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HIGH COURT of CHHATTISGARH, BILASPUR
MAC No.1505 of 2016

United India Insurance Company Limited Through Its Divisional Manager, Divisional Office- Bramha Road Near Kumkum Hotel, Ambikapur, Distt. Surguja, Chhattisgarh.

---- Appellant

Versus

1. Shri Prasad S/o Late Baldev, Aged About 60 Years Caste- Khairwar,
2. Smt. Shanti Bai W/o Shri Prasad, Aged About 55 Years Caste- Khairwar,
   Both are R/o Dhanwar Kala, P.O.- Chalgali, Tahsil- Chalgali, Distt. Surguja, Chhattisgarh.
3. Ram Avtar S/o Devsai, Aged About 32 Years Occupation- Driver, R/o Saraswatipur, P.O.- Ramanhat, P.S.- Chalgali, Distt. Surguja, Chhattisgarh.
4. Shyam Narayan S/o Sundar Lal, Occupation- Owner, R/o Ward No.12, Pali, Distt. Korba, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate.
For respondents 1&2	:	Shri Ravi Bhagat, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

12/07/2017

1. The present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act (for short, the MV Act) against the award dated 19.07.2016 passed by the 5th Additional Motor Accident Claims Tribunal, Ambikapur (for short, the Tribunal) in Claim Case No.783 of 2013. Vide the said impugned award, the Tribunal in a claim application filed under Section 166 of the MV Act by the claimants i.e. respondents No.1&2 have awarded compensation of Rs.3,54,000/- with interest @ 7 percent per annum from the date of application.

2. The brief facts of the case is that, Banwari i.e. son of respondents No.1&2 while travelling on Tata Matador (709) bearing registration No.CG-15-A-2857 owned by respondent No.4 and being driven by respondent No.3 and was moving from Ambikapur to Bilaspur, dashed against a stationery Tavera Car bearing registration No.CG-15-B-2341 and after hitting the Car, the Driver of the Matador lost control of the vehicle and it turned turtle and the said Banwari sitting in the cabin of the Matador sustained grievous injuries as he got crushed by the impact of the accident and succumbed to his injuries on the spot itself. The respondents No.1&2 are the parents of the deceased Banwari who at the time of accident was aged about 19 years, working as Labour and was earning Rs.3000/- per month.
3. The parents of the deceased filed an application under Section 166 of the MV Act and the Tribunal after recording the evidence passed an award in favour of the claimants holding that they are entitled for compensation of Rs.3,54,000/- and the liability of the said compensation was fastened upon the appellant-insurance company on account of fact that the driver of offending vehicle was having valid licence in existence on the date of accident. It is this award which is under challenge in this appeal.
4. The solitary contention raised by the appellant is that admittedly the Matador in which the deceased was travelling was a goods carriage vehicle and it was not supposed to carry passenger in it. Neither has the insurance company received any premium covering the risk of any person other than third party and the driver of the said vehicle.

According to him, they have also examined officer of the Transport office to establish this aspect. Yet, the Tribunal while fastening the liability has fastened it upon the driver, owner and the insurer jointly and severally which is bad in law and also contrary to the judicial pronouncement made by the Supreme Court on the said topic.

5. The deceased in the said Matador was travelling as a gratuitous passenger whose risk was not covered and therefore for death of someone which is not covered under the risk covering the policy, the insurance company could not be saddled with the liability. It was also contended that the driver of the offending vehicle at the relevant point of time was only having licence to drive LMV and that there was no endorsement granting permission to drive a goods carriage vehicle also. This further amounts to breach of policy conditions with which also the appellant-insurance company should have been exonerated of its liability from payment of compensation. Thus, for all these reasons, the insurance company has been wrongly made liable for payment of compensation and as such the award should be modified accordingly exonerating the insurance company of its liability.

6. Per contra, learned counsel appearing for the claimants submitted that there was no illegality or perversity in the finding of the Tribunal and that all the findings arrived at are based upon the evidence which have come on record. Therefore, the award needs no interference.

