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HIGH COURT of CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1394 of 2016

1. Deepak Tirkey S/o Shankar Tirkey, aged about 48 years, R/o Ward No.7, Dr. Rajendra Prasad Ward, Block Colony, Pratappur, Post- Pratappur, District- Surajpur, Chhattisgarh ....(Owner Maruti Swift Car No. CG-15-B-4581)
2. Nitin Deep Tirkey S/o Deepak Tirkey, aged about 25 years, R/o Ward No.7, Dr. Rajendra Prasad Ward, Block Colony, Pratappur, Post- Pratappur, District- Surajpur, Chhattisgarh ....(Driver Maruti Swift Car No. CG-15-B-4581) **---- Appellants**

Versus

1. Shivkumar S/o Sukhau Ram, aged about 40 years, R/o Village- Pakradi, Tahsil- Rajpur at present business address Village- Gotgawan, C/o Shivnandan Gond, Tahsil- Pratappur, District- Surajpur, Chhattisgarh
2. Basanti W/o Shivkumar, aged about 38 years, R/o Village- Pakradi, Tahsil- Rajpur at present business address Village- Gotgawan, C/o Shivnandan Gond, Tahsil- Pratappur, District- Surajpur, Chhattisgarh ....(Claimants)
3. Ifco Tokyo General Insurance Company Limited through the Branch Manager, Branch Office, Ring Road No.1, in front of Udhyog Bhawan, Silver Plaza, Second Floor, Shop No. 205, Raipur, Chhattisgarh ....(Insurer- Maruti Swift Car No. CG-15-B-4581)

---- Respondents

For Appellants	:	Shri Rahul Mishra, Advocate
For Respondents 1 & 2	:	Ms. Nand Kumari Kashyap, Advocate
For Respondent no.3	:	Shri P. R. Patankar along with Utsav Mahiswar, Advocates

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Misc. Appeal (C) No. 1393 of 2016

1. Deepak Tirkey S/o Shankar Tirkey, aged about 48 years, R/o Ward No.7, Dr. Rajendra Prasad Ward, Block Colony, Pratappur, Post- Pratappur, District- Surajpur, Chhattisgarh ....(Owner Maruti Swift Car No. CG-15-B-4581)

2. Nitin Deep Tirkey S/o Deepak Tirkey, aged about 25 years, R/o Ward No.7, Dr. Rajendra Prasad Ward, Block Colony, Pratappur, Post- Pratappur, District- Surajpur, Chhattisgarh ....(Driver Maruti Swift Car No. CG-15-B-4581) **---- Appellants**

Vs

1. Jitesh Paikra S/o Rambhagat Paikra, aged about 16 years, minor represented through legal guardian father Rambhagat Paikra Son of Satan Ram, Resident of Village- Toni, Tahsil- Rajpur, at present business at Khajuri, Tahsil Pratappur, District Surajpur, Chhattisgarh ....(Claimant)
2. Ifco Tokyo General Insurance Company Limited, through the Branch Manager, Branch Office, Ring Road No.1, In Front of Udhyog Bhawan, Silver Plaza, Second Floor, Shop No. 205, Raipur, Chhattisgarh ....(Insurer- Maruti Swift Car No. CG-15-B-4581)

---- Respondents

For Appellants	:	Shri Rahul Mishra, Advocate
For Respondent no.1	:	Ms. Nand Kumari Kashyap, Advocate
For Respondent no.2	:	Shri P. R. Patankar along with Utsav Mahiswar, Advocates

Hon'ble Shri Justice P. Sam Koshy

Order On Board

17/08/2017

These are the two appeals preferred by the owner and the driver of the offending vehicle under Section 173 of the Motor Vehicles Act challenging the award passed on the same date on 30.08.2016 by the Additional Motor Accident Claims Tribunal, Pratappur, District Surajpur in Claim Case Nos. 57/2015 and 58/2015 respectively arising out of the same accident.

2. Since the issue involved in both the appeals being same, this Court proceeds to decide these appeals by this common order.

