

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 63 of 2014**

- State of Chhattisgarh Through- The Divisional Forest Officer, Forest Division, Mahasamund, Distt. Mahasamund C.G.

---- Appellant**Versus**

1. Smt. Dharmautin Bai W/o Late Thanu Ram Bariha Aged About 46 Years, Caste Bariha, R/o Keshaldih, P.S. Tumgaon, Tah. And Distt. Mahasamund C.G.
2. Dhani Ram S/o Late Thanu Ram Bariha Aged About 22 Years, Caste Bariha, R/o Keshaldih, P.S. Tumgaon, Tah. And Distt. Mahasamund C.G.
3. Ku. Dhaneshwari D/o Late Thanu Ram Bariha Aged About 19 Years, Caste Bariha, R/o Keshaldih, P.S. Tumgaon, Tah. And Distt. Mahasamund C.G.
4. Dharam Manjhi S/o G.R. Manjhi Aged About 36 Years R/o Ward No. 04, Nayapara, Mahasamund, Tah. And Distt. Mahasamund C.G. Driver of Vehicle No. CG04-G-0479
5. Satyanarayan Sahu S/o Mewalal Sahu Aged About 26 Years R/o Purani Mandi Road, Ganjpara, Mahasamund, Tah. And Distt. Mahasamund C.G. Owner of Vehicle No. CG04-G-0479
6. Branch Manager The New India Insurance Company Ltd., Divisional Office, Madina Building, Raipur, Distt. Raipur C.G.

---- Respondents**MAC No. 61 of 2014**

- State Of Chhattisgarh Through- The Divisional Forest Officer, Forest Division, Mahasamund, Distt. Mahasamund C.G.

----Appellant**Versus**

1. Siyaram S/o Late Bhagirathi Dhruv Aged About 21 Years, R/o Keshaldih, P.S. Tumgaon, Tah. And Distt. Mahasamund C.G.
2. Suresh S/o Late Bhagirathi Dhruv Aged About 23Years Minor, R/o Keshaldih, P.S. Tumgaon, Tah. And Distt. Mahasamund C.G.
3. Dharam Manjhi S/o G.R. Manjhi Aged About 36 Years R/o Ward No. 04, Nayapara, Mahasamund, Tah. And Distt. Mahasamund C.G.

Driver of Vehicle No. CG04-G-0479.

4. Satyanarayan Sahu S/o Mewalal Sahu Aged About 26 Years R/o Purani Mandi Road, Ganjpara, Mahasamund, Tah. And Distt. Mahasamund C.G. Owner of Vehicle No. CG04-G-0479
5. Branch Manager The New India Insurance Company Ltd., Divisional Office, Madina Building, Raipur, Distt. Raipur C.G.

---- Respondents

MAC No. 62 of 2014

- State Of Chhattisgarh Through- The Divisional Forest Officer, Forest Division, Mahasamund, Distt. Mahasamund C.G.

----Appellant

Versus

1. Smt.Peela Bai W/o Late Panchu Ram Dhruv Aged About 38 Years R/o Keshaldih, P.S. Tumgaon, Tah. And Distt. Mahasamund C.G.
2. Kunwar Singh S/o Late Panchu Ram Dhruv Aged About 17 Years Minor, Through- his guardian mother Smt. Peela Bai, Caste Gond, R/o Keshaldih, P.S. Tumgaon, Tah. And Distt. Mahasamund C.G.
3. Jeevrakhan S/o Late Panchu Ram Dhruv Aged About 15 Years Minor, Thru- his guardian mother Smt. Peela Bai, Caste Gond, R/o Keshaldih, P.S. Tumgaon, Tah. And Distt. Mahasamund C.G.
4. Dharam Manjhi S/o G.R. Manjhi Aged About 36 Years R/o Ward No. 04, Nayapara, Mahasamund, Tah. And Distt. Mahasamund C.G. Driver of Vehicle No. CG04-G-0479
5. Satyanarayan Sahu S/o Mewalal Sahu Aged About 26 Years R/o Purani Mandi Road, Ganjpara, Mahasamund, Tah. And Distt. Mahasamund C.G. Owner of Vehicle No. CG04-G-0479
6. Branch Manager The New India Insurance Company Ltd., Divisional Office, Madina Building, Raipur, Distt. Raipur C.G.