7. Having heard the rival contentions put forth on either side, and on perusal of records, some of the admitted position as it stands from the record is that the accident to have occurred on 27.02.2012, the

vehicle involved in the accident was TATA Matador (709) bearing registration No.CG-15-A-2857 owned by the respondent No.4 and driven by respondent No.3 at the relevant point of time. It is also not in dispute that from the said accident the deceased Banwari, aged about 19 years, son of the claimants i.e. respondents No.1&2 succumbed to the injuries on the spot itself. It is further a factual aspect that the offending vehicle at the time of accident was insured with the present appellant covering the risk of only third party and the driver and no extra premium has been paid for covering the risk of any other person. Indisputably, the driver of the offending vehicle had a licence for driving LMV. The vehicle involved in the accident was also a LMV but a goods vehicle not meant for passenger transportation.

8. Now if we look into the evidence which have come on record, the insurance company has specifically led evidence of two persons. One from RTO, Ambikapur and the other being an Administrative Officer from the insurance company itself. The witness from the RTO office has established the fact that on the said date there was a valid licence in possession of the driver of the offending vehicle, but the said licence was for LMV and the endorsement for transport vehicle as well as public service vehicle was got done after the date of accident. So far as witness from the insurance company is concerned, the witness has categorically stated before the court that the policy which was issued by the insurance company was only covering the risk of third party and one driver. No extra premium has

been collected for covering the risk of any other persons.

9. Further, what also stands established from the evidence is the fact that it is nobody's claim i.e. neither claimants nor that of the driver or owner of the offending vehicle that the deceased being an employee of the said vehicle and if that be so, the only interference which can be drawn is that the deceased was travelling on the offending vehicle as a gratuitous passenger.

10. Now so far as whether in the given factual matrix of the case, the liability of payment of compensation could have been fastened upon the insurance company or not, it would be relevant at this juncture to refer to one of leading decision in this regard passed by the Supreme Court in New India Assurance Co. Ltd. Vs. Asha Rani & Others, 2003 (2) SCC 223, wherein it has been observed as under :

> "8. Under the Motor Vehicles Act of 1939 the requirements of policies and limits of liability had been provided in Section 95. Proviso to Section 95(1) of the said Act unequivocally states that the policy shall not be required in case of a goods vehicle for passengers being carried in the said vehicle. In Mallawwa (Smt.) and Ors. v. Oriental Insurance Co. Ltd. and Ors. (supra)while approving the earlier decision of the Court in Pushpabai Purshottam Udeshi's case - : [1977] 3 SCR 372 : [1977]3SCR372 , the Court construed the provisions of Section 95(1)(b) of the Motor Vehicles Act, 1939 and held that while the expression 'any person' and the expression 'every motor vehicle' are in wide terms but by proviso (ii) it restricts the generality of the main provision by confining the requirement to cases where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, therefore, the vehicle had to be vehicle in which passengers are carried. The Court further held that the goods vehicle cannot be held to be a passenger vehicle even if the vehicle was found to be used on some stray occasions for carrying passengers for hire or reward. Undoubtedly Mallawwa's case (supra) was dealing with a situation under the Motor Vehicle Act, 1939.
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> 9.In Satpal's case (supra) the Court assumed that the provisions of Section 95(1) of Motor Vehicles Act 1939 are identical with Section 147(1) of the Motor Vehicles Act 1988, as it stood prior

to its amendment. But a careful scrutiny of the provisions would make it clear that prior to the amendment of 1994 it was not necessary for the insurer to insure against the owner of the goods of his authorised representative being carried in a goods vehicle. On an erroneous impression this Court came to the conclusion that the insurer would be liable to pay compensation in respect of the death or bodily injury caused to either the owner of the goods or his authorised representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicle Amended Act of 1994 is examined, particularly Section 46 of the Act 6 of 1991 by which expression 'injury to any person' in the original Act stood substituted by the expression 'injury to any person including owner of the goods or his authorised representative carried in the vehicle the conclusion is irresistible that prior to the aforesaid amendment Act of 1994, even if widest interpretation is given to the expression 'to any person' it will not cover either the owner of the goods or his authorised representative being carried in the vehicle. The objects and reasons of Clause 46 also states that it seeks to amend Section 147 to include owner of the goods or his authorised representative carried in the vehicle for the purposes of liability under the Insurance Policy. It is no doubt true that sometimes the legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression 'including owner of the goods or his authorised representative carried in the vehicle which was added to the pre-existed expression 'injury to any person' is either classificatory or amplification of the pre-existing statute. On the other hand it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorised representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury. The judgment of this Court in Satpal's case, therefore must be held to have not been correctly decided and the impugned judgment of the Tribunal as well as that of the High Court accordingly are set aside and these appeals are allowed. It is held that the insurer will not be liable for paying compensation to the owner of goods or his authorised representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of goods or his representative dies or suffers any bodily injury.

26. In view of the changes in the relevant provisions in 1988 Act vis-a-vis 1939 Act, we are of the opinion that the meaning of the words 'any person' must also be attributed having regard to the context in which they have been used i.e. 'a third party'. Keeping in view the provisions of 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory

liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefore.

28. An owner of a passenger carrying vehicle must be premium for covering the risks of the passengers. If a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid. But if the ratio of this Court's decision in New India Assurance Company v. Satpal Singh and Ors. : AIR 2000 SC 235 is taken to its logical conclusion, although for such passengers, the owner of a goods carriage need not take out an insurance policy, they would be deemed to have been covered under the policy where for even no premium is required to be paid."

11. The co-ordinate Bench of this court again in recent decision in MAC No.391 of 2008 (The New India Assurance Co. Ltd. Vs. Smt. Bhagaiyya Bai & Others), decided on 24.07.2014 in paragraph 16 has referred to the aforesaid judgment of the Supreme Court in case of Asha Rani (Supra) and allowed the appeal of the insurance company exonerating of its liability from payment of compensation in the following terms:

"16.As per the statement of the applicant and the witness, it is clear that the claimant was travelling as gratuitous passenger in the offending vehicle. In a case New India Assurance Co. Ltd. Vs. Asha Rani, it has been held by the Supreme Court that if the passengers are travelling in a goods vehicle as a gratuitous passengers then in such case the liability cannot be fastened over the insurance company. In such case, it was decided that when the passengers travel in a goods vehicle then they cannot be enveloped in the word third party and consequently, the insurer would not be liable. In this case in hand, it is clear from from the evidence that claimant was travelling as a gratuitous passenger therefore the liability fastened over the insurance company cannot be sustained.
17. As a result, the appeal filed by the insurance company i.e. MAC No.391 of 2008 is allowed and the insurance company is exonerated from payment of compensation............"

12. In view of the aforesaid legal position as it stands when compared to the facts of the present case, this court has no hesitation in reaching to the conclusion that from the facts which has come on record, it

clearly reflects that on the fateful day the deceased was travelling on the offending vehicle as gratuitous passenger or atleast there is no evidence with which a different inference can be drawn and giving the factual situation since the insurance company has not received any premium covering the risk of any person other than third party or a driver, the insurance company cannot be saddled for making payment for something which they have not indemnified.

13. So far as breach of policy conditions of the driver not having a licence is concerned, the said issue is decided against the insurance company in the light of recent decision of the Supreme Court in case of Mukund Dewangan Vs. Oriental Insurance Co. Ltd., a larger Bench decision rendered on 03.07.2017 in Civil Appeal No. 5826 of 2011. Since it is not a case of breach of policy condition, rather it is a case where there is no premium received by the insurance company, this court finds it difficult to even apply the doctrine of 'Pay and Recover'.

14. In view of the aforesaid reasons, the appeal of the insurance company deserves to be and is accordingly allowed. The insurance company is exonerated of its liability of payment of compensation and the liability stands fastened upon the driver and owner of the offending vehicle.

Sd/-
(P. Sam Koshy)
Judge

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