NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1092 of 2014

- HDFC Ergo General Insurance Company Limited, 3rd Floor, Chawla Comlex, Rajendra Nagar Road, Raipur, Police Station Devendra Nagar, Civil and Revenue District Raipur, C.G.

---- Appellant

Versus

1. Savitri Bai W/o Chamru Ram aged about 58 years,

   R/o Village Salar, P.S. Sarangarh, Tahsil Sarangarh, Civil and Revenue District Raigarh ,C.G.
2. Mohd. Kayyum Khan S/o Sikandar Khan r/o Village Sarauli, P.S. Khodar, Civil and Revenue District Pratapgarh Uttar Pradesh At present Delhi Transport Company Tatibandh, P.S. Amanaka, Civil and Revenue District Raipur, C.G.
3. M.S. Delhi Asam Roadways Corporation Tahalsingh Complex, Ring Road, No.2 1st Floor, Tatibandh, P.S. Amanaka, Civil and Revenue District Raipur, C.G.

---- Respondents

For Appellant	:	Shri Rohitashva Singh, Advocate.
For Respondent Nos. 1	:	Shri Vikas Pradhan, Advocate.
For Respondent No.3	:	None.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

04/02/2019

1. This appeal is by the insurance company under Section 173 of the Motor Vehicles Act, 1988 against the award 10.09.2014 passed by Additional Motor Accident Claims Tribunal, Sarangarh, District Raigarh, C.G. in Claim Case No. 24/2013 awarding total compensation of Rs.3,36,500/- with interest @ 6% per annum

from the date of application till realization, fastening liability on the non-applicants No. 1 & 2/driver & owner jointly and severally while exonerating the insurance company of its liability on the ground of breach of policy conditions. However, the Tribunal has ordered for pay and recover in this case.

2. Respondent no.3/owner has filed cross objection under Order 41 Rule 22 of CPC challenging exoneration of liability.

3. As per claim petition, on 18.09.2012 the respondent no.2/Mohd. Kyyum Khan was driving the offending vehicle attached with trolley bearing registration no. CG04-G-6093 in which Deepak Dhruv was also sitting, in a rash and negligent manner, as a result thereof, Deepak Dhruv fell down, suffered grievous injuries and succumbed to the same. At the time of accident, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.

4. Learned counsel for the appellant has assailed the award of the Tribunal on the sole ground, that on account of there being specific breach of policy conditions when the insurance company has been exonerated of its liability, the Tribunal should not have ordered for pay and recover. Therefore, he prays for setting aside of the order of the Tribunal with respect to pay and recover.

5. On the other hand, learned counsel for the respondent/claimant supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation and ordered for pay and recover in this case, which needs no interference by this Court.

6. Heard learned counsel for the parties on appeal as well as on cross objection and perused the material available on record.

7. As regards the liability, NAW-1 Ragvendra Raghuvanshi has deposed that the offending vehicle was insured under Goods Carriage Vehicle Package Policy from 23.03.2012 to 22.03.2013. From the oral and documentary evidence available on record, it is seen that the deceased along with other persons was travelling in the trolley as a gratuitous passenger whereas there is no sitting capacity in the trolley and the insurance policy does not cover the risk of such person sitting in the trolley. As per insurance policy Ex.D-1 risk of driver and two employees is covered only. There is nothing on record to show that the deceased was the employee of owner of the offending vehicle. In these circumstances, the Tribunal was fully justified in exonerating the insurance company of its liability on the ground of there being breach of policy conditions and fastening the same on driver and owner of the offending vehicle.

8. So far as order of pay and recover is concerned, admittedly on the date of accident the offending vehicle was duly insured with non-applicant No.3 and the deceased was a gratuitous passenger. Therefore, keeping in view the decisions of the Hon'ble Supreme Court in ***Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796*** and ***Shivawwa and another Vs. Branch Manager, National India Insurance Company Limited and another, (2018) 5 SCC 762,*** this Court is of the opinion that the Tribunal has not committed

any illegality in passing the order of pay and recover in this case.

9. In the result, the appeal filed by the insurance company as well as cross objection being without any substance deserves to be dismissed at the admission stage itself and is, accordingly, dismissed.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh