NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 305 of 2015

The Divisional Manager, The Oriental Insurance Company Limited , Infront Of Bus Stand Rajeev Plaza, Bilaspur, Tahsil And District Bilaspur Chhattisgarh.

---- Appellant

Versus

1. Smt. Amrit Bai Chandra Wd/o Late Shri Kholbahra Chandra Aged About 43 Years R/o Village Kutrabod, Police Station Jaijaipur, District Janjgir Champa Presently Resident At - Chandan Awas, 4/4 Rajkishore Nagar, Bilaspur, Police Station Sarkanda, Distt. Bilaspur Chhattisgarh , Chhattisgarh
2. Radheshyam Chandra S/o Late Shri Kholbahra Aged About 23 Years R/o Village Kutrabod, Police Station Jaijaipur, District Janjgir Champa Presently Resident At - Chandan Awas, 4/4 Rajkishore Nagar, Bilaspur, Police Station Sarkanda, Distt. Bilaspur Chhattisgarh , District : Bilaspur, Chhattisgarh
3. Radhelal Chandra S/o Late Shri Kholbahra Aged About 21 Years R/o Village Kutrabod, Police Station Jaijaipur, District Janjgir Champa Presently Resident At - Chandan Awas, 4/4 Rajkishore Nagar, Bilaspur, Police Station Sarkanda, Distt. Bilaspur Chhattisgarh , District : Bilaspur, Chhattisgarh
4. Rajeshwar Chandra S/o Aged About 15 Years (minor) Through Mother Smt. Amrit Bai R/o Village Kutrabod, Police Station Jaijaipur, District Janjgir Champa Presently Resident At - Chandan Awas, 4/4 Rajkishore Nagar, Bilaspur, Police Station Sarkanda, Distt. Bilaspur Chhattisgarh , District : Bilaspur, Chhattisgarh
5. Kishore Kumar Dewangan S/o Budheshwar Prasad R/o Village Odekera, Police Station Jaijaipur, District-Janjgir Champa Chhattisgarh , District : Janjgir-Champa, Chhattisgarh
6. Ganpat Khute S/o Matadin Khute, R/o Qtr. No. 126, Station Para Sakti, District Janjgir-Champa Chhattisgarh , District : Janjgir-Champa, Chhattisgarh

---- Respondents

For Appellant	:	Mr. Pankaj Agrawal, Advocate.
For Respondents	:	None

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

19/06/2019

1. The appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the impugned award dated 15.1.2015 passed by the 6th Additional Motor Accidents Claims Tribunal, Bilaspur (CG) in Claim case No.95/2013 wherein the learned Claims tribunal awarded a total sum of Rs.3,99,600/- as compensation in a death case.

2. Brief facts relevant for disposal of this appeal are that on 22.5.2010, Kholbahara Chandra was travelling on a Pick-up vehicle bearing No. OR-17-G/2062 along with the gift articles of marriage. He was sitting in security and protection of the gift articles along with gift articles on back side of the pick-up. When the pick-up reached near village Belkari, non-applicant 1 drove the vehicle rashly passing through the ditch and speed breaker at high speed due to which, Kholbahara Chandra fell down from the pick-up and suffered grievous injury over his person. Subsequently, he succumbed to the injuries. The matter was reported to concerned Police Station based on which Crime No. 85/2010 was registered against non-applicant 1 for the offence defined under Section 304-A of the I.P.C.

3. On account of death of Kholbahara Chandra, respondents 1 to 4/ claimants have filed claim application before the competent claims tribunal claiming Rs.4,70,000/- as compensation from the non-applicants on the grounds mentioned there in. Non-applicants 1 and 2, who are driver and owner of the offending vehicle (pick-up),

submitted their reply to the claim application and have pleaded that the claim application has been filed on the basis of false and fabricated grounds. They have also taken a plea that as the accident took place within the territorial jurisdiction of Jaijaipur, Police Station, Janjgir, therefore, the Claims Tribunal at Bilaspur has not having jurisdiction to try the claim application. After filing of reply to the claim application, non-applicant Nos. 1 and 2 remained absent and they were proceeded ex-parte.

4. Non-applicant No.3 submitted reply to the claim application and pleaded that on the date of accident, the offending vehicle was being driven without any valid permit and as at the time of accident, the vehicle was carrying Baratis (passengers), therefore, there is violation of conditions of the insurance policy and the insurance company is not liable for payment of any amount of compensation.

5. The learned claims tribunal on appreciation of the pleadings and evidence available on record, has arrived at a finding that the accident took place due to rash and negligent driving of the offending vehicle, pick up bearing No.OR-17G-2062 by non-applicant 1 and in the aforementioned accident, death of Kholbahara Chandra took place. The claims tribunal also recorded a finding that there was violation of the conditions of insurance policy by non-applicants 1 and 2 and therefore, the insurance company was exonerated from its liability and have directed the

insurance company first to pay and then to recover it from non-applicants No.1 & 2, but while passing the award the claims tribunal has held all the non-applicants i.e. non-applicants 1, 2 and 3 jointly and severally liable for the payment of amount of compensation and awarded a total sum of Rs.3,99,600/- as compensation to the claimants.

6. Learned counsel for the appellant submits that the learned claims tribunal while deciding issue No.2 has held that there was violation of the conditions of insurance policy as on the date of accident in a goods vehicle passengers were carrying and one of the passengers travelling in the vehicle died in the motor accident and therefore, there is violation of the conditions of insurance policy and further recorded that the liability for the payment of amount of compensation would be on non-applicants 1 and 2. In the concluding paragraph, the claims tribunal held that all the non-applicants including insurance company i.e. non-applicants 1, 2 and 3 to be jointly and severally liable for payment of compensation, which is not sustainable in the eyes of law.

7. None appears on behalf of the respondents even consecutive calls of the case.

8. I have heard learned counsel for the parties and perused the record.

9. The insurance policy has been filed as Ex.NA3-1, in which the name and model of the vehicle is mentioned as TATA 207, type of the body has been mentioned as loadbody & hideck loadbody. Sitting capacity has been mentioned as 3 + 1.

10. Perusal of the schedule of premium mentioned in Ex.NA3-1 would show that apart from the basic third party cover, the insurance company has also charged premium for owner and driver, for legal liability for paid driver, conductor, cleaner, legal liability towards employees and thereby charged Rs.12,818/- as total premium.

11. The offending vehicle as evident from the description mentioned in the insurance policy Ex.NA3-1 is a goods carriage vehicle, but at the relevant time about 10-12 persons were travelling on the offending vehicle which is evident from Ex.P2 i.e. first information report lodged on same day immediately after few hours of the accident by one Premnath Chandra. From perusal of the contents of first information report Ex.P2 it is evident that the deceased was travelling on the back side of the vehicle which is open place for carrying goods whereas the vehicle was registered as good carriage vehicle and also insured as public carrier.

12. In view of the above, the claims tribunal has rightly held that as on the date of accident, the vehicle is being used for carrying passengers and that there is violation of the conditions of insurance

policy and also recorded a finding that it will be the liability of the non-applicants 1 and 2 for the payment of amount of compensation. But in para 15 of the award while deciding issue No.4 held that the appellant/insurance company is to be jointly and severally liable for payment of amount of compensation along with non-applicants 1 and 2 which is apparently an erroneous award. When once from the evidence, the claims tribunal has arrived at a finding that there is violation of conditions of insurance policy and also held liable the non-applicants 1 and 2 for making payment of the amount of compensation to the claimants then the claims tribunal ought not to have directed the insurance company jointly and severally liable for payment of amount of compensation along with non-applicants 1 and 2. The said part of the impugned award where the claims tribunal has held the appellant/insurance company liable for payment of the amount of compensation is not sustainable and it is liable to be set aside and is hereby set aside. In view of the aforementioned discussion, in the impugned award itself the learned claims tribunal has recorded a finding that there is violation of conditions of the insurance policy and held liable to non-applicants 1 and 2 for payment of the amount of compensation. Now, non-applicants 1 and 2 will only be liable for the payment of the amount of compensation.

13. As the owner of the vehicle has not paid any amount for covering risk of any other person other than the driver/owner in the opinion of this Court order of pay and recover also cannot be directed in the facts of the case.

14. In the result, the appeal is allowed and it is directed that now the amount of compensation awarded by the claims tribunal will be paid by non-applicants 1 and 2 in accordance with the terms and conditions mentioned by the claims tribunal in the impugned award.

Sd/

(Parth Prateem Sahu)
Judge

sunita