NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL NO. 1272 OF 2005

Sunil Kshatri, aged about 32 years, S/o Raghuraj Singh, R/o Maro, Tah. Nawagaon, District Durg (C.G.)

… Appellant

Versus

1. Dhelau Sahu, aged about 65 years, S/o Shri Kanwali Sahu
2. Smt. Agrautin Bai, W/o Shri Dhelau Sahu, aged about 60 years
3. Dileshwari Bai, Wd/o Late Chandra Kumar alias Ramchandra, aged about 22 years
4. Kumari Kamlesh, aged about 2 years, through- her natural guardian Dhelau (Resp. No.1)

   All are R/o Village Gunjera, Tah. Nawagarh, District Durg (C.G.)
5. The New India Insurance Co. Raipur, Madina Building Linm Jail Road, Near Medical College, Raipur (C.G.)

… Respondents

MISC. APPEAL NO. 1255 OF 2005

Sunil alias Nanha Thakur, S/o Raghuraj Thakur, aged about 30 years, R/o Maro, Chowki, P.S. Nandghat, District Durg (C.G.)

… Appellant

Versus

1. Smt. Sukalhin, W/o Ramcharan Satnami, aged about 35 years, R/o Bhagat Singh Ward Bhatapara, P.S. Bhatapara, Shahar, District Raipur (C.G.)
2. The Manager, New India Insurance Company Limited, Raipur Branch No.1, IInd Floor, R.D.A. Bajrang Market, G.E. Road, Raipur (C.G.)

… Respondents

MISC. APPEAL NO. 1256 OF 2005

Sunil alias Nanha Thakur, S/o Raghuraj Thakur, aged about 30 years, R/o Maro, Chowki, P.S. Nandghat, District Durg (C.G.)

… Appellant

Versus

1. Sadhe Lal Satnami, S/o Agar Singh, aged about 39 years, R/o Nipaniya Satnamipara, P.S. Bhatapara (Gramin), District Raipur (C.G.)
2. The Manager, New India Insurance Company Limited, Raipur Branch No.1, IInd Floor, R.D.A. Bajrang Market, G.E. Road, Raipur (C.G.)

… Respondents

MISC. APPEAL NO. 1254 OF 2005

Sunil alias Nanha Thakur, S/o Raghuraj Thakur, aged about 30 years, R/o Maro, Chowki, P.S. Nandghat, District Durg (C.G.)

… Appellant

Versus

1. Pintu Singh alias Bhola, S/o Phuleshwar Singh Thakur, aged about 18 years, R/o Maro, P.S. Nandghat, Tah. Nawagarh, District Durg (C.G.)
2. The Manager, New India Insurance Company Limited, Raipur Branch No.1, IInd Floor, R.D.A. Bajrang Market, G.E. Road, Raipur (C.G.)

… Respondents

MISC. APPEAL NO. 1273 OF 2005

Sunil Kshatri, aged about 32 years, S/o Raghuraj Singh, R/o Maro, Tah. Nawagaon, District Durg (C.G.)

… Appellant

Versus

1. Tulsi Ram, S/o Late Sunder Lal Satnami, aged about 25 years, R/o Chakarvap (Maro), Tah. Nawagarh, District Durg (C.G.)
2. The New India Insurance Company Limited, Raipur, Madina Building Linm Jail Road, New Medical College, Raipur (C.G.)

… Respondents

MISC. APPEAL NO. 1274 OF 2005

Sunil Kshatri, aged about 32 years, S/o Raghuraj Singh, R/o Maro, Tah. Nawagaon, District Durg (C.G.)

… Appellant

Versus

1. Patanga, aged about 60 years, S/o Dhanaseth
2. Shyam Bai, W/o Sunder Lal, aged about 40 years
3. Kartik Lal, S/o Sunderlal, aged about 15 years (minor)
4. Guru Wachan Das, S/o Sunderlal, aged about 13 years (minor)
5. Dev Kumari, aged about 10 years, S/o Sunderlal (minor)

Sl. No. 3 to 5 are minors, through their natural guardian Respondent No.2. All are R/o Village Chakarwaymaro, Tah. Nawagarh, District Raipur (C.G.)

6. The New India Insurance Company Limited, Raipur, Madina Building Linm Jail Road, New Medical College, Raipur (C.G.)

… Respondents

MISC. APPEAL NO. 1275 OF 2005

Sunil Kshatri, aged about 32 years, S/o Raghuraj Singh, R/o Maro, Tah. Nawagaon, District Durg (C.G.)

… Appellant

Versus

1. Fulmati Bai, W/o Motilal Satnami, aged about 24 years
2. Ubaran, aged about 18 years, S/o Shri Dekhn Satnami,

Both are resident of Village Chakarvay (Maro), Tah. Nawagaon, District Durg (C.G.)

3. The New India Insurance Company Limited, Raipur, Madina Building Linm Jail Road, New Medical College, Raipur (C.G.)

… Respondents

For Appellant (owner of the vehicle) : Mr. Malay Kumar Bhaduri, Advocate.
For Respondent-Insurance Company : Mr. Qamrul Aziz, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

03/08/2017

1. These are the seven appeals under Section 173 of the Motor Vehicles Act, 1988, filed by the Appellant, the owner of the offending vehicle, i.e., Metador No. CG10-A/4525, assailing the award dated 13.7.2005 passed by the Second Additional Motor Accident Claims Tribunal, Balodabazar, in Claim Case Nos. 20 of 2004, 27 of 2004, 28 of 2004 and 31 of 2004 and also the award passed on the same day i.e. 13.7.2005 by the same Tribunal in another set of Claim Case Nos. 48 of 2004, 60 of 2004 and 62 of 2004.

