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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 922 of 2013

- Goutam Baghel S/o R.R.Baghel Aged About 35 Years R/o Amabeda, P.S. Amabeda, Tah. Antagarh, Distt. North Bastar Kanker C.G., Chhattisgarh (Owner of Bolero vehicle bearing registration No.CG 17D-1631)

---- Appellant

Versus

1. Smt.Amro Bai W/o Rajnu Salam Aged About 21 Years
2. Ku. Urmila D/o Rajnu Salam Aged About 1 Years Minor, Thru- Mother Smt. Amro W/o Rajnu Ram Salam
3. Smt. Dukalo Bai W/o Ramji Salam Aged About 53 Years
4. Ramji s/o Guharam Salam, aged about 55 years
   All are R/o village Lohattar, P.S. Amabeda, Tah. Antagarh, Distt. North Bastar, Kanker, Chhattisgarh (Claimants)
5. Rajuram s/o Ramp[rasad Naag, aged about 28 years, R/o Village Amabeda, Police Station Amabeda, Tahsil Antagarh, District North Bastar Kanker (CG) (Driver of Bolero vehicle bearing registration No.CG 17D-1631)
6. Bajaj Allianz General Insurance Company Limited, through Branch Manager, Branc Office, Shiv Mohan Bhavan, Vidhan Sabha Road, Pandari, Ripur, Tahsil and district – Raipur Chhattisgarh (Insurer of Bolero vehicle bearing registration No.CG 17D-1631) **---- Respondents**

For Appellant	:	Shri Anil Gulati, Advocate.
For Respondent-6	:	Shri Sangeet K Kushwaha, Advocate on behalf of Shri SS Rajput, Advocate
For other Respondents	:	None appears.

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

08.05.2019

1. Owner of Bolero Jeep bearing registration No.CG 17D- 1631 (offending vehicle) has preferred this appeal under Section 173 of Motor Vehicle Act, 1988 challenging the impugned award dated 30.03.2013 passed by the learned Motor Accident Claims Tribunal, Bhanupratappur, North Bastar (for short, 'Claims Tribunal') in Claim Case No.13 of 2010 wherein learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.4,99,000/- towards compensation in a death

case while exonerating Insurance Company, fastened liability of payment of compensation on owner of offending vehicle.

2. Brief facts for disposal of this appeal are that on 04.01.2010 Rajnuram along with his other friends was going from Raipur to Amabeda in offending vehicle driven by respondent- 5, Rajuram. At 11 pm when they reached near village Balodgahan between Dhamtari and Kanker, offending vehicle dashed a truck which was parked by one side of road. In the aforementioned accident, Rajnuram and others sustained injuries. Looking to the injuries sustained by Rajnuram, he was taken to hospital at Dhamtari, where he succumbed to injuries during the course of treatment.

3. Respondents- 1 to 4 who are legal representatives of deceased Rajnuram on account of his death filed claim application under Section 163A of Motor Vehicle Act, 1988 (for short, '1988 Act') claiming Rs.19,50,000/- as compensation on the grounds mentioned therein.

4. Driver and owner of offending vehicle submitted reply to claim application and denied contents of claim application. They pleaded that at the time of accident, driver of offending vehicle was not driving offending vehicle rashly and negligently, but the accident took place due to failure of breaks of offending vehicle. Further it has been pleaded that on the date of accident offending vehicle was insured with respondent- 6/ Insurance Company therefore, liability if any, would be on Insurance company to satisfy amount of compensation.

5. Respondent- 6 Insurance Company submitted its reply to the claim application and denied involvement of offending vehicle in the accident.

They also pleaded that owner, driver and Insurance Company of other vehicle involved in the accident have not been arrayed as respondents in the claim application therefore, it is not maintainable for want of necessary parties. Further it was pleaded that at the time of accident, offending vehicle was being used as private taxi and there was no valid and effective driving license with driver of offending vehicle, therefore, there is violation of conditions of Insurance Policy.

6. Learned Claims Tribunal based on pleadings and evidence available on record, allowed claim application in part and awarded total sum of Rs.4,99,000/- as compensation to claimants, who are respondents- 1 to 4 herein. Learned Claims Tribunal also held that on the date of accident, offending vehicle was being used as private taxi/commercial purpose, hence there is violation of conditions of Insurance Policy and exonerated Insurance Company from its liability. Owner and driver of offending vehicle were held liable to satisfy the amount of award.

7. Learned counsel for appellant submitted that though there is mention in the merg intimation which is part of criminal case and Police Challan, that offending vehicle was being used as taxi. But, the witness, who lodged merg intimation had stated specifically before learned Claims Tribunal that he did not inform the fact that offending vehicle was hired by occupants travelling in it to concerned Police Station. He further argues that learned Claims Tribunal earlier passed an award fastening liability on Insurance Company which was challenged before this Court and this Court remitted the case to learned Claims Tribunal for deciding the matter afresh after recording fresh evidence. However, none of the parties led

any evidence afresh before Claims Tribunal. Thereafter, learned Claims Tribunal on the same set of evidence, which was recorded earlier, passed impugned award whereby Insurance Company, earlier which was held liable has been exonerated from its liability to pay compensation and fastened liability on owner of offending vehicle.

8. Learned counsel for respondent- 6 / Insurance Company submits that in an earlier appeal MAC-77 of 2011 before this Court, Insurance Company took a specific plea that in one of documents, which is part of record of learned Claims Tribunal, there is specific mention by one of the occupants of offending vehicle that offending vehicle has been taken on hire from its owner and accident took place while they were returning and accepting arguments raised by counsel appearing on behalf of Insurance Company, this Court while observing that learned Claims Tribunal has not taken into consideration documents available with respect to Criminal Case remitted back the case to Tribunal for taking decision afresh. Therefore, learned Claims Tribunal has not committed any illegality in passing this award and fastening liability on owner of offending vehicle. He further argued that Kamlesh AW2, who lodged Dehati Nalishi immediately after the accident in which he specifically stated that offending vehicle has been hired, cannot be permitted to turn around from his statement made earlier before concerned Police authorities. He also submitted that Claimants themselves have filed records of Criminal case before Claims Tribunal in proof of accident.

9. I have considered argument raised by learned counsel for the parties and perused records.

10. Perusal of records would show that Claimants have filed final report-Ex.P/1, copy of FIR-Ex.P/2 and Dehati Nalishi- Ex.P/3 recorded by Police Station Gurur on 05.01.2010. From perusal of Dehati Nalishi in which name of informant has been shown as 'Kamlesh Kumar' and who was examined as AW-2 has narrated accident to Police in which it has been specifically mentioned that they hired offending vehicle owned by Gautam Baghel, appellant herein. Kamlesh Kumar himself was one of the occupants of offending vehicle and he appeared as witness before learned Claims Tribunal. This witness was travelling as one of the friends of deceased and therefore, contents of the documents of Criminal Case filed in support of claim application shall be read as it is. Kamlesh Kumar was examined as witness to support contents of claim application and the grounds raised by claimants, therefore, along with the proof of accident other facts narrated in FIR is to be read as a whole.

11. In view of aforementioned facts and circumstances of case, Kamlesh Kumar, who was one of the occupants of offending vehicle and lodger of Dehati Nalishi, cannot be permitted to revert from his earlier statement made within few hours of accident.

12. Hon'ble Supreme Court in the matter of **Oriental Insurance Company Limited Vs Premlata Shukla and others** reported in 2007 AIR SCW 3591 while dealing with issue with respect to FIR or Criminal records of Criminal Case in claim cases, held as under :

> “13. However, the factum of an accident could also be proved from the First Information Report. It is also to be noted that once a part of the contents of the document is admitted in evidence, the party bringing the same on record cannot be permitted to turn round

> and contend that the other contents contained in the rest part thereof had not been proved. Both the parties have relied thereupon. It was marked as an Exhibit as both the parties intended to rely upon them."

13. In the case at hand, Kamlesh Kumar, who was one of the occupants of offending vehicle, at whose instance Dehati Nalishi- Ex.P/3 was recorded and who filed records of Criminal Case, appeared as witness to support case of claimants, therefore, Dehati Nalisi Ex.P-3 relied upon by claimants has to be read as it is and it is not permitted for him to say that he has not mentioned the fact as appearing in Ex.P-3. In these facts and circumstances, law laid down by Hon'ble Supreme Court in the matter of **Premlata** (supra) will apply to present case with full force.

14. In view of above discussions, ground raised by learned counsel appearing for appellant/owner that learned Claims Tribunal committed error in exonerating Insurance Company on the basis of records of Criminal case only is not sustainable under the law and it is hereby set aside. No other ground has been raised by counsel for the appellant for consideration.

15. The appeal is devoid of merit. Accordingly, it is liable to be and is hereby dismissed.

16. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma