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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 183 of 2015

- Reliance General Insurance Company Limited Corporate Office, 570, Nikam Cross Road, Nevan To Royal, Industrial Estate Mumbai Maharashtra At Present 5th Floor, National Corporate Park, Opp. Dhuppad Petrol Pump. G.E. Road, P.S. Azad Chowk, Civil And Revenue Dist. Raipur C.G., Chhattisgarh

---- Appellant

Versus

1. Mrs.Gautarhin W/o Siddhram Aged About 48 Years R/o Village Mathani Kla Thana Pipariya, Teh. Kawardha Distt.. Kabirdham C.G., Chhattisgarh

2. Dilip S/o Late Siddhram Kewat Aged About 25 Years R/o Village Mathani Kla Thana Pipariya, Teh. Kawardha Distt.. Kabirdham C.G., District : Kawardha (Kabirdham), Chhattisgarh

3. Kumari Indrani D/o Late Siddhram Kewat Aged About 13 Years Through Her Mother Mrs. Gautarhin R/o Village Lochan, P.S. Pipariya, Civil And Revenue Dist. Kabirdham C.G., District : Kawardha (Kabirdham), Chhattisgarh

4. Bisnath Urf Vishwanth S/o Maniram Yadav Aged About 30 Years R/o Vill Chechanmeta Manpur P.S. Pipariya, Tah. Kawardha, Civil And Revenue Dist. Kabirdham C.G., District : Kawardha (Kabirdham), Chhattisgarh

5. Govind Sahu S/o Mayaram Sahu R/o Vill. Gunjadih Marka Post Marka, Tah. Kawardha, P.S. Kawardha, Civil And Revenue Dist. Kabirdham C.G., District : Kawardha (Kabirdham), Chhattisgarh

6. Bajaj Allianz Insurance Company Limited. S/o G.E. Plaza, Airport Road, Yerawada, Pune, At Present-Divisional Office- Shivmohan Bhawan, Vidhansabha Road, Pandri, P.S. Pandri, Civil And Revenue Dist. Raipur C.G., District : Raipur, Chhattisgarh

---- Respondents

MAC No. 184 of 2015

- Reliance General Insurance Company Ltd. Corporate Office, 570, Nikam Cross Road, Nevan To Royal, Industrial Estate Mumbai Maharashtra At Present- 5th Floor, National Corporate Park, Opp. Dhuppad Petrol Pump, G.E. Road, P.S. Azad Chowk, Civil And Revenue Dist. Raipur C.G., Chhattisgarh

---- Appellant

Versus

1. Bhairam S/o Ramsingh Kewat Aged About 45 Years R/o Village Mathani Kla Thana Pipariya, Teh. Kawardha Distt.. Kabirdham C.G., Chhattisgarh,

2. Bandin Bai W/o Bhairam Kewat Aged About 43 Years R/o Village Mathani Kla Thana Pipariya, Teh. Kawardha Distt. Kabirdham C.G., District : Kawardha (Kabirdham), Chhattisgarh

3. Bisnath Urf Vishwanth S/o Maniram Yadav Aged About 30 Years R/o Vill Chechanmeta Manpur P.S. Pipariya, Tah. Kawardha, Civil And Revenue Dist. Kabirdham C.G., District : Kawardha (Kabirdham), Chhattisgarh

4. Govind Sahu S/o Mayaram Sahu R/o Vill. Gunjadih Marka Post Marka, Tah. Kawardha, P.S. Kawardha, Civil And Revenue Dist. Kabirdham C.G., District : Kawardha (Kabirdham), Chhattisgarh

5. Bajaj Allianz Insurance Company Limited. S/o G.E. Plaza, Airport Road, Yerawada, Pune, At Present-Divisional Office- Shivmohan Bhawan, Vidhansabha Road, Pandri, P.S. Pandri, Civil And Revenue Dist. Raipur C.G., District : Raipur, Chhattisgarh

---- Respondents

<u>MAC No. 941 of 2015</u>

- Reliance General Insurance Company Limited Corporate Office, 570, Nikam Cross Road, Nevan To Royal, Industrial Estate Mumbai Maharashtra At Present 5th Floor, National Corporate Park, Opp. Dhuppad Petrol Pump, G.E. Road, P.S. Azad Chowk Civil And Revenue Distt. Raipur Chhattisgarh , Chhattisgarh

---- appellant

Versus

1. Urmila S/o W/o Ramcharan Kewat Aged About 18 Years R/o Village Mathani Police Station Ppariya, Tahsil Kawardha, Civil And Revenue Distt. Kabirdham Chhattisgarh, Chhattisgarh

2. Pramila S/o W/o Gautar Kewat Aged About 38 Years R/o Village Mathani Police Station Pipariya, Tahsil Kawardha, Civil And Revenue Distt. Kabirdham Chhattisgarh, District : Kawardha (Kabirdham), Chhattisgarh

3. Gautar Kewat S/oLakhan Kewat Aged About 42 Years R/o

Village Mathani Police Station Pipariya, Tahsil Kawardha, Civil And Revenue Distt. Kabirdham Chhattisgarh , District : Kawardha (Kabirdham), Chhattisgarh

