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HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 288 of 2018**

Branch Manager H. D. F. C. Ergo General Ins. Co. Ltd., H. D. F. C. House, 1st Floor, 165-166, Backbay Ricklmesion H. T. Parekh Marg, Church Gate, Mumbai (Maharashtra), Through Branch Office- Near Chawla Complex, Devendra, Nagar Road, P. S. Devendra Nagar, Tahsil And District- Raipur, Chhattisgarh.

---- Appellant**Versus**

1. Smt. Ishwari Bai @ Rajeshwari Sahu Wd/o Late Deviprasad Sahu Aged About 34 Years
2. Chelaram Sahu S/o Late Deviprasad Sahu Aged About 15 Years
3. Ku. Yashoda Sahu @ Yamini Sahu D/o Late Deviprasad Sahu Aged About 11 Years.
4. Tulsi Sahu S/o Late Deviprasad Sahu Aged About 1 Years And 6 Months.

Respondent No. 2 to 4 are Minors And Representing Through Their Mother Res. No. 1 Smt. Ishwari Wd/o. Late Deviprasad Sahu, Bai, All R/o Village Navagaon, Thana Bori, Tahsil And District- Durg, Chhattisgarh. (Claimants)

5. Mithlesh Kumar Dewangan S/o Kaushal Dewangan Aged About 22 Years R/o Sirsa Khurd (Jeora Sirsa), Chauki Jeora Sirsa, Tahsil And District- Durg, Chhattisgarh. (Driver)
6. Kaushal Prasad Dewangan S/o Nandlal Dewangan Aged About 47 Years R/o Sirsa Khurd (Jeora Sirsa), Near Talab Chauki Jeora Sirsa, Tahsil And District- Durg, Chhattisgarh. (Owner)
7. Vasadeo Banchhor S/o Khilawan Prasad Banchhor, Aged About 39 Years R/o Village Basing Police Chouki Jeora Sirsa Thana Pulgoan, Tahsil And District- Durg, Chhattisgarh. (Owner)
8. Branch Manager, The New India Assurance Company Limited, Branch Office Bhilai, Address- 1st Floor, Above Dena Bank, Nandini Road, Power House, Bhilai, Tahsil And District- Durg, Chhattisgarh. (Insurer)

---- Respondents**MAC No. 290 of 2018**

Branch Manager H. D. F. C. Ergo General Ins. Co. Ltd., H. D. F. C. House, 1st Floor, 165-166, Backbay Ricklmesion H. T. Parekh Marg, Church Gate, Mumbai (Maharashtra), Through Branch Office- Near Chawla Complex, Devendra, Nagar Road, P. S. Devendra Nagar, Tahsil And District- Raipur, Chhattisgarh.

---- Appellant**Versus**

1. Gokul Sahu S/o Manihar Sahu Aged About 54 Years R/o Village Jeora Sirsa Chauki Jeora Sirsa Thana Pulgaon, Tahsil And District- Durg, Chhattisgarh. (Claimant)

2. Mithlesh Kumar Dewangan S/o Kaushal Dewangan Aged About 22 Years R/o Sirsa Khurd (Jeora Sirsa), Chauki Jeora Sirsa, Tahsil And District- Durg, Chhattisgarh. (Driver)
3. Kaushal Prasad Dewangan S/o Nandlal Dewangan Aged About 47 Years R/o Sirsa Khurd (Jeora Sirsa), Near Talab Chauki Jeora Sirsa, Tahsil And District- Durg, Chhattisgarh. (Owner)
4. Vasadeo Banchhor S/o Khilawan Prasad Banchhor, Aged About 39 Years R/o Village Basing Police Chouki Jeora Sirsa Thana Pulgoan, Tahsil And District- Durg, Chhattisgarh. (Owner)
5. Branch Manager, The New India Assurance Company Limited, Branch Office Bhilai, Address- 1st Floor, Above Dena Bank, Nandini Road, Power House, Bhilai, Tahsil And District- Durg, Chhattisgarh. (Insurer)

For Appellant : Mr. Rohitashva Singh, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19/02/2018

1. These are two appeals preferred by the Insurance Company under Section 173 of the Motor Vehicles Act. Challenge is to the award dated 14.11.2017, passed by the 4th Additional Motor Accident Claims Tribunal, Durg, Chhattisgarh.
2. MAC No. 288/2012 is an appeal arising out of the Claim Case No. 2547/2012, whereby the Tribunal in a death case has awarded a compensation of Rs.9,22,200/- with interest @ 6% per annum from the date of application and the MAC No. 290/2012 is an appeal arising out of the Claim Case No. 2548/2012, whereby the Tribunal in an injury case has awarded a compensation of Rs.1,24,758/- with interest @ 6% per annum.
3. While fastening the liability, the Tribunal has apportioned sharing of the compensation between two Insurance Companies which had insured the offending Tractor and Trolley involved in the accident. The Tractor was insured by the present appellant and the trolley was

insured by the respondent-the New India Assurance Company Limited. The counsel for the appellant submits that it is a case where the deceased was traveling in the trolley and therefore the present appellant cannot be held responsible for the death or injury caused to the persons who were sitting in the trolley as the premium which was paid to the present appellant was covering the risk of the Driver alone and that neither the tractor nor the trolley permits other persons to travel on it. Thus the appellant should be exonerated of its liability.

4. The perusal of record would show that the present is a case where the accident occurred when the vehicle which was insured by the present appellant i.e. a Tractor bearing registration No. CG/07/NA/2903, owned by Kaushal Prasad Dewangan and the Trolley attached to the said Tractor on the said date owned by the Respondent No.7 Vasadeo Banchhor and registered as CG/07/ZC/0634 turned turtle. As a result of which the Deviprasad Sahu sustained injuries, to which he later succumbed and Gokul Sahu sustained injuries. The legal representatives of Deviprasad Sahu as well as the injured Gokul Sahu filed two claim applications under Section 166 of the Motor Vehicles Act which stood allowed vide the impugned award.
5. What is relevant at this juncture to be considered is that the policy which was issued was a package policy. Package policy would always cover the risk of an occupant also as has been settled by the Hon'ble Supreme Court in the case of "**National Insurance Company Limited vs. Balakrishnan & Anr.**" reported in (2013) 1 SCC 731 and also in 2011 ACJ 1415 (Del).

6. Given the facts and circumstances of the case, particularly when admittedly it was the Tractor insured by the present appellant, which was involved in the accident, turned turtle resulting in the death of Deviprasad Sahu and the injury to Gokul Sahu and the policy which was issued being a package policy, this Court does not find any strong case made out by the Insurance Company challenging the apportionment of the liability of payment of compensation between the Insurance Company of the Tractor and the Insurance Company of the Trolley.
7. The both the appeals thus fail and are accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

Ved