

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 15-2-2018****Pronounced on 20-2-2018****MAC No. 98 of 2013**

National Insurance Company Limited Branch Manager, in front of
G.E. Road, Rajbandha Ground, Distt. Raipur (CG)

Thru- Its Divisional Manager, Divisional Office, B-1 Taha
Complex, 1st Floor, Ring Road-1, Priyadarshini Nagar, Vyapar
Vihar, Bilaspur, P.S. Civil Lines, Bilaspur, Distt. Bilaspur C.G.

---- Appellant**Versus**

1. Vandana @ Shobha Pal W/o Chandrashekhar Pal Aged About
28 Years R/o Village- Kura, P.S. Dharsinva, Raipur, Distt. Raipur
C.G.
2. Mahendra Singh S/o Veer Singh R/o Durga Nagar, Beergaon,
P.S. Urla, Distt. Raipur C.G., Address No. 2, C/o Balveer Singh
S/o Harbansh Singh, R/o Lane No. 3, Near Shiv Mandir, Fafadih,
Raipur, Distt. Raipur C.G. (**Driver**)
3. Balveer Singh S/o Harbansh Singh R/o Lane No. 3, Near Shiv
Mandir, Fafadih, Raipur, Distt. Raipur C.G. (**Owner**)

---- Respondents**MAC No. 100 of 2013**

National Insurance Company Limited Divisional Office, G.E.
Road, In front of Rajbandha Ground, Raipur Distt. Raipur (CG)

Thru- Its Divisional Manager, Divisional Office, B-1 Taha
Complex, 1st Floor, Ring Road-1, Priyadarshini Nagar, Vyapar
Vihar, Bilaspur, P.S. Civil Lines, Bilaspur, Distt. Bilaspur C.G.

---- Appellant**Versus**

1. Ku.Pinky @ Neelu D/o Govind Ram Yadav Aged About 20 Years
R/o Vill. Kurra, P.S. Dharsinva, Distt. Raipur C.G., Address No. 2,
Village- Manth, P.S. Kharora, Distt. Raipur C.G.
2. Mahendra Singh S/o Veer Singh R/o Durga Nagar, Beergaon,
P.S. Urla, Distt. Raipur C.G., Address No. 2, C/o Balveer Singh
S/o Harbansh Singh, R/o Lane No. 3, Near Shiv Mandir, Fafadih,
Raipur, Distt. Raipur C.G. (**Driver**)
3. Balveer Singh S/o Harbansh Singh R/o Lane No. 3, Near Shiv
Mandir, Fafadih, Raipur, Distt. Raipur C.G. (**Owner**)

---- Respondents.

For appellant	: Shri Dashrath Gupta, Adv.
For respondent No. 1	: Shri Amiyakant Tiwari, Adv.
For respondents No. 2 and 3	: Shri Alok Nigam, Adv.

Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. ORDER

1. As these two MAC arise out of the same accident, owner, driver and insurance company are the same, they are being disposed of by this common order.
2. MAC No. 98/2013 and MAC No. 100/2013 have been preferred by the appellant/National Insurance Company Limited against the awards dated 22-9-2012 passed by the 7th Addl. Motor Accident Claims Tribunal, Raipur (in brevity, 'Tribunal') in Claim Case No. 99/2011 and Claim Case No. 98/2011 respectively.
3. This is admitted by appellant/Insurance Company, and the respondents No. 2 /driver and respondent No. 3/owner of the offending vehicle that at the time of accident, Truck Tailor No. CG 04 CQ 7411 was insured with the appellant. This is also admitted by the respondents No. 2 and 3 that at the time of alleged accident dated 27-9-2010, at about 8.15 am, the respondent No. 2 was driver of the truck trailer and respondent No. 3 was owner of the vehicle.
4. In brief, case of respondent No. 1 of both the appeals is that when they were traveling in the offending vehicle as labourer, the respondent No. 2 driving the vehicle rashly and negligently collided the vehicle with a tree; in the accident, they sustained injuries including fracture; they used to earn Rs. 150/- per day by labour work.
5. In brief, case of the respondents No. 2 and 3 is that the respondent No. 2 was not driving the vehicle rashly and negligently and did not cause injuries to the respondent No. 1 of

both the appeals.