2. On 28.11.2003, the offending vehicle, a public carrier, belonging to the Appellant met with an accident resulting in death of three persons and injuries to few more persons. Consequently, the aforementioned seven claim applications were filed under Section 166 of the Motor Vehicles Act, 1988, before the Tribunal; three of them were in respect of death case and four were in respect of the injuries sustained by the persons.

3. The undisputed fact is that, the accident being of 28.11.2003, three persons died and four injures sustained injuries in the said accident and the offending vehicle being insured with the New India Insurance Company Limited. The offending vehicle was duly insured for one driver, one cleaner and five coolies also is not disputed, as is evident from Exhibit D-3 which is the insurance policy proved before the Tribunal.

4. After conclusion of the proceeding under Section 166 of the Motor Vehicles Act, the Tribunal vide the impugned awards, exonerated the Insurance Company as there was a breach of policy conditions and had fastened the liability for payment of compensation upon the Appellant, the owner of the offending vehicle. Hence, the present appeal.

5. According to Shri Malay Kumar Bhaduri, learned Counsel for the Appellant, the Tribunal has committed an error of law in not appreciating the evidence which have come on record where the evidence of the Insurance Company itself has admitted the fact that the policy taken by the Appellant covered the risk of 1+1+5 in all seven persons and therefore the liability should have been fastened upon the Insurance Company since the policy had the coverage of seven persons is undisputed. He further submits that it is a case where no sufficient evidence has been brought on record by the Insurance Company to establish the fact that the injured as well as the deceased persons were travelling in the offending vehicle in the capacity of passenger and in the absence of a strong evidence, the liability should not have been fastened upon the owner of the offending vehicle but should have been shifted upon the Insurance Company. It is also contended by Shri Bhaduri that the Tribunal should have taken into consideration the fact that since admittedly in addition to a driver and a cleaner, five persons were also covered under the policy therefore the Insurance Company should have been fastened with the liability in at least five of the cases, if not, in all. It is lastly contended by Shri Bhaduri that the offending vehicle is registered as a public carrier and once when it is a public carrier there cannot be any restriction in respect of the number of passengers which could be taken in the said vehicle and if that be so, the policy itself reflecting the insured vehicle to be a public carrier, the responsibility of indemnifying the owner automatically fell upon the Insurance Company. Thus, the Tribunal should have not exonerated the Insurance Company but should have fastened the liability upon the Insurance Company.

6. Shri Qamrul Aziz, learned Counsel for the Insurance Company, opposing the appeal submits that the policy (Exhibit D-3) has been duly proved before the Tribunal and the same is not in dispute further the policy also is as explicit as it could be. The policy itself clearly reflects that it covered the risk of one driver, one cleaner and five coolies. This aspect has also been proved by the Insurance Company by leading evidence of one G. Raja Ravi Kumar as NAW-3 before the Tribunal. He further submits that it has come in the statement of each of the claimants that they were travelling in the offending vehicle after paying the charges of goods which they were transporting and which itself shows that they were not working as coolies in the offending vehicle and were private persons travelling in the said vehicle. Thus, for the aforesaid reasons, Shri Aziz submits that the Tribunal has rightly exonerated the Insurance Company. Hence, there is no scope of interference with the said finding and further prayed for rejection of the appeals.

7. Having considered the rival contentions put forth on either side and on perusal of the record, the fact which is not in dispute as has been narrated earlier is, the accident which had arisen on 28.11.2003, the offending vehicle involved in the said accident, the present Appellant being the owner of the offending vehicle and the offending vehicle being insured with the Insurance Company. What is also not in dispute is that the risk covered under the policy was for 1+1+5 and the premium was only to that extent.

8. At this juncture, it would be relevant to take note of the evidence which have come on record on behalf of each of the Claimants. All the Claimants in their statement before the Tribunal in very categorical terms have made a statement that they were travelling in the offending vehicle after paying the charges to the Appellant for the goods that they were transporting. It is also pertinent to take note of the statement of an injured person, namely, Pintu Singh, who is the claimant in Claim Case No. 48 of 2004. The said Pintu singh, in addition to what has been stated by the other claimants, has stated that he had paid Rs.10/- to the Appellant for travelling in the offending vehicle. All these evidence of the respective claimants clearly reflect that they were not travelling in the offending vehicle either as a driver or a cleaner or a coolie. None of the claimants have deposed before the Tribunal of going in the vehicle as a loader or unloader, in the absence of which it is hard to believe that they were those persons for whom the risk was covered in the insurance policy.

9. Given the said set of evidence by each of the claimants, this Court does not find any illegality on the part of the Tribunal in reaching to the finding that the offending vehicle was being used other than for the purpose for which it was insured and as such there was a clear breach of policy conditions, for which the Insurance Company cannot be fastened with the liability for payment of compensation.

10. Thus, in the opinion of this Court, no strong case is made out on the part of the Appellant calling for an interference with the impugned awards and the appeals are accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

/shard/