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**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Miscellaneous Appeal (C) No. 808 of 2014**

Alok Jaiswal, S/o Late Kannilal Jaiswal, Aged About 40 Years, R/o Deviganj Road, Jaiswal Chitra Mandir, Ambikapur, P.S., Post & Tahsil Ambikapur, District Surguja, Chhattisgarh.

**---- Appellant**

**Versus**

1. Shivmangal Ram Painkra, S/o Shree Chamru Ram, Aged About 42 Years, R/o Navaparakala, P.S. Darima, Tahsil Ambikapur, District Surguja, Chhattisgarh.

2. Smt. Fulkunwar, W/o Shivmangal Ram Paikra, Aged About 38 Years, R/o Navaparakala, P.S. Darima, Tahsil Ambikapur, District Surguja, Chhattisgarh.

3. Bajaj Alliance General Insurance Company Limited, Through Branch Manager, Address Shivmohan Bhawan, Vidhan Sabha Road, Pandari, Raipur, P.S., Post & Tahsil Raipur, District Raipur, Chhattisgarh.

**---- Respondents**

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| For Appellant | : Ms. Priyanka Mehta, Advocate. |
| For Respondent No. 1 & 2 | : Mr. Rishi Rahul Soni, Advocate. |
| For Respondent No. 3 | : Mr. N. K. Thakur & Mr. Rohitashava Singh, Advocates. |

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**Hon'ble Shri Justice Sanjay Agrawal**

**Order On Board**

**10.07.2019**

1. This Miscellaneous Appeal has been preferred by the Non-

Applicant No.1/Owner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') questioning the propriety of the award dated 03.07.2014 passed by the 3rd Additional Motor Accidents Claims Tribunal Ambikapur, District Surguja (C.G.) (for short 'the Claims Tribunal') in Claim Case No. 04/2013, by which the learned Claims Tribunal while allowing the claim in part awarded a total amount of compensation to the tune of Rs.3,49,000/- with 6% interest per annum from the date of filing of the claim petition till its realization, while exonerating the Insurance Company from its liability.

2. Briefly stated the facts of the case are that on the intervening night of 25th and 26th of February 2008, deceased Suleshwar was returning from Vishrampur to Ambikapur after unloading the cement pipes by offending vehicle "Truck" bearing Registration No.CG-15-ZC-0316 and when it was reached near the river known as "Ren River", it fell down into the said river owing to the rashness and negligent driving of its driver, Veer Singh. As a result of which, deceased Suleshwar, the said driver and one Ram Kripal @ Kripal Rajwade died on the spot. It is pleaded in the claim petition that the alleged offending vehicle was owned by Non-Applicant No.1, namely, Alok Jaiswal (Appellant herein) and was insured with the Non-Applicant No.2, namely, Bajaj Alliance General Insurance Company Limited. It is alleged further that on account of the alleged accident, the deceased Suleshwar, who was 22 years old, a coolie/cleaner used to earn Rs.4,000/- per month, and therefore, the total amount of compensation to the tune of Rs.38,66,000/- has been claimed by his parents.

3. While disputing the monthly income of the deceased at Rs.4,000/-, it is pleaded by Non-Applicant No.1/Owner of the alleged offending vehicle that he handed over the said vehicle to his driver namely, Rajendra Singh, who in turn without his knowledge handed over the same to the said deceased driver Veer Singh. It is pleaded further that since the driver of the offending vehicle was holding the effective and valid license to drive the said transport vehicle, therefore, in case of any liability being fastened, then he would be entitled to be indemnified by Non-Applicant No.2/Insurance Company. While Non-Applicant No.2/Insurance Company contested the claim by submitting inter alia, that the alleged offending vehicle was being used without any permit by its driver, who was even not holding the effective and valid driving license to drive the same. It is pleaded further that at the relevant time, the deceased was travelling as a gratuitous passenger, and therefore, the Insurance Company cannot be held liable to indemnify the insured.

4. After considering the evidence led by the parties, it has been held by the learned Claims Tribunal that the alleged accident occurred in the intervening night of 25$^{th}$ and 26$^{th}$ of February, 2008 owing to the rashness and negligent driving of its driver, resulting the sad demise of said driver, Suleshwar and one Ram Kripal. It held further that the driver of the offending vehicle namely, Veer Singh was holding the effective and valid license and that by considering the monthly income of the deceased as Rs.3,000/-, awarded total amount of compensation to the tune of Rs.3,49,000/- with 6% interest per annum from the date of filing

of the claim petition till its realization, while exonerating the Insurance Company from its liability as the deceased was travelling as a gratuitous passenger in violation of the insurance policy.

5. Being aggrieved, the Non-Applicant No.1/Owner has preferred this appeal. Ms. Priyanka Mehta, learned counsel for the Appellant submits that the award under appeal as passed by the learned Claims Tribunal is apparently contrary to law. According to her, the deceased was returning by the alleged offending vehicle from Vishrampur to Ambikapur after unloading the cement pipes and as such, it cannot be held that he was travelling as a gratuitous passenger as held by the Claims Tribunal. While inviting the attention of this Court to paragraphs 10 and 18 of the award under appeal, it is contended by her that a contradictory finding has been recorded regarding the manner in which, the deceased was travelling as it has been observed at paragraph 10 that he was a gratuitous passenger while at paragraph 18 it has been observed that he was not a passenger, yet the Insurance Company has been exonerated from its liability. In any case, the burden was heavily upon the Insurance Company to prove that the alleged offending vehicle was being used in violation of the insurance policy, however, the Insurance Company has failed to prove the same by way of any cogent and reliable evidence. The award impugned, is therefore, liable to be modified.

6. On the other hand, learned counsel for the Respondent No.3 while supporting the award under appeal submits that the vehicle in question was the goods vehicle and deceased was travelling

as a gratuitous passenger in violation of the policy. The Claims Tribunal has, therefore, rightly exonerated the Insurance Company from its liability.

7. I have heard learned Counsel for the parties and perused the entire record carefully.

8. The main contention of the appellant herein is that the Claims Tribunal while passing the award under appeal has erred in exonerating the Insurance Company from its liability by holding that the deceased was travelling as a gratuitous passenger. From perusal of the record, it appears that the deceased, who was a coolie/cleaner was returning by the alleged offending vehicle while unloading the cement pipes. According to the policy (Ex.D-6), it is evident that the risk of three persons was covered while collecting the premium in this regard. It is not in dispute that more than three persons were not travelling in the alleged vehicle at the relevant time and, in fact they were returning after unloading the cement pipes. Besides, a bare perusal of the statement of Punit Rathore, who was examined by the Insurance Company, it is difficult to hold that the deceased was travelling as a passenger. In any case, based upon aforesaid contradictory findings, as pointed out by Ms. Mehta, it cannot be held that the deceased was travelling as a gratuitous passenger so as to hold that the vehicle in question was being used in violation of the policy. What is pleaded by the Insurance Company in its written statement that since the alleged vehicle “Truck” was a heavy goods vehicle and as such it cannot be used for carrying passengers. However, in order to get rid of its liability, it is the

bounded duty of the insurer to prove the terms and conditions of the policy. In this case, though the policy has been filed, but its conditions have not been proved. In such circumstances and based upon the aforesaid observations, the Claims Tribunal has erred in exonerating the Insurance Company from its liability.

9. At this juncture, the principles laid down by this Court in the matter of "Oriental Insurance Company Limited Vs. Swatantra Kumar Verma" passed in MA No.216/2006 decided on 20.09.2016 are to be seen, wherein at para 11, it has been observed as under :-

> **11.** As far as the second ground raised by the insurance company is concerned, I am not in agreement with the submission. If the insurance company, in any case, wants to prove that it is not liable or that its liability is limited, but admits that the vehicle was insured with it, it is bound to prove the terms of the insurance policy. In this case, though the policy has been filed on record, no attempt has been made to prove the policy or conditions thereof. It is urged by Learned Counsel for the insurance company that relying upon this very insurance policy, the insurance company has made liable. The insurance company has not denied the fact that it has issued the insurance policy. The defencee raised by the Company is that as per the terms of policy, it is not liable to cover liability in respect of passengers travelling in motor vehicles. This has to be proved by the insurance company. An insurance policy can even be tendered if it is not objected by the other side. To get itself excluded or to limit its liability the insurance company will have to prove the policy of insurance.

10. In view of the foregoing discussions and in view of the principles

laid down in the aforesaid case, the appeal deserves to be and is hereby allowed. Consequently, the award impugned is modified and it is held that the Non-Applicant No.2/Insurance Company is liable to indemnify the Appellant/Insured and to pay the amount of compensation as determined by the Claims Tribunal to the Respondent Nos. 1 & 2/Claimants under the terms and conditions as made therein. No order as to costs.

Sd/-
(**Sanjay Agrawal**)
Judge

Deepti Jha