6. In brief, case of the appellant is that the Insurance policy was under certain conditions; at the time of alleged incident, the respondent No. 2 did not have 'legal and effective' driving licence.
7. In Claim Case No. 99/2011, the Tribunal awarded a sum of Rs. 42,030/- to the claimant Vandna alias Shobha Pal to be paid jointly and severally by the appellant, respondents No. 2 and 3. In Claim Case No. 98/2011, the Tribunal awarded a sum of Rs. 1,81,965/- to the claimant Ku. Pinki alias Neelu to be paid jointly and severally by the appellant, respondents No. 2 and 3. Being aggrieved, the appellant has preferred these two MACs.
8. Shri Dashrath Gupta, counsel for the appellant during the course of argument submitted that he is challenging only the liability of appellant and he is not challenging quantum or any other finding of the Tribunal. He strenuously argued that the claimants were not employees of the respondent No. 3, thus, they were gratuitous passengers and the appellant is not liable to pay any compensation to them. Thus, the appellant may be exonerated from the liability.
9. Shri Amiyakant Tiwari, Counsel for the respondent No. 1 of both the appeals argued that the appellant has failed to prove that any term and condition of the insurance policy was violated by not proving the insurance policy itself. He further argued that the insurance paper available on record of the Tribunal could not be seen by this Court at appeal stage, if this Court finds that it could see the insurance paper though it could not be seen, then it is mentioned in the insurance paper that the policy was the

package police and for six employees, one other employee , thus the appellant is liable to pay the compensation to the respondent No. 1 of both appeals.

10. First considerable point for determination in the case in hand is that whether at the time of the accident, the offending vehicle was plying violating the term and condition of the insurance policy, regarding carrying the respondent No. 1 of both the appeals.

11. Now this Court will examine as to whether this Court can look into the contents of the copy of the insurance paper dated 29-9-2009.

12. Shri Amiyakant Tiwari, counsel for the respondent No. 1 placed reliance in the decision of Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd., New Delhi -v- Jugal Kishore and others** (AIR 1988 SC 719), in para 10 of which it has been held that :-

“The attitude of not filing copy of policy of insurance is worth mentioning. In this connection what is of significance is that the claimants for compensation under the Act are invariably not possessed of either the policy or a copy thereof. The Supreme Court has consistently emphasised that it is the duty of the party which is in possession of a document which would be helpful in doing justice in the cause to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof. This duty is greater in the case of instrumentalities of the State such as the appellant Insurance Company who are under an obligation to act fairly. In many cases even the owner of the vehicle for reasons known to him does not choose to produce the policy or a copy thereof. It has to be emphasised that in all such cases where the Insurance Company concerned

wishes to take a defence in a claim petition that its liability is not in excess of the statutory liability it should file a copy of the insurance policy along with its defence.”

13. In the matter of **National Insurance Company Limited -v- Rattani and others** [(2009) 2 SCC 75], Hon'ble Supreme Court held in para 15 as under :-

“15. As indicated hereinbefore, the first information report as such may or may not be taken into consideration for the purpose of arriving at a finding in regard to the question raised by the appellant herein, but, when the first information report itself has been made a part of the claim petition, there cannot be any doubt whatsoever that the same can be looked into for the aforementioned purpose.”

14. In the case in hand, the aforesaid insurance paper has been filed by each respondent No. 1 herself. The insurance paper is the part of claim petitions. This is not the case where the insurance paper has not been filed by any party. In these circumstances, the respondent No. 1 of both the appeals do not get any help from the above-mentioned judicial precedent laid down by the Hon'ble Supreme Court in the **National Insurance Company Ltd. -v- Jugal Kishore** (supra). Looking to the above-mentioned circumstances, this Court finds that in the light of the judicial precedent laid down by Hon'ble Supreme Court in **National Insurance Company Ltd. -v- Rattani and others** (supra), this Court can look into the contents of the aforesaid insurance paper. Thus, this Court is not impressed with the argument raised by Shri Tiwari, counsel for the respondent No. 1 regarding this matter.

15. In the aforesaid insurance paper, it has been mentioned

that policy is the package policy WC to six employees, other employee-1.

16. Now this Court will consider as to whether the respondent No. 1 in both the appeals were employees of the resp.No. 3.

17. This is not the case of the respondent No. 1 in both the appeals that they were allegedly employees of the respondent No. 3. Moreover, respondent No. 1 in MAC No. 100/2013 namely Pinki alias Neelu in para 10 and respondent No. 1 in MAC No. 98/2013 namely Vandna alias Shobha in para 9 say during their cross-examination that they were working in Hare Krishna factory at Siltara, Siltara company was giving wages to them, this is true that owner of the truck does not give them salary. Thus, this Court finds that at the time of the accident, respondent No. 1 of both the appeals were not the employees of the resp. No. 3.

18. Looking to the above-mentioned facts and circumstances of the case and the materials placed on record, this Court finds that respondent No. 1 of both the appeals were traveling in the offending vehicle as gratuitous passengers.

19. Now this Court will examine as to whether the respondent No. 1 in both the appeals are covered by the insurance policy because the policy was the package policy.

20. It is noticeable that in the Circular issued by the Insurance Regulatory and Development Authority dated 16-11-2009, it has been mentioned that the insured's liability in respect of occupants(s) carried in a private car and pillion rider carried on a two wheeler is covered under the standard motor package policy.

21. In the matter of **National Insurance Company Limited -v-**

Balakrishnan and another [(2013) 1 SCC 731], Hon'ble Supreme Court in para 26 held as under :-

“**26.** In view of the aforesaid factual position, there is no scintilla of doubt that a “comprehensive/package policy” would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an “Act policy” stands on a different footing from a “comprehensive/package policy”. As the circulars have made the position very clear and IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a “comprehensive/package policy” covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the “Act policy” which admittedly cannot cover a third-party risk of an occupant in a car. But, if the policy is a “comprehensive/package policy”, the liability would be covered.”

22. Looking to the aforesaid circular and judicial precedent laid down by Hon'ble Supreme Court in **National Insurance Co Ltd. -v- Balkrishnan and anr.** (supra) this Court finds that, the respondent No. 1 in both the appeals are not covered by the insurance policy though the policy was the package policy. Thus, this Court disallows the argument put-forward by Shri Amiyakant Tiwari, counsel for the respondent No. 1 in both the appeals regarding this matter.

23. Shri Amiyakant Tiwari, Advocate for the claimants placed reliance on a decision of Hon'ble Supreme Court in the matter of **Ramchandra -v- United India Insurance Co. Ltd.** [(2013) 12 SCC 84, relevant portion of para 24 reads thus :-

“24.the respondent Insurance Company had neither

produced the policy of insurance before the High Court nor led any evidence to establish that as per the terms and conditions of policy extra premium had not been paid.”

24. As per aforesaid insurance paper, there was no provision of payment of extra premium to cover the risk of gratuitous passengers, in the case in hand, the respondent No. 1 in both the appeals were not the employees of the respondent No. 3. The insurance paper has been filed by the respondent no. 1 in both appeals. Thus, the respondent No. 1 in both the appeals do not get any help from the aforesaid judicial precedent laid down by the Hon'ble Supreme Court in **Ramchandra** (supra).

25. After the appreciation of the evidence discussed hereinabove, this Court finds that at the time of the accident, the offending vehicle was plying violating the term and condition of the insurance policy, regarding carrying the respondent No. 1 of both the appeals.

26. Second point for determination in this case is as to whether the appellant is not liable to indemnify to the respondent No. 3.

27. This has been earlier decided that the offending vehicle was plying violating the term and condition of the insurance policy that it shall not carry any gratuitous passenger.

28. In the matter of **National Insurance Company Limited -v- Baljit Kaur and others** [(2004) 2 SCC 1], Hon'ble Supreme Court dealt with the matter, relevant portion of paras 11, 14, 17, 19, and 20 read as under:-

“11.....The effect of the 1994 amendment on Section 147 is unambiguous. Where earlier, the words “any person” could be held not to include the owner of the goods or his

authorized representative travelling in the goods vehicle, Parliament has now made it clear that such a construction is no longer possible. The scope of this rationale does not, however, extend to cover the class of cases where gratuitous passengers for whom no insurance policy was envisaged, and for whom no insurance premium was paid, employed the goods vehicle as a medium of conveyance.

14. Having regard to the definition of “goods carriage” vis-à-vis “public service vehicle”, it is clear that whereas the goods carriage carrying any passenger is not contemplated under the 1988 Act as the same must be used solely for carrying the goods.

17. By reason of the 1994 amendment what was added is “including owner of the goods or his authorised representative carried in the vehicle”. The liability of the owner of the vehicle to insure it compulsorily, thus, by reason of the aforementioned amendment included only the owner of the goods or his authorised representative carried in the vehicle besides the third parties. The intention of Parliament, therefore, could not have been that the words “any person” occurring in Section 147 would cover all persons who were travelling in a goods carriage in any capacity whatsoever.

19. The premium in view of the 1994 amendment would only cover a third party as also the owner of the goods or his authorised representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise.

20. It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the

insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people.”

29. In the matter of **National Insurance Co. Ltd. -v- Cholleti Bharatamma and others** [(2008) 1 SCC 423] Hon'ble Supreme Court held in para 11 and 20 as under :-

“11. The effect of the 1994 Amendment came up for consideration in *National Insurance Co. Ltd. v. Baljit Kaur* [(2004) 2 SCC 1] wherein this Court following *Asha Rani* [(2003) 2 SCC 223] opined that the words “injury to any person” would only mean a third party and not a passenger travelling on a goods carriage whether gratuitous or otherwise. The question came up for consideration again in *National Insurance Co. Ltd. v. Bommithi Subbhayamma* [(2005) 12 SCC 243] wherein upon taking into consideration a large number of decisions, the said view was reiterated.

20. In this case, the High Court had proceeded on the basis that they were gratuitous passengers. The admitted plea of the respondents themselves was that the deceased had boarded the lorry and paid an amount of Rs 20 as transport charges. It has not been proved that the deceased was travelling in the lorry along with the driver or the cleaner as the owner of the goods. Travelling with the goods itself does not entitle anyone to protection under Section 147 of the Motor Vehicles Act.”

30. The Supreme Court in the matter of **United India Insurance Co. Ltd. v. Suresh K.K.** (2008 ACJ 1741) held in para 13 as under:-

“13. If the claimant had not been travelling in the vehicle as owner of the goods, he shall not be covered by the policy of the insurance. In any view of the matter in a three

wheeler goods carriage, the driver could not have allowed anybody else to share his seat. No other person whether as a passenger or as a owner of the vehicle is supposed to share the seat of the driver. Violation of the condition of the contract of insurance, therefore, is approved.”

31. In the matter of **National Insurance Company Limited -v- Rattani and others** (supra), the Hon'ble Supreme Court has held in para 19 that :-

“19. We, therefore, in the facts and circumstances of the case, have no hesitation to hold that the victims of the accident were travelling in the truck as gratuitous passengers and in that view of the matter, the appellant herein was not liable to pay the amount of compensation to the claimants.”

32. In **Manager, National Insurance Company Limited v. Saju P. Paul** (2013 ACJ 554) the Hon'ble Supreme Court held that the insurer is liable to pay compensation only in respect of those employees for whom insurance premium is paid and not for each and every employee who might be travelling as a gratuitous passenger in the vehicle concerned.

33. Looking to the above-mentioned facts and circumstances of the case and material placed on record, the aforesaid judicial precedent laid down by the Hon'ble Supreme Court in the matters of **National Insurance Company Ltd. -v- Baljit Kaur** (supra), **National Insurance Co. Ltd. -v- Cholleti Bharatamma** (supra), **United India Insurance Co. Ltd. -v- Suresh K.K.** (supra), **National Insurance Co. Ltd. -v- Rattani** (supra) and **the Manager National Insurance Co. Ltd. -v- Saju P. Paul** (supra), this Court finds that the appellant is not liable to indemnify the respondent No. 3 and deserves to be exonerated

from the liability to pay the compensation to respondent No. 1 in both the appeals. Thus, this Court allows the argument of Shri Dashrath Gupta, counsel for the appellant and disallows the argument of Shri Amiyakant Tiwari, counsel for the respondents No. 1 in both the appeals.

34. Consequently, this Court allows both the appeals of the appellant. The appellant/insurance company is exonerated from the liability to pay compensation to the respondent No. 1 in both the appeals as ordered by the Tribunal. The liability to pay the compensation as awarded by the Tribunal would be on the respondents No. 2 and 3.

35. In **National Insurance Co. Ltd. v. Challa Bharathamma** (2004 ACJ 2094) the Supreme Court held that considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured.

36. Relevant portion of para 21 of the decision in **National Insurance Comp. Ltd. -v- Baljit Kaur and other** (supra) is extracted herebelow:-

“21.We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the

issue is decided against the owner and in favour of the insurer.”

37. Looking to the aforesaid judicial precedents laid down by Hon'ble Supreme Court in **National Insurance Company Ltd. -v- Challa Bharatamma** (supra) and **National Insurance Company Ltd. -v- Baljit Kaur** (supra), the appellant / insurance company is ordered that it shall pay compensation as awarded by the Tribunal to the respondent No. 1 in both the appeals/ claimants and then recover the same from the respondent No. 3/ owner of the offending vehicle. The impugned awards passed by the Tribunal is modified accordingly.

38. In view of above, the stay of the impugned award granted by this Court in MAC no. 100/2013 on 22-6-2017 stands automatically vacated.

Sd/-
(Sharad Kumar Gupta)
Judge