous passengers for whom no premium has been paid by the appellant-owner covering the risk of such passengers.

7. At this juncture counsel for the appellant tries to take shelter of the recent decision of Supreme Court in case of Manuara Khatun and Ors. Vs. Rajesh Kumar Singh & Others,2017 (4) SCC 796, wherein the Supreme Court has re-iterated the principle of Pay and Recover in the case of carrying gratuitous passengers.

8. In the present case what is not similar to the facts of said case is that, the present is a case where the accident had recently occurred and it was not an old accident. Further, it is not in dispute that the vehicle involved is a goods carriage commercial vehicle whereas, in the said case it was a TATA Sumo, a private vehicle, which was being used for carrying passengers. Further, in the instant case there is admission of the appellant-owner of using the vehicle for carrying passengers and that they were more than 20 passengers.

9. All these facts put together clearly reflects that there was a clear breach of policy conditions. In addition, it also reflects that the policy also did not cover the risk of any of the passengers except for driver and one cleaner.

10. In the given factual matrix of the case, this court is of the opinion that judgment of Supreme Court in case of Manuara Khatun (Supra) may not be applicable in the facts of the present case and the same is thus distinguishable.

11. So also the judgment of Division Bench of this High Court in case of Smt. Rambati Madiya (Supra) is concerned, the facts of that case is also different and thus distinguishable in the facts of present case.

12. Since the vehicle was a goods carriage commercial vehicle and insurance policy issued was a package policy covering the risk of only 1+1 i.e. driver and cleaner coupled with the admission on the part of the appellant-owner himself before the Tribunal of carrying more than 20 persons in the vehicle at the time of accident, clearly demonstrate the appellant's breach of policy conditions and for which the insurance company cannot be held responsible for indemnifying the appellant-owner.

13. Thus, this court does not find any strong case made out for interfering with the impugned award and the appeals thus being devoid of merit are liable to be and are accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

inder