3. Brief facts for disposal of the two appeals are that on 18.08.2015, while the deceased Ramlakhan and respondent Jitesh paikra were going to school on a bicycle, they were dashed by a Maruti Swift car bearing registration No. CG 15 B 4581 driven by appellant no.2 and owned by appellant no.1. As a result of the accident, Ramlakhan died on the spot and respondent Jitesh Paikra received grievous injuries. The said vehicle was duly insured with respondent no.3 Insurance Company. The legal representatives of the deceased i.e. respondents 1 & 2 in MAC No.1394/16 and the injured Jitesh Paikra i.e. respondent no.1 in MAC no.1393/16 filed their respective claims under Section 166 of the Motor Vehicles Act before the Tribunal.

4. After conclusion of the pleadings and the evidences, the Claims Tribunal vide impugned order dated 30.08.2016 allowed the applications by granting compensation of Rs.4,40,000/- with interest to the claimants in Claim Case No. 57/15 in the death case and Rs.25,785/- to the injured Jitesh in Claim Case No.58/15. While passing the impugned award, the Tribunal exonerated the Insurance Company of its liability of payment of compensation and fastened the liability of compensation upon the appellants herein i.e. the owner and the driver of the offending vehicle. The reason for exonerating the liability of the Insurance Company was on the solitary ground that the offending vehicle, at the time of accident, was found to be carrying 117.60 bulk liters of liquor, value of which was Rs.54,948/-. This According to the Tribunal, was a clear breach of policy condition in as much as the vehicle was a private vehicle and the same was being used for commercial purpose for transportation of liquor for commercial use.

5. It is this award which is under challenge in the present appeals by the owner and the driver of the offending vehicle.

6. Contention of the counsel for the appellants is that the finding of the Tribunal is totally erroneous in as much as there is no evidence which has come on record with which it could be said that the vehicle was being used for any other purpose except for the purpose for which the policy was issued. Counsel for the appellants submits that there is no evidence so far as the breach of policy condition is concerned. He submits that the driver of the offending vehicle who was also prosecuted for the offence under Sections 279, 338 and 304A of IPC and Section 34 (2) of the CG Excise Act has also been acquitted of the said charges by the Judgment dated 18.04.2016 of the CJM, Balrampur in Criminal Case No. 231/2015. Based upon all the above contentions, counsel for the appellants submits that the appellants have been wrongly fastened with the liability of payment of compensation which ought to have been shifted upon the Insurance Company. Thus, prayed for modification of the impugned award to that extent.

7. Counsel appearing for the Insurance Company however opposes the appeals and submits that the finding of the Tribunal is based upon the evidences which have come on record particularly the documents pertaining to the criminal case more particularly the FIR and the seizure memo which clearly reflects the seizure of huge amount of liquor from the offending vehicle. Thus, prayed for rejection of both the appeals.

8. Having heard the counsel appearing on either side and on perusal of the record what is more pertinent at this juncture is to take note of the evidence of the witness examined on behalf of the Insurance Company namely Anurag Dwivedi who in his deposition has categorically admitted that the policy which was issued pertaining to the offending vehicle was a comprehensive policy. This witness has further stated of being ignorant of whether the vehicle was being used for transportation of the liquor or not. He was also not aware of the contents of the criminal case and the subsequent acquittal of the driver in the said criminal case. What is all the more reflected from the deposition of the witness of the Insurance Company is that the Insurance Company has miserably failed to establish or prove the fact that the vehicle was being used for other than the purpose that it was insured for. Merely because the vehicle at the relevant point of time was allegedly found to be carrying liquor in it by itself cannot be presumed that it was being used for commercial purpose or was being used for the purpose of transportation of liquor.

9. Given the said facts and circumstances of the case, this Court has no hesitation in holding that the finding of the Tribunal discharging the Insurance Company of its liability was not proper. The appeal thus deserves to be and is accordingly allowed. The amount awarded in the two cases i.e. Claim Case Nos. 57/15 and 58/15 stands modified to the extent that the liability of payment of compensation would be jointly or severally borne by the Insurance Company as well as by the owner and the driver of the offending vehicle. It shall be the duty of the Insurance Company to deposit the amount awarded by the Tribunal. So far as the statutory mandatory deposit which has been made by the appellants are concerned, the same shall be permitted to be refunded to the appellants with a direction to the Insurance Company to ensure that the entire amount is deposited at the earliest. Rest of the award including the quantum and the interest part shall remain intact.

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

Bhola