

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on : 10.08.2018

Order delivered on : 07.09.2018

MAC No. 271 of 2013

1. Rajwant Singh, S/o Iqbaal Singh Aged About 51 Years R/o 2nd Floor, Dhillan Complex, Bhilai, Presently R/o Nehru Nagar East, Bhilai, P.S. Supela, Distt. Durg C.G., Chhattisgarh (Owner of the offending vehicle/Non-applicant No.2)
2. Paramjeet Singh S/o Rajendra Singh Aged About 40 Years R/o Kohka, Bhilai, P.S. Supela, Distt. Durg C.G., District : Durg, Chhattisgarh (Driver of the offending vehicle / Non-applicant No.1)

---- Appellants

Versus

1. Smt. Uttara Verma W/o Late Gokul Verma Aged About 27 Years
2. Kumari Vedika Verma D/o Late Gukul Verma, aged about 1 month, Minor
3. Kumari Dharni Verma D/o Late Gokul Verma aged About 3 Years Minor
Respondents- 2 and 3 Thru- Legal Guardian Mother Smt. Uttara Verma
4. Awadh Ram Verma S/o Ram Charan Verma Aged About 65 Years
5. Smt. Fekan Bai W/o Awadh Ram Verma Aged About 60 Years
All are R/o Funda, P.S. Patan, Tah. Patan, Distt. Durg C.G., District : Durg, Chhattisgarh
6. United India Insurance Co.Ltd. W/o Office At Thakkar Chambers, In Front Of I.T.I., G.E. Road, Power House, Bhilai, P.S. Chawni, District : Durg, Chhattisgarh

---- Respondents

For Appellants	: Shri Jaydeep Singh Yadav, Advocate
For Respondent-6/Insurance Company	: Smt Chitra Shrivastava, Advocate
For other Respondents	: None appears

Hon'ble Shri Justice Parth Prateem Sahu

CAV Order

- 1) The appellants who are owner and driver of the offending vehicle have filed this instant appeal challenging the impugned award dated 29.11.2012 passed by the 4th Additional Motor Accident Claims Tribunal, Durg, in claim case No. 60 of 2012, whereby learned Claims Tribunal

awarded Rs.4,61,500/- towards compensation in favour of claimants- 1 to 5 and fastened the liability of payment of compensation to present appellants while exonerating the Insurance Company.

2) Brief facts of the case are that on 15.04.2008 at about 1 pm, Gokul Verma, husband of respondent- 1, father of respondents- 2 and 3 and son of respondents- 4 and 5 was travelling on Marshal Jeep bearing No.CG-07-7605 and going towards Khairagarh from Bhilai driven by appellant- 2. On his way one Santro car tried to overtake his vehicle Marshal Jeep and at that time, the driver of jeep could not able to maintain his vehicle on road and met with accident. The jeep turned turtle and in the said accident, Gokul Verma sustained injuries and succumbed to said injuries at Sector-9 Hospital, Bhilai. On account of his death, respondents-1 to 5 have filed claim application claiming Rs.32,38,000/- mentioning therein that deceased Gokul Verma is the sole bread winner of their family and all of them were dependent on his income.

3) Appellants- 1 and 2 submitted their reply to claim application and admitted the status of owner and driver of offending vehicle and further stated that on the date of accident, Gokul Verma was under employment of appellant- 1. Deceased was travelling on jeep owned by him, which was driven by appellant- 2 and going for the work of supervision of his wine shop. It has also been stated that one Santro car at the time of overtaking, came in front of jeep from one side and on account of which jeep turned turtle and Gokul Verma died. They further submitted that on the date of accident offending vehicle was insured with respondent- 6, United Insurance Company Limited.

4) Respondent- 6 submitted its reply and stated that income of the deceased as pleaded was towards higher side and no document was submitted. The income could be assessed only Rs.15,000/- per annum as per schedule. It has been further stated that offending vehicle has been insured as private vehicle and on the date of accident deceased was travelling as passenger and therefore, there was violation of conditions of Insurance policy. It was further pleaded that the accident is a result of negligence of drivers of both the vehicles and respondent- 6 can be held liable to the ratio of negligence on the part of the driver of jeep.

5) Learned Claims Tribunal on the basis of pleadings and evidence lead by parties and considering the documentary evidence available on record, allowed the claim of respondents- 1 to 5 and awarded Rs.4,61,500/- but have passed the award against the appellants by exonerating the Insurance Company on the ground that on the date of accident offending vehicle was being used for commercial purpose.

6) It is this award passed by learned Claims Tribunal which is under challenge before this Court.

