

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 493 of 2016**

- Smt. Badrika Jogi W/o Kedarnath Jogi, Aged About 50 Years R/o Village- Ghuru Ameri, Police Station- Chakarbhatta, District- Bilaspur, Chhattisgarh Vehicle OwnerNon-Applicant No.2, Chhattisgarh.

---- Appellant**Versus**

1. Gayatri W/o Late Chhankuram, Aged About 50 Years Caste- Satnami, R/o Village- Pendridih, Police Station- Hirri, District- Bilaspur, Chhattisgarh, Chhattisgarh.
2. Hariram S/o Late Chhankuram, Aged About 30 Years Caste- Satnami, R/o Village- Pendridih, Police Station- Hirri, District- Bilaspur, ChhattisgarhClaimants, District : Bilaspur, Chhattisgarh.
3. Siddharth Dahariya S/o Aasharam, Aged About 20 Years R/o Ghuru Ameri Ward No.10, Police Station- Chakarbhatta, District- Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh.
4. The New India Insurance Company Limited, Divisional Manager, Rama Trade Centre I I Floor U T I, Building Office, In Front Of Rajeev Plaza, Bilaspur, District- Bilaspur, ChhattisgarhNon-Applicants, District : Bilaspur, Chhattisgarh.

---- Respondent**MAC No. 494 of 2016**

- Smt. Badrika Jogi W/o Kedarnath Jogi, Aged About 50 Years R/o Village- Ghuru Ameri, Police Station- Chakarbhatta, District- Bilaspur, Chhattisgarh Vehicle OwnerNon-Applicant No.2, Chhattisgarh.

---- Appellant**Versus**

1. Sukhiya W/o Late Thukel, Aged About 50 Years Caste- Satnami, R/o Village- Urela, Police Station- Hirri, District- Bilaspur, Chhattisgarh, Chhattisgarh.
2. Milan S/o Late Thukel, Aged About 26 Years Caste- Satnami, R/o Urela, Police Station- Hirri, District- Bilaspur, ChhattisgarhClaimants, District : Bilaspur, Chhattisgarh.

3. Siddharth Dahariya S/o Aasharam, Aged About 20 Years R/o Ghuru Ameri Ward No.10, Police Station- Chakarbhatha, District- Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh.
4. The New India Insurance Company Limited, Divisional Manager, Rama Trade Centre II Floor U T I, Building Office, In Front Of Rajeev Plaza, Bilaspur, District- Bilaspur, ChhattisgarhNon-Applicants, District : Bilaspur, Chhattisgarh.

---- Respondent

MAC No. 495 of 2016

- Smt. Badrika Jogi W/o Kedarnath Jogi, Aged About 50 Years R/o Village- Ghuru Ameri, Police Station- Chakarbhatha, District- Bilaspur, Chhattisgarh Vehicle OwnerNon-Applicant No.2, Chhattisgarh.

---- Appellant

Versus

1. Lalita W/o Shri Darshan Joshi, Aged About 40 Years R/o Village- Ghuru Ameri, Police Station- Chakarbhatha, District- Bilaspur, Chhattisgarh, Chhattisgarh.
2. Priti (minor) D/o Late Darshan Joshi, Aged About 7 Years Minor, Represented Through Mother Lalita, R/o Village- Ghuru Ameri, Police Station- Chakarbhatha, District- Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh.
3. Ku. Gajra (minor) D/o Late Darshan Joshi, Aged About 9 Years Minor, Represented Through Mother Lalita, R/o Village- Ghuru Ameri, Police Station- Chakarbhatha, District- Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh.
4. Daa (minor) S/o Late Darshan Joshi, Aged About 12 Years Minor, Represented Through Mother Lalita, R/o Village- Ghuru Ameri, Police Station- Chakarbhatha, District- Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh.
5. Vimal (minor) S/o Late Darshan Joshi, Aged About 16 Years Minor, Represented Through Mother Lalita, R/o Village- Ghuru Ameri, Police Station- Chakarbhatha, District- Bilaspur, ChhattisgarhClaimants, District : Bilaspur, Chhattisgarh.

No. 1 to 5 are minor, represented through mother Lalita,

6. Siddharth Dahariya S/o Aasharam, Aged About 20 Years R/o Ghuru Ameri Ward No.10, Police Station- Chakarbhatha, District- Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh.
7. The New India Insurance Company Limited, Divisional Manager, Rama Trade Centre II Floor U T I, Building Office, In Front Of

Rajeev Plaza, Bilaspur, District- Bilaspur, Chhattisgarh
.....Non-Applicants, District : Bilaspur, Chhattisgarh.

---- Respondents

For Appellants : Gautam Khetrapal, Advocate.
For Respondent/Insurance Company: Raj Awasthi, Advocate

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

08.01.2019

1. Since all the appeals filed by the owner arise out of the same accident and are directed against the award dated 31.03.2016 passed by 5th Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case Nos. 635/2014 (MAC No. 493 of 2016), 636/2014 (MAC No. 494 of 2016) & 606/2014 (MAC No.495 of 2016), respectively, therefore, they are heard together and are being disposed of by this common judgment.
2. In these awards, learned Claims Tribunal has exonerated the Insurance Company from its liability to pay compensation to the claimants, fastening the liability upon the owner of the offending vehicle on the ground that offending vehicle was being plied plying in violation of policy conditions as sitting capacity of the passenger in the offending vehicle was only 7 but at the time of accident more than 7 passengers were sitting in the aforesaid vehicle.
3. Being aggrieved & dissatisfied with the aforesaid award fastening the liability upon the owner of the offending vehicle, these appeals under Section 173 of the Motor Vehicles Act, 1988 (henceforth "MV Act, 1988) have been preferred.
4. Brief fact of the case are that on the date of accident i.e.

