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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 498 of 2015

- Bajaj Allianz General Insurance Company Ltd. Branch Office-Shiv Mohan Bhawan, Vidhan Sabha Road, Pandri Ps Pandri, Civil And Revenue District-Raipur, Chhattisgarh,

---- Appellant

Versus

1. Sohar Gond S/o Santa Aged About 38 Years R/o Village Basantpur, Tahsil Wadrafnagar, District Balrampur, Thana Wadrafnagar, District Balrampur Civil And Revenue District Balrampur, Chhattisgarh, Chhattisgarh

2. Sudhni W/o Sohar Aged About 36 Years R/o Village Basantpur, Tahsil Wadrafnagar, Distt.- Balrampur, Thana Wadrafnagar, Distt.- Balrampur Civil And Revenue Distt.- Balrampur, Chhattisgarh, District : Balrampur, Chhattisgarh (Claimants)

3. Mukesh Kumar Swami S/o Onkar Swami R/o Jodhpura, Tahsil Kotputli, Jaipur-Rajasthan P.S. Kotputli Civil And Revenue Distt.- Jaipur- Rajasthan At Present- P.R.A. Company Consultant, Premnagar Medhari, Tahsil Wadrafnagar, Thana- Wadrafnagar, Distt.- Balrampur- Ramanujganj- Civil And Revenue District- Balrampur, Chhattisgarh, District : Balrampur, Chhattisgarh (Driver)

4. Krishna Kumar Swami S/o Onkar Das Swami R/o Jodhpura, Tahsil Kotputli, P.S. Kotputli Civil And Revenue District- Jaipur, Rajasthan, District : Jaipur, Rajasthan (Owner)

---- Respondents

For Appellant	:	Shri Rohitshwa Singh, Advocate
For Respondents 1 and 2	:	Shri Yash Dubey, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma
Order on Board

09/8/2018

1. This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short, "the Act, 1988") against the award dated 20.1.2015, passed by the Additional Motor Accidents Claims Tribunal (for short, "the Tribunal"), Ramanujganj, District Balrampur-Ramanujganj (CG) in Claim Case No. 07/2012,

wherein the said Tribunal has awarded a sum of Rs.3,41,500/- on account of death of one Juko in a motor accident.

2. Brief facts of the case are the on 3.3.2010 at about 5.30 pm, respondent No.3- Mukesh Kumar Swami was driving the offending vehicle Tata 407 bearing registration No.RJ 23G- 0875 in which one machine was being transported and the deceased was sitting in the vehicle for keeping maintenance of the said machine. Due to negligent driving of the driver, fatal injuries were sustained by Juko, resulting into her death.

3. Learned counsel for the appellant submits as under :

(i) As the driving licence of the driver was not effective on the date of incident, there is breach of insurance policy and the Insurance company is not liable to pay the compensation.

(ii) Permit was not produced by the owner/driver and the same is also breach of insurance policy, therefore, Insurance company should have been exonerated.

(iii) Eight persons were travelling in the said vehicle in breach of rules/road regulations, therefore, the insurance company is not liable to pay the compensation.

4. On the other hand, learned counsel for respondents 1 and 2 submits that as per terms and conditions of the insurance policy, premium was paid for sitting 2 persons for maintenance of goods and the same is covering the liability of Insurance Company for death of the deceased, therefore, finding of the Tribunal is not liable to be disturbed.

5. From the record of the Tribunal, it appears that the driving licence of Mukesh Kumar Swami was submitted and it was valid till 21.10.2011. As the

incident took place on 3.3.2010, on the date of incident the driver of the offending vehicle was having effective driving licence, therefore, the argument advanced on behalf of the appellant/insurance company on this count also is not acceptable.

6. It is a settled law that breach of Insurance policy is to be proved by the Insurance company. The Insurance Company has led evidence of one Rishabh Pandey (NAW1) who is a law officer and as per his statement, it is not established that he has enquired about the permit of the said vehicle. In this view of the matter, there is no evidence that the driver was driving the vehicle without permit against the terms of insurance policy. Again, the said witness of the insurance company did not dispute that the policy is covering risk for 2 persons sitting in the vehicle for operation and maintenance. Ex.D1 is the insurance policy in which, 2 persons are allowed to seat and the insurance company is liable only for compensation regarding 2 persons. If the driver allows more than 2 persons at his risk, the insurance company is not liable for other person sitting in the vehicle.

7. In the present case, the insurance company is liable for only one person who was sitting for operation/maintenance of the goods kept in the vehicle and he is covered under the policy.

8. On an overall assessment of the evidence, the finding of the Tribunal is based on proper appreciation of oral and documentary evidence adduced by both the parties which is not liable to be interfered with invoking jurisdiction of appeal.

9. The appeal is liable to be and is hereby dismissed.

Sd/-

(Ram Prasanna Sharma)
Judge

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