4. Bisnath Urf Vishwanath S/o Maniram Yadav Aged About 30 Years R/o Village Chechanmeta Manpur P.S. Pipariya, Tah. Kawardha, Civil And Revenue Distt. Kabirdham Chhattisgarh, District : Kawardha (Kabirdham), Chhattisgarh

5. Govind Sahu S/o Mayaram Sahu R/o Village Gunjadih Marka Post Marka, Tah. Kawardha, P.S. Kawardha, Civil And Revenue Distt. Kabirdham Chhattisgarh , District : Kawardha (Kabirdham), Chhattisgarh

6. Bajaj Allianz Insurance Company Ltd. S/o G/e/ Plaza, Airport Road, Yerawada, Pune, At Present Divisional Office Shivmohan Bhawan, Vidhansabha Road, Pandri, P.S. Pandri, Civil And Revenue Distt. Raipur Chhattisgarh, District : Raipur, Chhattisgarh

---- Respondents

For Appellant/In. Company : Shri Bhaskar Pyashi, Advocate.
For Respondents/claimants : Smt. Renu Kochar, Advocate.
For Respondent/owner & driver None

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

15.02. 2019

(1) Since all these three appeals filed by the appellant/Reliance General Insurance Company Limited arise out of the common award dated 19.11.2014 passed by Additional Motor Accident Claims Tribunal, Kabirdham in Claim Case Nos. 63/2014, 64/2014, 65/2014 & 66/2014, respectively and all the claim cases arise out of the same accident, therefore, they are heard together and are being disposed of by this common judgment.

(2) As per averments made in the claim petition, when on

22.06.2010 the respondent No. 3 was driving a Tractor bearing registration No. CG 09 C 5892 (henceforth “offending vehicle”) and in which one Sidhhram, Baldev & Ramcharan & some other persons were travelling, near Jaitpuri Koylari route, the said tractor turned turtle, as a result of which Siddhram, Baldev & Ramcharan died due to injuries sustained by them in the said accident.

(3) In M.A. (C) No. 183 of 2015 (claim case No. 63/14), the Tribunal has awarded a total sum of Rs. 2,82,000/- as compensation for the death of deceased Siddhram in motor accident dated 22.06.2010 against Rs. 12,80,000/- claimed by unfortunate wife and daughter of deceased by filing application under Section 166 of the Motor Vehicles Act, 1988 (for short ‘MV Act’).

(4) In M.A. (C) No. 184 of 2015 (claim cases No. 64/14 & 66/2014), both claim cases filed by the parents & wife respectively the Tribunal has awarded a total sum of Rs. 4,50,000/- as compensation for the death of deceased Baldev in motor accident dated 22.06.2010 against Rs. 16,00,000/- and 14,20,000/-, respectively claimed by unfortunate parents & wife of deceased by filing application under Section 166 of the Motor Vehicles Act, 1988 (for short ‘MV Act’)

(5) In M.A. (C) No. 941 of 2015 (claim case No. 65/14), the Tribunal has awarded a total sum of Rs. 4,50,000/- as compensation for the death of deceased Ramcharan in motor accident dated 22.06.2010 against Rs. 17,00,000/- claimed by unfortunate wife and parents of deceased by filing application under Section 166 of the Motor Vehicles Act, 1988 (for short ‘MV Act’).

(6) In all the aforesaid three claims cases, the Tribunal has fastened

the liability of payment of compensation upon the appellant/Insurance Company as it could not establish the violation of policy conditions.

(7) Learned counsel appearing for the appellant / Reliance General Insurance Company submits that at the time of accident the offending vehicle was not insured with the appellant/Insurance Company as according to the Insurance Policy (Ex. NA/4) the said policy was issued in favour of non-applicant No. 2 / owner of the offending vehicle, which was valid and effective from the date of 28.06.2010 to 27.06.2011 and accident occurred on 22.06.2010 therefore, as per policy NA/4 the offending vehicle was not covered under the Insurance Policy prior to the date of incident. He also submits that the cover note (Ex-D/2) was also produced before the Claims Tribunal, in which date of issuance of cover note is mentioned as 17.06.2010 but the said cover note was not issued by appellant/Insurance Company, therefore, appellant/Insurance Company is not liable to pay compensation to the claimants.

(8) Learned counsel for the appellant/Reliance General Insurance Company also submits that deceased persons namely Baldev, Siddhram and Ramcharan along with other persons were sitting in the tractor-trolley as a gratuitous passenger whereas sitting capacity of Tractor is only one and appellant/insurance company is not statutory liable to cover the risk of gratuitous passenger sitting in the trolley nor had assumed such risk by entering into special contract with the owner of the vehicle and by charging extra premium therefor, and therefore, the Tribunal has fallen in error in fastening the liability upon the appellant/insurance company.

(9) On the other hand, Smt. Renu Kochar, learned counsel

appearing for the respondents/claimants submits that the accident had occurred on 22.06.2010, but till date the claimant have not received compensation amount. She submits that after passing of the award in favour of the claimants, as per order of this Court, only 50% of the awarded amount was deposited by the appellant/Insurance Company on 19.11.2014, and since the claimants are deprived of their livelihood, therefore, it is prayed that the remaining amount may be directed to be disbursed in favour of the claimants. She also submits that if any breach of policy are there in the matter, the Insurance Company is not liable to pay compensation but as per cover note (Ex-D/2), which was produced before the Claims Tribunal, in which date of issuance of cover note is mentioned as 17.06.2010, valid though it was denied by the appellant/Insurance Company during hearing of the claim petition and, therefore, order of "Pay & recover" is required to be passed in this case.

(10) I have heard learned counsel appearing for the parties and perused the impugned award including record of the Claims Tribunal.

(11) The first plea raised by appellant/Insurance Company is required to be considered; appellant/Insurance Company is claiming in this appeal that the Cover Note (Ex.D-2), in which date of issuance is mentioned as 17.06.2010, which was valid up to 16.06.2011, was not issued by the appellant/Insurance Company but no evidence was adduced by the Insurance Company to prove the said fact examining any agent. Abhishek Singh (NAW-1) has stated in paragraph 5 of his statement that offending vehicle was not insured with the appellant/Insurance Company on the date of accident as the insurance

policy, which was issued, is valid from 28.06.2010 to 27.06.2011 whereas the accident had occurred on 22.06.2010 i.e. prior to date of issuance of Insurance policy. But in examination in chief, Abhishek Singh (NAW-1) has stated that insurance policy be issued on the cover note and the date of issuance of cover note is mentioned in the Insurance Policy, therefore, it is held that appellant/Insurance Company has issued cover note prior to the date of accident i.e. 17.06.2010 whereas the accident had occurred on 22.06.2010 and, therefore, Insurance Company is bound to pay compensation to the claimants. As per cover note policy issued from 17.06.2010 till 17.06.2011.

(12) The next contention made by the appellant/Insurance Company that Insurance Company is not covered the risk of gratuitous passengers sitting in the tractor-trolley as the sitting capacity of tractor in only one, the aforesaid fact is duly proved by the claimants themselves in claim case No. 63/2014 that deceased persons were sitting on tractor trolley on the date of accident. Thus, it is held that the Tribunal has wrongly fastened the liability upon the appellant/Insurance Company. The Final Report (Ex. P/1), FIR (Ex. P-3), Dehati Nalisi (Ex. P/4) & merg Intimation (Ex.-)P/6 are clearly disclosed this fact that on the time of accident, deceased persons were sitting in the tractor as a gratuitous passenger as sitting capacity of the tractor is only one and trolley is not meant for sitting passengers.

(13) Appellant/Insurance Company had taken a specific plea in para 7 & 8 in its written statement that appellant/insurance company has not undertaken the risk of gratuitous passengers sitting in the Tractor-trolley by entering into special contract with the owner and by charging extra premium therefor, in the absence whereof, the insurance company cannot

be held liable for payment of compensation to the claimant. Respondent No. 4-Bishnath @ Vishwanath, driver of the offending has accepted in paragraph 3 of his statement that deceased persons were sitting in the tractor-trolley. As per Ex. NA/1- certificate of registration of tractor is specifically mentioned the sitting capacity of the tractor is one including driver. The Supreme Court Judgment in the matter of **Shivaraj Vs. Rajendra and Another** reported in **(2018) 10 SCC 432,** it is held as under:

> **Tractor ensured only for agricultural purposes and not for carrying goods-hence, held, appellant who travelled on tractor as a passenger, even though tractor could accommodate only one person, namely, driver and hence, Insurance Company (R-2) was not liable for loss or injuries suffered by appellant or to indemnify owner of tractor.**

(14) In the instant case, the passenger were travelling in the tractor as gratuitous passenger and in the light of the above Apex Court judgment they are not cover under the policy issued by the Insurance Company.

(15) Looking to all documents and evidence adduced before the Tribunal and evidence, no any premium was taken by the Insurance Company to cover the risk of gratuitous passenger sitting in the tractor trolley and only it is covered the risk of third party and owner-driver and one person (appointed for operation and maintenance) as per Insurance policy (Ex.NA/4 & 5) therefore, liability fastened upon the appellant Insurance Company by the Tribunal is against the material available on record.

(16) For the reason mentioned hereinabove, the appellant/Insurance Company is not liable to indemnify the owner to pay the compensation to the claimants. Therefore, the Insurance Company is exonerated from its liability to pay compensation.

(17) However, considering the facts and circumstances of the case, the fact that on the date of accident, the offending vehicle was duly insured with the appellant/Insurance Company and the deceased were the gratuitous passengers, in view of principles of law laid down by the Hon'ble Supreme Court in **Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4SCC 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 shall first pay the entire amount of compensation alongwith interest as awarded by the Tribunal to the claimants and then recover the same from non-applicants/ owner & driver in accordance with law.

(18) For the reasons mentioned above, the all the three appeals stand disposed of with modification in the award impugned to the extent indicated hereinabove.

Sd/-

(Gautam Chourdiya)
Judge

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