7) Learned counsel for the appellants submitted that offending vehicle was insured with respondent- 6 for the period from 28.07.2007, up to midnight of 27.07.2008. He further submitted that the policy taken by them was a private car package policy; deceased Gokul Verma was his employee and the vehicle on the date of accident was going for his personal /official work and therefore, it cannot be said that offending vehicle on the date of accident was being used as commercial vehicle

and learned Claims Tribunal without considering the evidence of the non-applicants, arrived at a wrong finding, which is not sustainable under law.

8) Learned counsel appearing for respondent- 6 submitted that as the deceased was not a family member of appellant 1 (owner) of offending vehicle and on the date of accident it was going to the place of business of the owner and therefore, learned Tribunal rightly held that the vehicle is being used as commercial vehicle. She also submitted that no premium for any occupant was paid, but premium only towards owner and one employee was paid as per Insurance policy. She supported the award and stated that learned Claims Tribunal after appreciating evidence, rightly passed impugned award which do not call for any interference by this Court.

9) I have heard learned counsel for the parties. Perused the records.

10) The only question for consideration before this Court is that whether on the date of accident there was any violation of conditions of Insurance policy issued in favour of appellant- 1(owner) of the vehicle and whether occupant of the vehicle is covered under the policy.

11) From perusal of insurance policy Ex.D/1 it would show that the policy issued for offending vehicle was a private car package policy.

12) Hon'ble Supreme Court while dealing with the issue with regard to package/comprehensive policy in the matter of **National Insurance Company Limited Vs Balakrishnan and another** reported in **2013 (1) SCC 731** held in paragraphs 25 and 26 as under:

"25. It is also worthy to note that the High Court, after referring to individual circulars issued by various insurance companies, eventually stated thus:-

"In view of the aforesaid, it is clear that the comprehensive/package policy of a two-wheeler covers a pillion rider and comprehensive/package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for the Motor Accident Claims Tribunal to go into the question whether the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC's directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case."

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 the 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. These aspects were not noticed in the case of Bhagyalakshmi (supra) and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same."

13) From the above, it is clear that the package policy/comprehensive policy covers the risk of the occupants of the vehicle as per the sitting

capacity mentioned in the policy and therefore, the argument to the extent that appellant- 1 has not paid the premium for any occupant is not sustainable.

14) As far as the other issue raised by respondent- 6 that the deceased on the date of accident was travelling as passenger and the vehicle is used for commercial purpose is concerned, the witness NAW- 2 in his evidence specifically stated that the Insurance policy Ex.D/1 obtained by him was comprehensive policy. He further stated that he is doing the work of liquor contractor and having one wine shop at Khairagarh. He further stated that Manjeet Singh and Gokul Verma were travelling to Khairagarh on his instructions without payment of any hire or reward. In his cross-examination he admitted that Gokul Verma was his employee and on the date of accident, Gokul Verma was travelling with his permission and direction without payment of any fare. The other witness Manjeet Singh also denied the suggestion that they were travelling as passengers.

15) The aforesaid evidence of non-applicants' witnesses remained uncorroborated and the Insurance Company could not produce any material to show that on the date of accident, Gokul Verma was travelling after payment of any amount of fare or hired the vehicle.

16) Insurance Company examined Sukhwant Singh, Branch Manager, Bhilai who only stated that deceased Gokul Verma was travelling in a private vehicle as passenger, but not substantiated his averments by any other reliable piece of evidence. He was not present on spot at the time of accident. Un-disputedly, the said witness of Insurance Company was not

an eyewitness to the accident, nor travelling in the vehicle. Therefore, his oral statement bears no value. In fact, it has been stated that the deceased was working as supervisor with liquor contractor. He stated that on the date of accident, deceased was travelling as passenger only on the basis of a report submitted by the investigator of his company, but he also admits that the said investigator has not been examined as witness to prove the report prepared by him and therefore, for want of non-examination of the person who prepared the document (Ex.D-2), the said document loses its evidentiary value. Even otherwise, the investigator's report do not clearly bears the status of Gokul Verma in the offending vehicle on that date. It was the burden on the Insurance Company to prove their plea that the offending vehicle was being used for commercial purpose by producing cogent or admissible piece of evidence in which it failed.

17) From the aforementioned discussions and also considering the evidence available on record, it is clear that the deceased being an employee of appellant- 1 (owner) was travelling in the vehicle owned by appellant-1 with his consent and permission without payment of fare or hired the vehicle. The vehicle was insured as private vehicle under the private car package policy and therefore, learned Claims Tribunal committed illegality in arriving at a conclusion that the vehicle is being used for commercial purpose without there being any cogent and reliable piece of evidence on record. The finding of Tribunal that on the date of accident vehicle is used in violation of conditions of insurance policy is without any evidence which is liable to be and is hereby set aside.

18) In view of above, the appeal is allowed and respondent- 6, Insurance Company is held jointly and severally liable for payment of compensation along with appellants as awarded by the Claims Tribunal in favour of respondents- 1 to 5/ claimants.

19) No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE