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HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No.620 of 2015

United India Insurance Company Limited R.B. Traders, 1st Floor, Stadium Road T.P. Nagr Korba, District Korba Chhattisgarh0 **(Non-Applicant No.3 (Insurance Company)**

---- Appellant

Versus

1. Smt. Gouri Sahu, Wd/o Late Tikaram Sahu Aged About 38 Years R/o Village Rapagula Police Station And Tahsil Sarangarh, District Raigarh Chhattisgarh , Chhattisgarh
2. Lokesh Sahu S/o Late Tikaram Sahu Aged About 21 Years R/o Village Rapagula, Police Station And Tahsil Sarangarh, District Raigarh Chhattisgarh , District : Raigarh, Chhattisgarh
3. Lochan Prasad Sahu S/o Late Tikaram Sahu Aged About 18 Years R/o Village Rapagula, Police Station And Tahsil Sarangarh, District Raigarh Chhattisgarh , District : Raigarh, Chhattisgarh
4. Kamta Prasad Sahu S/o Late Kartik Ram Sahu Aged About 65 Years R/o Village Rapagula, Police Station And Tahsil Sarangarh, District Raigarh Chhattisgarh , District : Raigarh, Chhattisgarh
5. Smt. Rathbai W/o Kamta Prasad Sahu Aged About 63 Years R/o Village Rapagula, Police Station And Tahsil Sarangarh, District Raigarh Chhattisgarh , District : Raigarh, Chhattisgarh **(Claimants)**
6. Hemcharan Sahu S/o Khoduram Sahu Aged About 27 Years R/o Village Salhe, Police Station And Tahsil Sarangarh District Raigarh Chhattisgarh , District : Raigarh, Chhattisgarh **(Non-Applicant No.1) (Driver)**
7. Pushpkant Sharma S/o Banshi Lal Sharma R/o Qtr. No. 99, Khaneriya Samaj Mandir, Sitamani Main Road, Korba, District Korba Chhattisgarh , District : Korba, Chhattisgarh **(Non-Applicant No.2) (Registered Owner)**
8. Nanki Bai Sahu W/o Ramdayal Sahu Aged About 50 Years R/o Salhe, Police Station And Tahsil Sarangarh, District Raigarh Chhattisgarh , District : Raigarh, Chhattisgarh **(Non-Applicant No.4) (Consequent Owner)**

---- Respondents

For Appellant:	Shri HB Agrawal, Senior Advocate along with Shri Pankaj Agrawal, Advocate.
For Respondents No.1 to 6:	None, though served.
For Respondent No.7:	Shri Dashrath Lal Prajapati and Shri Abhishek Pandey, Advocates.
For Respondent No.8:	Shri Manoj Jaiswal, Advocate.

Single Bench: Hon'ble Shri Sanjay Agrawal, J

Award On Board

08.08.2019

1. This Miscellaneous Appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988) by the Appellant/Non-Applicant No.3/Insurance Company questioning the legality and propriety of the award dated 21.04.2015 passed by the Motor Accident Claims Tribunal, Raigarh (CG) (for short 'the Claims Tribunal') in Claim Case No.03/2014 by which, the Claims Tribunal has awarded the total amount of compensation to the tune of Rs.4,76,000/- with 6% interest per annum from the date of filing of the Claim Petition till its realization, while fastening the liability upon the Insurance Company. The parties to this Appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated, the facts of the case are that on 20.04.2013 at 5.00 p.m, deceased Teekaram Sahu was returning to his home at village Rampagula by the offending vehicle (pickup van) bearing its Registration No.GG 13 E 0962. At the relevant time, it was being driven rashly and negligently by its driver Non-Applicant No.1/Hemcharan Sahu, owned by Non-Applicants No.2 & 4 namely Pushpkant Sharma and Nanki Bai Sahu, the registered owner as well as the subsequent owner of the vehicle in question respectively which was insured with Non-Applicant No.3/United Insurance Company Limited. Due to the rash and negligent driving, the driver of the said vehicle has lost its control resulting into the sad demise of deceased Teekaram Sahu. Owing to which, the Claimants, being the legal representatives of deceased, instituted a Claim Petition under Section 166 of the Act of 1988 by alleging *inter alia* that the

deceased, a 44 years old, was performing his duty as a *Rojgar Guarantee Sahayak* in Janpad Panchayat Sarangarh and was also involved in agricultural activities from where he used to earn Rs.5,150/- per month and therefore, a total compensation to the tune of Rs.31,24,000/- was claimed.

3. The aforesaid claim has been contested by Non-Applicants No.1, 3 & 4, while denying the fact that the alleged accident occurred with the said offending vehicle. It is contested further on the ground that since the vehicle in question was insured with Non-Applicant No.3/Insurance Company, therefore, in case of any liability being fastened, the same could be indemnified by the said Insurance Company.

4. Non-Applicant No.3/Insurance Company, while disputing the involvement of the alleged offending vehicle in relation to the said accident, contested the Claim mainly on the ground that since the vehicle in question was insured as a "Goods Commercial Vehicle" and was being used other than its purposes by carrying *'barati'* and as the driver of it was not authorized to drive the same, therefore, no liability could be fastened upon it in relation to the accident occurred on 20.04.2013.

5. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 20.04.2013 at 5.00 pm due to the rash and negligent driving of the driver of the offending vehicle resulting into the sad demise of Teekaram Sahu, who used to earn Rs.3,500/- per month while working as *Rojgar Guarantee Sahayak* in Janpad Panchayat, Sarangarh. It held further while entertaining issue No.3 that the vehicle in question was being driven by the driver of the said offending vehicle who was holding the valid and effective driving license. As a consequence, while fastening the liability upon the Insurance Company, a total amount of

compensation to the tune of Rs.4,76,000/- with 6% interest per annum was awarded from the date of filing of the Claim Petition till its realization.

6. Being aggrieved, Non-Applicant No.3/Insurance Company has preferred this Appeal. Shri HB Agrawal, learned Senior Counsel for Non-Applicant No.3/Insurance Company/Appellant submits that the findings as recorded by the Claims Tribunal holding that the vehicle in question was not being used in violation of the insurance policy is apparently contrary to law. According to him, the vehicle in question was insured as a Goods Commercial Vehicle (GCV) and at the relevant time, it was being used by carrying passengers (*barati)* as evidenced by the evidence led by the parties. Without considering this material fact, the Claims Tribunal has committed an illegality in fastening the liability upon the Insurance Company on finding that the driver of the offending vehicle was authorized to drive the same. However, the Claims Tribunal, based upon the evidence led by the parties, ought to have come to the conclusion that at the relevant time, deceased Teekaram Sahu was travelling in the alleged vehicle as one of the *'barati'* in utter violation of the insurance policy. The award impugned is, therefore, liable to be set aside and/or modified.

7. On the other hand, Shri Pandey, learned Counsel for Non-Applicant No.2/Owner of the vehicle in question, while supporting the award impugned, submits that the driver of the offending vehicle was holding valid and effective license and therefore, the Claims Tribunal has not committed any illegality in fastening the liability upon the Insurance Company.

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

9. It appears from the defence taken by the Insurance Company that the

vehicle in question, which was insured as a goods commercial vehicle was being used for carrying '*barati'* at the relevant time, other than its purposes and the driver of the offending vehicle was not possessing the valid and effective driving license, therefore, the Insurance Company cannot be held liable. In view of that, the question, which arises for determination is as to whether the driver of the alleged offending vehicle was holding valid driving license or not and, as to whether the vehicle in question was being used as *'baratis'* other than its purposes for which, it was insured. Perusal of the record would reveal that the driver of the offending vehicle was entitled to drive the "Motorcycle with Gear and Light Motor Vehicle" as evidenced by the driving license of the driver (Ex.D-6C). It is true that the vehicle in question was insured as a "Goods Commercial Vehicle" but a bare perusal of the information pertaining to "Vehicle Particulars" (Ex.D-4C), it appears that the class of vehicle used on the fateful day is "Light Goods Vehicle" (LGV) and its unladen weight is 1400 kgs and laden weight is 2300 kgs. In such circumstances, it is evident that the driver of the vehicle in question holding a license to drive the Light Motor Vehicle was entitled to drive the same even in absence of any endorsement of driving the alleged goods vehicles in view of the principles laid down in the matter of *Mukund Dewangan vs. Oriental Insurance Company Limited* reported in **(2017) 14 SCC 663.** In the said matter. the question involved as to whether a driver who is having license to drive Light Motor Vehicle and who is driving a transport vehicle of that class in absence of such an endorsement was considered and it was held at paragraphs 60.1, 60.2 and 60.4 as under:-

> **60.1.** "Light motor vehicle" as defined in Section 2(21) of the Act would include a transport vehicle as per the weight prescribed in Section 2(21) read with Sections 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act 54 of 1994.

> **60.2.** A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg would be a light motor vehicle and also motor car or tractor or a roadroller, “unladen weight” of which does not exceed 7500 kg and holder of a driving license to drive class of “light motor vehicle” as provided in Section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg or a motor car or tractor or roadroller, the “unladen weight” of which does not exceed 7500 kg. That is to say, no separate endorsement on the license is required to drive a transport vehicle of light motor vehicle class as enumerated above. A license issued under Section 10(2)(d) continues to be valid after Amendment Act 54 of 1994 and 28-3-2001 in the form.
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> **60.4.** The effect of amendment of Form 4 by insertion of “transport vehicle” is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving license for transport vehicle of class of “light motor vehicle” continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding license to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.

10. Based upon the aforesaid principles laid down by the Supreme Court, I do not find any infirmity in the award impugned in so far as the driving license of the driver of the alleged offending vehicle is concerned and the Claims Tribunal has not committed any illegality in holding that the driver was authorized to drive the alleged offending vehicle. It, however appears from perusal of the record, vis-a-vis the evidence led by the parties coupled with the documentary evidence like Ex.P-1 to Ex.P-9 and Ex.D-10 that the deceased was travelling as a *'barati'* in the alleged offending vehicle. The vehicle in question which was admittedly insured as a “Goods Commercial Vehicle” vide Ex.D-7C cannot be used other than its purposes. However, as observed hereinabove, it is evident that the vehicle in question was not carrying the goods and instead, the deceased was travelling in the alleged vehicle as one of the *'barati'.* It therefore, appears that the vehicle in question was being

used in violation of the terms and conditions stipulated in the policy (Ex.D-7C). As such, though issue was not framed in this regard by the Claims Tribunal, but in view of the pleadings of the parties and the evidence led by them, it is crystal clear that both the parties were very well aware with regard to the said fact and the issues involved therein. Therefore, in absence of the issue being framed in this regard, the said fact which has been brought on record can be taken into consideration for ascertaining the fact as to whether vehicle in question was being used in violation of the insurance policy or not and the materials brought on record, as observed hereinabove, would lead to an irresistible conclusion that it was being used in violation of the insurance policy by carrying *'barati'* at the relevant time. The finding of the Claims Tribunal exonerating the Insurance Company therefore, is liable to be set aside.

11. Consequently, it is held that the vehicle in question was being used in violation of the insurance policy and the Insurance Company is entitled to be exonerated from its liability in relation to the accident occurred on 20.04.2013. Although the Insurance Company is exonerated as such, however by applying the principles of "pay and recover", I hereby direct Non-Applicant No.3 (Appellant)/the Insurance Company to pay the awarded sum first and then to recover the same from the insured in the very proceeding in view of the principles laid down in the matter of *Manager, National Insurance Company Limited vs. Saju P. Paul and Another* reported in **(2013) 2 Supreme Court Cases 41,** wherein it has been held in paragraphs 20 & 26 as under:-

> "20. The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the Insurance Company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle (Respondent 2 herein).

> "26. The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in *Baljit Kaur* (National Insurance Co. Ltd. v. Baljit Kaur, (2004) 2 SCC 1 : 2004 SCC (Cri) 370) and *Challa Upendra Rao* (National Insurance Co.Ltd. v. Challa Upendra Rao, (2004) 8 SCC 517 : 2005 SCC (Cri) 357) should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, the claimant was 28 years old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to the stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The Insurance Company has already deposited the entire awarded amount pursuant to the order of this Court passed on 1-8-2011 [National Insurance Co. Ltd. v. Saju P. Paul, SLP (C) No.20127 of 2011, order dated 1-8-2011 (SC)] and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent 1) may be allowed to withdraw the amount deposited by the Insurance Company before this Court along with accrued interest. The Insurance Company (the appellant) thereafter may recover the amount so paid from the owner (Respondent 2 herein). The recovery of the amount by the Insurance Company from the owner shall be made by following the procedure as laid down by this Court in *Challa Upendra Rao.*

12. By applying the aforesaid principles to the case in hand, it would be just and proper to direct Non-Applicant No.3/Appellant/United India Insurance Company Limited to first pay the awarded amount to the Claimants and then to recover the paid awarded sum from the registered owner of the offending vehicle i.e. Non-Applicant No.2/Pushpkant Sharma in execution proceedings arising in this very case.

13. The Appeal is accordingly allowed by modifying the award impugned by directing Non-Applicant No.3/Appellant/United India Insurance Company Limited to pay the aforesaid awarded sum of Rs.4,76,000/- with 6% interest per annum from the date of filing of the Claim Petition till its realization to the Claimants and thereafter, Non-Applicant No.3/Appellant/United India Insurance Company Limited shall be entitled to recover the entire paid awarded sum from the registered owner Non-Applicant No.2/(Pushpakant Sharma) of the offending vehicle in this very proceeding by filing execution application against him. As far as other conditions as observed by the Claims Tribunal are concerned, they shall remain intact. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge

Priya