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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1010 of 2013

- Bajaj Allianz General Insurance Company Limited, Branch Office – Ambikapur, District Sarguja, Through its authorized officer Bajaj Allianz General Insurance Company Limited, Shiv Mohan Bhawan Vidhansabha Road Pandri, Raipur, District Raipur (C.G.)

---- Appellant/Insurer/Non-applicant No.1

Versus

1. Smt. Suryawati Devi W/o Late Bhola Prasad Gupta, Aged 30 years
2. Meera Gupta D/o Late Bhola Prasad Gupta, Aged 16 years
3. Shailesh Kumar S/o Late Bhola Prasad Gupta, Aged 14 years

   (Claimants)

   Respondent No. 2 and 3 Being minor through their natural guardian mother Smt. Surywati Devi respondent no.1, All Respondents are R/o Village Silouta, P.S. and Tehsil- Pratappur, District Surajpur (C.G.)
4. Shambhu Sharan Gupta S/o Balmukund, Aged- 36 years, Caste Sondik, R/o Village Silouta, Post Semrakala, P.S. Pratappur, District Surajpur (C.G.)

   (Owner of vehicle/Non-applicant No.2)
5. Vijay Kumar Gupta S/o Harigovind, Age 40 years, Caste- Sondik, R/o Village- Chawgai, Post – Semarkala, P.S. Chalgali, District Sarguja (C.G.)

   (Driver of vehicle/Non-applicant No.3)

---- Respondents

For Appellant	:	Shri Ghanshyam Patel, Advocate
For Respondents No. 1 to 3	:	None
For Respondents No. 4 & 5	:	Shri Sunil Tripathi, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

02.05.2019

1. This appeal is by the Insurance Company/non-applicant No.1/Appellant under Section 173 of the Motor Vehicles Act, 1988 against the award dated 25.04.2013 passed by the Additional Motor Accident Claims Tribunal, Pratappur, District Surajpur (C.G.) in Claim Case No. 11 of 2012 awarding total compensation of Rs.4,57,000/- with interest @ 7.5% per annum from the date of application till realization, fastening liability on the non-applicant No.1 jointly and severally along with non-applicants No. 2 & 3/owner &

driver.

2. As per claim petition, on 14.04.2010 deceased Bhola Prasad Gupta, 30 years of age, earning Rs.9,000/- per month from grocery shop and repairing shop of bicycle, was travelling in the vehicle Pickup bearing No. UP-62/T/2824, owned by non-applicant No. 2 and insured with non-applicant No.1, which was being driven by non-applicant No.3 Vijay Kumar in a rash and negligent manner, as a result of which the said vehicle turned turtle, Bhola Prasad Gupta suffered grievous injuries and ultimately succumbed to the same on the way while being taken to the Hospital.

3. On claim petition being filed Claimants, wife and two minor children of the deceased, under Section 166 of the Motor Vehicles, Act, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

4. Learned counsel for the Appellant/Insurance Company submits that as per Certificate of Registration of the offending vehicle (Ex.A/7), its unladen weight is 1690 kg and gross weight is 2880 kg. The offending vehicle was a goods vehicle and from the evidence on record including the evidence of NAW-2 Pravin Sijariya, it is clear that on the date of accident, the driver was carrying about 20-22 persons in the said vehicle whereas the insurance policy does not cover risk of such persons because no premium was taken for them by the Insurance Company. The deceased was neither the owner of the goods nor authorized representative of the goods being carried in the said vehicle. Therefore, the Tribunal has wrongly fastened liability on the Insurance Company of paying compensation to the Claimants.

5. On the other hand, learned counsel for Respondents No. 4 & 5/owner & driver supports the impugned award and submits that there is no breach of policy conditions, therefore, the Tribunal has rightly fastened liability on non-applicant No.1/Insurance Company.

6. Heard learned counsel for the parties and perused the material available on record.

7. It is not disputed by the parties that the offending vehicle was involved in the accident and was light motor goods vehicle. As per Ex.D/1, insurance policy, the gross vehicle weight is 2750 kg and the vehicle is goods carrying commercial vehicle. As per Ex.-A/1, FIR, there were 20-22 persons sitting in the offending vehicle out of which 17 persons got injured.

8. As regards the issue of liability, considering the facts and circumstances of the case, the evidence of AW-1 Suryawati Devi, in para-8, that approximately 20-22 persons were sitting in pickup van and the evidence of NAW-1 Vijay Gupta, NAW-2 Pravin Sijariya and NAW-3 Shivshankar Singh that on the date of accident, 20-22 persons were being carried in the offending vehicle, fact the offending vehicle was admittedly a goods carrying vehicle, the Insurance Company has not taken any premium for covering the risk of passengers being carried in the said vehicle, there is nothing on record to show that the deceased was either owner of the goods being carried in the vehicle or authorized representative of such goods, this Court is of the opinion that the Tribunal was not justified in fastening liability on the Insurance Company. Therefore, on account of there being breach of policy conditions, the Insurance Company is exonerated of its liability.

However, considering the fact that at the time of accident the offending vehicle was duly insured with the Insurance Company/Appellant, in view of the principles of law laid down by 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 feels it proper to order for “pay and recover” in this case, meaning thereby that the Insurance Company/Appellant shall first pay the amount of compensation to the Claimants and then recover the same from non-applicants No. 2 & 3/owner & driver in accordance with law.

9. As observed above, the Insurance Company/Appellant shall pay the entire amount of compensation to the Claimants and thereafter, recover the same from non-applicants No. 2 & 3/owner & driver of the offending vehicle in accordance with law.

10. In the result, the appeal is allowed in part with modification in the impugned award to the above extent. However, rest of the conditions of the impugned award shall remain intact.

Sd/-
(Gautam Chourdiya)
Judge

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