---- Respondents

MAC No. 64 of 2014

- State Of Chhattisgarh Through- The Divisional Forest Officer, Forest Division, Mahasamund, Distt. Mahasamund C.G.

----Appellant

Versus

1. Smt. Prem Bai W/o Late Bhojram Patel Aged About 34 Years R/o Khirkhali, Post- Achanakpur, P.S. Tumgaon, Tah. And Distt. Mahasamund C.G.
2. Sukhchand Patel S/o Late Bhojram Patel Aged About 17 Years Minor, Thru- Mother Smt. Prema Bai W/o Late Shri Bhojram Patel, R/o Khirkhali, Post- Achanakpur, P.S. Tumgaon, Tah. And Distt. Mahasamund C.G.
3. Ku. Rewati Patel D/o Late Bhojram Patel Aged About 14 Years Minor, Thru- Mother Smt. Prema Bai W/o Late Shri Bhojram Patel, R/o Khirkhali, Post- Achanakpur, P.S. Tumgaon, Tah. And Distt. Mahasamund C.G.
4. Dharam Manjhi S/o G.R. Manjhi Aged About 36 Years R/o Ward No. 04, Nayapara, Mahasamund, Tah. And Distt. Mahasamund C.G. Driver of Vehicle No. CG04-G-0479
5. Satyanarayan Sahu S/o Mewalal Sahu Aged About 26 Years R/o Purani Mandi Road, Ganjpara, Mahasamund, Tah. And Distt. Mahasamund C.G. Owner of Vehicle No. CG04-G-0479
6. Branch Manager The New India Insurance Company Ltd., Divisional Office, Madina Building, Raipur, Distt. Raipur C.G.

---- Respondents**MAC No. 65 of 2014**

- State Of Chhattisgarh Through- The Divisional Forest Officer, Forest Division, Mahasamund, Distt. Mahasamund C.G.

----Appellant**Versus**

1. Chandar Singh Bariha S/o Ratiram Bariha Aged About 41 Years R/o Khirkhali, P.S. Tumgaon, Tah. And Distt. Mahasamund C.G.
2. Dharam Manjhi S/o G.R. Manjhi Aged About 36 Years R/o Ward No. 04, Nayapara, Mahasamund, Tah. And Distt. Mahasamund C.G. Driver of Vehicle No. CG04-G-0479
3. Satyanarayan Sahu S/o Mewalal Sahu Aged About 26 Years R/o Purani Mandi Road, Ganjpara, Mahasamund, Tah. And Distt. Mahasamund C.G. Owner of Vehicle No. CG04-G-0479
4. Branch Manager The New India Insurance Company Ltd., Divisional Office, Madina Building, Raipur, Distt. Raipur C.G.

---- Respondents

For State	: Shri R.R. Singh, Dy. G.A.
For Respondents/Driver and Owner	: Shri Anshul Tiwari, Advocate on behalf of Shri Manoj Paranjpe, Advocate.
For Respondent/Insurance Company	: Shri Dashrath Gupta, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment On Board

15/03/2019

1. As all these five appeals filed under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') arise out of awards dated 18.07.2013 passed by Motor Accident Claims Tribunal, Mahasamund, C.G. in claim cases no. 67/08, 68/08, 69/08, 70/08 and 71/08 involving the vehicle Metador bearing no. CG04-G-0479 (offending vehicle), they are being disposed of by this common judgment.
2. Brief facts necessary for disposal of these appeals are that on the date of accident i.e. 19.04.2006 the offending vehicle, owned by non-applicant no.2/Satyanaran Sahu and insured with non-applicant no.3/New India Insurance Company Limited, was taken in possession by the employees of the Forest Department from its driver/non-applicant no.1 Dharam Manjhi for the purpose of taking persons/labours to the programme organized for distribution of bonus to the labours against collection of *Tendu* leaves by the Chief Minister. However, on the way due to rash and negligent driving of the said vehicle by non-applicant no.1, it turned turtle resulting in grievous injuries to as many as 26 persons sitting in the vehicle and death of four passengers.
3. On claim petition being filed by the claimants against the death of Bhojram Patel under Section 166 of the Act (registered as claim case

no.67/08 in MAC No.64/14), the Tribunal considering the evidence led by the parties awarded a compensation of Rs.6,75,000/- with interest @ 6 percent from the date of application till its realization, fastening the liability on non-applicant no.4 jointly and severally along with non-applicants no. 1 & 2.

4. On claim petition being filed by the claimant against the death of Panchu Ram Dhurv under Section 166 of the Act (registered as claim case no.68/08 in MAC No.62/14), the Tribunal considering the evidence led by the parties awarded a compensation of Rs. 5,55,000/- with interest @ 6 percent from the date of application till its realization, fastening the liability as above.
5. On claim petition being filed by the claimant against the death of Bhagirath Dhruv under Section 166 of the Act (registered as claim case no.70/08 in MAC No.61/14), the Tribunal considering the evidence led by the parties awarded a compensation of Rs. 3,75,000/- with interest @ 6 percent from the date of application till its realization, fastening the liability as above.
6. On claim petition being filed by the claimant against the death of Thanu Ram Bariha under Section 166 of the Act (registered as claim case no.71/08 in MAC No.63/14), the Tribunal considering the evidence led by the parties awarded a compensation of Rs. 3,75,000/- with interest @ 6 percent from the date of application till its realization, fastening the liability as above.
7. On claim petition being filed by the claimant against the injured/claimant Chandar Singh Bariha under Section 166 of the Act (registered as claim case no.69/08 in MAC No.65/14), the Tribunal

considering the evidence led by the parties awarded a compensation of Rs.25,000/- with interest @ 6 percent from the date of application till its realization, fastening the liability as above.

8. Learned counsel for the appellant/State submits that the State Government is neither owner of the vehicle nor the same was being driven by its driver and there is documentary evidence on record to show that the offending vehicle was requisitioned by the State and in these circumstances the Tribunal was not justified in exonerating the Insurance Company and fastening the liability on the State Government. Since, the offending vehicle was duly insured with the Insurance Company on the date of accident, liability, if any, is of the Insurance Company to satisfy the impugned award.
9. Learned counsel appearing for the driver/owner as also learned counsel for the Insurance Company supporting the impugned award submit that the Tribunal has rightly fastened liability upon the non-applicant no.4/Forest Department. As per evidence adduced by both the parties, it stands proved that on the date of accident the offending vehicle was forcibly taken in possession by the employees of the Forest Department on the oral direction of their Superior Authorities. There is no contract between the owner of the offending vehicle and the Forest Department and no any fare/rent is paid to the owner of the offending vehicle by the Forest Department. Being so, the Tribunal was justified in exonerating the Insurance and fastening liability on non-applicant no.4/Forest Department who at the time of accident was having control and possession of the offending vehicle.
10. Heard learned counsel for the parties and perused the material available on record.

11. It has not been disputed by both the parties that on the date of accident, the offending vehicle was being driven by non-applicant no.1 Dharam Manjhi, its registered owner was non-applicant no.2 and the same was duly insured with non-applicant no.3/New India Insurance Company. N.K. Pandey, Divisional Forest Officer, General Forest Division, Mahasamund has admitted in his evidence that on 17.04.2006 letters no. 519 to 523 were issued by the Office of Forest Circle Officer, Mahasamund. From perusal of letter no. 521 dated 17.04.2006 issued by the Office of Forest Circle Officer, Mahasamund, it is evident that by this letter all the Circle Assistant of Mahasamund Circle were directed for making arrangement for the purpose of taking the *Tendu* Leaves Collectors to Pithora through the members of Gramin Samithi and Prathmik Vanopaj Samithi to receive the bonus to be distributed by the Chief Minister for the *Tendu* Leaves Collection Year, 2004. In this letter names of the Employees/Officers of the concerned Forest Committees have been mentioned for making the above arrangement. Vide Ex.D1(C), Laxaman Puri Goswami, whose name finds place in the letter of Ex.D-6 Forest Guard, Mahasamund Forest Circle, has stated that on 19.04.2006 on the oral directions of Deputy Rangers he had taken the offending vehicle from non-applicant no.2 Satyanarayan Sahu for complying with the directions of Forest Circle Officer, Mahasamund in the letter no. 521 dated 17.04.2006.
12. Kaliram (AW-2) in claim case no. 68/2008, has specifically stated in para 3 that he along with other persons were made to sit in the offending vehicle by the employees of the Forest Department, he was not made to sit in the offending vehicle by its driver and he does not know the owner of the vehicle. He has further stated that they were being taken by the offending vehicle by the employees of the Forest

Department for distribution of bonus for collection of *Tendu* Leaves. The evidence of Kaliram finds due corroboration from the evidence of Uttam Kumar Bariha (AW-3).

13. As per *Dehati Nalishi* lodged by Jagtu Ram, Forest Guard, whose name also finds place in Ex.D-6, has stated that on 19.04.2006 he was carrying the members of the Forest Committees by the offending vehicle as per directions of the Superior Authorities, due to rash and negligent driving of the said vehicle by non-applicant no.1 Dharam Manjhi, the vehicle overturned as a result of which 30-35 persons sitting in the said vehicle suffered grievous injuries. In the said *Dehati Nalishi* he has also named the persons who suffered such injuries.
14. Laxman Puri Goswami NAW-2, in claim case no. 68/2008, Forest Guard in Mahasamund Circle, whose name finds place in Ex.D-6, has categorically stated that on the date of accident i.e. 19.04.2006 he had taken in possession the offending vehicle for carrying ration and at the time of handing over of the vehicle, its owner had clearly informed him that his vehicle is a goods vehicle. He has further stated that he had taken the offending in his possession on the directions of Deputy Ranger Shri D.N. Sahu. He has proved the document of Ex.D-1.
15. Thus, regard being had to the over all facts and circumstances of the case, the evidence led by the claimants and the non-applicants, the admission of N.K. Pandey (the witness examined on behalf of non-applicant no.4), it stands proved that on the date of accident the offending vehicle was taken in possession by the employees of Forest Department for the purpose of carrying *Tendu* Leaves Collectors to the programme organized at Pithora for distribution of *Tendu* Leaves Bonus by the Chief Minister for the *Tendu* Leaves Collection Year,

2004. From the evidence available on record, it is seen that the offending vehicle was a goods carrying vehicle whereas as many as 30 to 35 persons were being carried by the said vehicle, the vehicle was taken in possession by the employees of the Forest Department for carrying persons without consent of the owner and the insurance policy does not cover the risk of said persons. The Tribunal considering all these things in light of decisions in the matters of ***Arun Kumar Thaper Vs. Yashwant Indapurkar, 2004 ACJ 1946 & National Insurance Company Limited Vs. Deepa Devi and others, 2008 (3) CGLJ (DBSC) 383***, exonerated the Insurance Company of its liability and fastened the same on non-applicant no.4 jointly and severally along with non-applicant nos. 1 & 2/driver and owner of the offending vehicle. This Court finds no illegality or infirmity in the findings so recorded by the Tribunal.

16. On the basis of aforesaid discussions, this Court finds no substance in the present set of appeals and the same being bereft of any substance are liable to be dismissed and are, accordingly, dismissed.

Sd/-
Gautam Chourdiya
Judge