**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 366 of 2014**

- Zahir Mohammad Siddiqui S/o Aphtab Siddiqui, Caste-Muslim, aged about 48 years, Occupation-Transporting, Owner of Offending Vehicle, resident of Mahapalli (Loing), Tahsil & Police Station Raigarh, District Raigarh (CG)

**---- Appellant**

**Versus**

1. Basanti, W/o Tikeshwar Soni Aged About 27 Years, Caste-Satnami.

2. Minor Sangeeta D/o Late Tikeshwar Soni Aged About 15 Years, Caste-Satnami.

3. Minor Sanjay S/o Late Tikeshwar Soni Aged About 10 Years, Caste-Satnami.

   Respondents No.2 & 3 both minor through legal guardian mother Smt. Basanti widow of Tikeshwar Soni.

4. Kirti S/o Late Hari Aged About 65 Years, Occupation-Nil, dependent, Caste-Satnami.

5. Rukhni W/o Kirti Soni Aged About 55 Years, Occupation-Nil, dependant.

   All respondents No.1 to 5 are residents of Nachanmuda, P.S. Rengali, Distt. Jharsuguda (Orissa), Now resident of Kayaghat, Raigarh, Tahsil & Police Station Raigarh, District Raigarh (CG)

6. Manoj Kumar S/o Taleshwar Chauhan Aged About 26 Years Occupatioh-Driver, resident of Vinoba Nagar, Raigarh, Through-Vehicle Owner, Resident of Village Mahapalli (Loing), Tahsil & District Raigarh (CG)

7. Shriram General Insurance Company Limited, I/8 E.P.I.P. Ralco Industrial Sitapur, Police Station Sitapur, District Jaypur (Rajasthan)

**---- Respondents**

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| For Appellant | : | Shri Manoj Kumar Jaiswal, Advocate |
| For Respondent No.7. | : | Shri Dipak Gupta, Advocate. |

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**Order On Board By Hon'ble Shri Justice Parth Prateem Sahu**

**16.8.2019**

1. Appellant- Owner has filed this miscellaneous appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging award dated 05.10.2013 passed by learned 1st Additional Motor Accident Claims Tribunal, Raigarh (henceforth 'the Claims Tribunal') in Claim Case No.46/12 by which the Claims Tribunal allowed claim application in part, awarded a total sum of Rs.4,11,000/- as compensation and fastened liability to pay amount of compensation on appellant & respondent No.6 herein i.e. owner & driver of vehicle Tata Ace No.CG13-ZD-8184 (for short 'the offending vehicle').
2. Facts of case, in brief, are that on 7.5.2010 at about 10.30 a.m. near Godgoda brook, Tamnaar Road, the offending vehicle turned turtle due to rash & negligent driving of non-applicant No.1 / respondent No.6 herein, as a result of which, Tikeshwar Kumar Soni, who was travelling in offending vehicle and going to Tamnaar from Raigarh, sustained grievous injuries and succumbed thereto at the spot.
3. Claimants, who are legal heirs of deceased, filed claim application under Section 166 of the Act of 1988 claiming Rs.23,46,000/- as compensation against non-applicants impleaded therein.
4. Non-applicant No.1/respondent No.1, driver of offending vehicle, did not appear before the Claims Tribunal and therefore he was

proceeded ex-parte.

5. Non-applicant No.2/appellant-owner of offending vehicle, filed his reply to claim application and denied all the averments made in claim application including the fact that accident occurred from his vehicle. He pleaded that accident was caused by vehicle bearing registration No.CG13-D-5503 regarding which a report was also lodged in the concerned police station on 7.5.2011 and based on which offence under Crime No.61/11 was registered against the driver of said vehicle. It was also pleaded that on the date of accident, the vehicle owned by appellant herein was insured with respondent No.7- Insurance Company and therefore liability, if any, for payment of compensation would be on insurance company.

6. Respondent No.7-insurance company filed its reply to claim application and pleaded that accident did not occur with the vehicle owned by appellant herein and insured with it. It was also pleaded that on the date of accident, the offending vehicle was being driven in violation of conditions of insurance policy, therefore, the insurance company is not liable for payment of amount of compensation.

7. On appreciation of pleadings and evidence of the respective parties, the Claims Tribunal held that deceased Tikeshwar Soni died on account of injuries suffered by him in an accident occurred due to rash & negligent driving of offending vehicle by non-applicant No.1-driver and awarded total sum of Rs.4,11,000/- as compensation. The Claims Tribunal exonerated

insurance company from its liability of indemnifying the insured on the ground that on the date of accident, the offending vehicle was plied on road in violation of conditions of insurance policy, and accordingly held non-applicant No.1 & 2 i.e driver & owner of offending vehicle, liable to pay aforesaid amount of compensation, jointly and severally.

8. Learned counsel for non-applicant No.2/appellant-owner would submit that the offending vehicle was insured with non-applicant No.3/respondent No.7 Insurance Company and in the insurance policy, seating capacity has been mentioned as '2+1', therefore, the Claims Tribunal ought to have held insurance company liable for payment of amount of compensation as there is only one claim of the accident. He further submits that in FIR (Ex.P-2) allegations have been mentioned against driver of vehicle bearing registration No.CG13-D-5503 and thus it is apparent that vehicle of appellant herein has been falsely involved in the accident in question, however, while deciding claim application, the Claims Tribunal has not taken into consideration this aspect of matter and thereby committed illegality, which is liable to be interfered.

9. On the other hand, learned counsel for respondent No.-7 Insurance Company supported the impugned award and submitted that the Claims Tribunal after considering overall facts, circumstances and evidence available on record, has rightly fastened liability upon owner and driver of offending vehicle, jointly and severally, and the same does not call for any

interference.

10. I have heard learned counsel for the parties and perused the records.

11. So far as first argument advanced by learned counsel for appellant that initially FIR has been lodged against driver of vehicle bearing registration No.CG13-D-5503 is concerned, perusal of FIR would show that it has been lodged by one Birsa Oraon, who was working as Security Guard, Jindal Industrial Park. Ex.P-7 is the application submitted by said Birsa Oraon, lodger of FIR, and perusal of said application reveals that said Birsa Oraon has mentioned in it that at the time of lodging FIR in the police station concerned, he inadvertently mentioned number of vehicle as 'CG13-D-5503', whereas the vehicle infact turned turtle bears registration No.CG13-ZD-8184. He prayed for correction of vehicle number in the FIR.

12. Dev Kumar Vishwakarma is the Motor Mechanic who examined the offending vehicle and gave his report (Ex.P-4) opining that steering was broken, along with other descriptions, and it was mechanical fault.

13. On completion of investigation, the police submitted final report under Section 173 (2) of CrPC in which the Investigating Officer mentioned that accident took place due to rash and negligent driving of vehicle bearing No.CG13-ZD-8184 by its driver i.e. non-applicant No.1/respondent No.6 herein.

14. Non-applicant No.2/appellant herein examined himself as NAW-1 and denied the fact of accident. He has stated that he is not

the owner of vehicle bearing No.CG13-D-5503 against which FIR was initially lodged. In the cross-examination, this witness has even showed his ignorance about the seizure of his vehicle by the police in connection with accident in question and also to the fact that non-applicant No.2 Manoj was driver of his vehicle. He also stated that he has orally made complaint to the Superintendent of Police, Raigarh regarding false implication of his vehicle in the alleged accident. The appellant did not make any effort of making written complaint or approaching the Court of law.

15. From the above evidence available on record, it appears that appellant has not stated correct facts and he tried to suppress material facts known to him. Appellant even did not choose to examine the author of FIR, who had given particulars of some other vehicle i.e. CG13-D-5503, and subsequently made an application for correction of vehicle number in FIR, to prove his pleadings that the vehicle owned by him was not involved in the accident which had resulted in death of Tikeshwar Soni. Appellant has even not chosen to bring the Investigating Officer into the witness box to prove as to how and on what basis his vehicle was falsely implicated in the accident.

16. From the above discussions, it is clear that appellant has not approached the Claims Tribunal with clean hands & clean mind and therefore not stated true facts before the Claims Tribunal in his evidence. Appellant even failed to prove the fact pleaded by him in his reply that the accident was caused by the vehicle

particulars of which were initially mentioned in FIR, and not by the vehicle owned by him. Hence, the submission made by learned counsel for the appellant does not appeal to the conscience of this Court and therefore the same is liable to be repelled and is hereby repelled.

17. Next argument advanced by learned counsel for appellant is that in the insurance policy seating capacity of vehicle has been shown to be '2+1' and in the accident death of only one person took place, therefore, insurance company would be liable to indemnify the insured. Though the certificate of registration and insurance policy have not been exhibited in evidence but photocopies of the same are available in the record of Claims Tribunal as 'Document No.4 & 5'. Considering the fact that proceeding before the Claims Tribunal is summary in nature, this Court deem fit and proper to peruse the said documents available on record as 'Document No.4 & 5'. Perusal of certificate of registration (Document No.4) reveals that appellant herein is registered owner of Tata Ace Vehicle bearing No.CG13-D-8184, which is a 'light goods vehicle' as indicated in the column 'class of vehicle'. A glance of photocopy of insurance policy (Document No.5) reflects that vehicle bearing Engine No. 2751D106KZYSG1214, Chasis No.MAT445222AZN78562 was insured. Engine & Chasis numbers mentioned in insurance policy tally with the Engine & Chasis numbers as recorded in the registration certificate (Document No.4). A further glance of insurance policy would reveal that though seating capacity has

been mentioned as '2+1', but as per 'Schedule of Premium', appellant herein has not paid any extra premium to cover risk of occupants of offending vehicle owned by him.

18. As per pleadings made in claim application, on the date of accident, deceased Tikeshwar Soni was travelling on the offending vehicle along with his friends and going to Tamnaar from Raigarh to work as labour and on the way, oxygen cylinders were also loaded on offending vehicle. In the final report (Ex.P-1) & FIR (Ex.P-2) it has been mentioned that deceased was travelling on offending vehicle by sitting over gas cylinder, that is to say, the place where goods are to be loaded.

19. In view of the above, the argument raised by learned counsel for appellant that as there was seating capacity of '2+1' and at the time of accident, offending vehicle was insured with respondent No.7 herein, therefore, the liability to pay amount of compensation would be of insurance company, is not sustainable and is hereby repelled.

20. Other aspect of the case is that offending vehicle is registered as a 'light goods vehicle' and at the time of accident, about three persons were travelling on it by sitting on *dala.* Thus it is apparent that offending vehicle was being plied on road in violation of conditions of insurance policy. In the matter of **New India Assurance Co. Ltd. v. Asha Rani & ors** reported in **(2003) 2 SCC 223** the Hon'ble Supreme Court had an occasion to deal with issue of 'gratuitous passenger' and in para-26 of the judgment it has been held as follows;

> "26.In view of the changes in the relevant provisions in the 1988 Act vis-`-vis the 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger traveling in a goods vehicle, the insurers would not be liable therefor."

In the matter of **National Insurance Co. Ltd. v. Baljit Kaur** reported in **(2004) 2 SCC 1** the Hon'ble Supreme Court while dealing with identical issue has held as under:-

> "20. It is therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people.

Similar issue came up for consideration of Hon'ble Supreme in the matter **National Insurance Company v. Saju P Paul** reported in **(2013) 2 SCC 41** and it was held as under:-

> "16. In the present case, Section 147 as originally existed in 1988 Act is applicable and, accordingly, the judgment of this Court in Asha Rani1 is fully attracted. The High Court was clearly in error in reviewing its judgment and order delivered on 09.11.2010 in review petition filed by the claimant by applying Section 147(1)(b)(i). The High Court committed grave error in holding that Section 147(1)(b)(i) takes within its fold any liability which may be incurred by the insurer in respect of the death or bodily injury to any person. The High

> Court also erred in holding that the claimant was travelling in the vehicle in the course of his employment since he was a spare driver in the vehicle although he was not driving the vehicle at the relevant time but he was directed to go to the worksite by his employer. The High Court erroneously assumed that the claimant died in the course of employment and overlooked the fact that the claimant was not in any manner engaged on the vehicle that met with an accident but he was employed as a driver in another vehicle owned by M/s. P.L. Construction Company. The insured (owner of the vehicle) got insurance cover in respect of the subject goods vehicle for driver and cleaner only and not for any other employee. There is no insurance cover for the spare driver in the policy. As a matter of law, the claimant did not cease to be a gratuitous passenger though he claimed that he was a spare driver. The insured had paid premium for one driver and one cleaner and, therefore, second driver or for that purpose 'spare driver' was not covered under the policy.
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> 17. The High Court misconstrued the proviso following sub-section (1) of Section 147 of the 1988 Act. What is contemplated by proviso to Section 147 (1) is that the policy shall not be required to cover liability in respect of death or bodily injury sustained by an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923. The claimant was admittedly not driving the vehicle nor he was engaged in driving the said vehicle. Merely because he was travelling in a cabin would not make his case different from any other gratuitous passenger.
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> 18.The impugned judgment is founded on misconstruction of Section 147. The High Court was wrong in holding that the insurance company shall be liable to indemnify the owner of the vehicle and pay the compensation to the claimant as directed in the award by the Tribunal."

21. For the foregoing discussions, in the considered opinion of this Court the Claims Tribunal has rightly fastened liability to pay compensation upon owner & driver of offending vehicle, jointly and severally, and absolved respondent-Insurance company from its liability to indemnify insured. I do not find any good

ground warranting interference with the impugned award passed by the Claims Tribunal.

22. Resultantly, the appeal being meritless is liable to be dismissed and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

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