20.4.2014, Non-applicant No. 1- Sidharth Dahariya while driving the offending vehicle (Bolero) bearing registration No. CG- 10-M/7770 rashly and negligently, the said offending vehicle turned turtle, as a result of which three persons namely Chhankuran Satnami, Darshan Joshi & Thukel who were traveling in the said bus sustained grievous injuries and succumbed to these injuries.

5. Claim petition No. 635/2014 was filed by the claimants/wife & son of deceased- Chhankuram Satnami under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs, 23,00,000/- under various heads, the Tribunal considering the evidence led by both the parties, by the impugned award granted a total compensation of Rs. 2,84,000/- with interest @ 6% per annum from the date of filing of claim petition till its actual payment, *whereas* in claim petition No.636/2014 filed by the claimants/wife and son of deceased- Thukel under Section 166 of the Motor Vehicles Act claiming compensation of Rs. 21,00,000/- under various heads, the Tribunal considering the evidence led by both the parties, by the impugned award granted a total compensation of Rs.1,88,000/- along with interest @ 6% per annum from the date of application till realization *and* in claim petition No. 606/2014 filed by the claimants/wife & children of deceased- Darshan Joshi under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs, 51,00,000/- under various heads, the Tribunal considering the evidence led by both the parties, by the impugned award granted a total compensation of Rs. 3,98,000/- with interest @ 6% per annum from the date of filing of claim petition till its actual payment. The learned Tribunal exonerated the respondent/Insurance Company from its liability to pay compensation to the claimants on the ground of breach of policy

conditions and fastened the liability to pay compensation to the claimants upon owner of the offending vehicle.

6. Learned Counsel appearing for the appellant / owner of the offending vehicle would submit the Tribunal has erred in exonerating the Insurance Company from its liability to pay compensation to the claimants and fastening the liability upon the owner of the offending vehicle and, therefore, it is liable to be set aside. He placed reliance upon the Supreme Court judgment in the matter of **National Insurance Co. Ltd. Vs. Anjana Shyam & others reported (2007) 3 SCC (Cri) 416** in support of his submissions in which Hon'ble Supreme Court has held that Insurer can be made liable only in respect of the number of passengers for whom insurance can be taken under the Motor Vehicles Act, 1988.

7. On the other hand, Learned counsel for the respondent No. 3 /Insurance Company submitted that the chargesheet was filed against the driver of the offending vehicle under Section 39/192 of the Motor Vehicle Act alongwith other offence of the IPC. As per registration certificate the vehicle was registered and insured as a private vehicle but on the date of accident the marriage party was being carried by the owner and driver of the vehicle and therefore, it is a specific breach of policy and as such, the insurance Company is not liable to pay compensation. He placed reliance upon the Supreme Court judgment in the matter of **National Insurance Company Ltd. Vs. Meena Agarwal reported in 2009(1) T.A.C. 809(S.C.)** in support of his submissions. He further submits that learned Tribunal has not committed any error in fastening the liability upon the owner of the offending vehicle and, therefore, there is no need to interfere in the awards impugned.

8. Heard learned counsel for both the parties and perused the record of the Tribunal and awards impugned.

9. According to awards passed by learned Tribunal it has exonerated the Insurance Company to pay compensation to the claimants only on the ground of sitting capacity in the vehicle which is mentioned in the RC Book and looking to passengers sitting in offending vehicle.

10. As per the evidence of Deepak Umale non-applicant witness No. 1 in claim case No. 494/2016 and non applicant Witness No. 2 adduced by the Insurance Company that the offending vehicle was used for the marriage of the relative of the owner and they both have disputed the fact whether the vehicle was hired or rewarded or any amount was paid to the owner of the vehicle. The vehicle was only using for carrying passengers and Insurance Company could not lead any evidence before the Tribunal regarding the breach of policy therefore, learned Tribunal wrongly fastened the liability upon the owner.

11. Learned counsel for the respondent no. 3/Insurance Company relying the Supreme Court judgment in the matter of **National Insurance Company Ltd. Vs. Meena Agarwal** (Supra) submits that the vehicle was used by owner for carrying marriage party(Barati) the vehicle was hired on rent of Rs. 2,100/- for this reason, the Supreme Court has exonerated the Insurance Company in above-cited case but in the instant case there is no any evidence regarding payment of any rent or reward, which was payable to the owner of the offending vehicle and this fact was not proved by marriage party or any other person, therefore that Apex Court judgment cannot be applicable in the present case. Further merely on the fact that chargesheet has been filed against the driver of the offending vehicle under Section 39(192) of the Motor

Vehicle Act, it cannot be presumed that the vehicle was hired.

12. In view of the aforesaid discussion, all the appeals are allowed. Respondent-Insurance Company is held liable for payment of compensation to the claimants jointly and severally with the owner & driver of the offending vehicle. It is directed that the Insurance Company shall pay the amount of compensation to the claimants along with interest within a period of two months from this order. Rest of the condition mentioned in the impugned order shall remain intact.

Sd/-

(Gautam Chourdiya)
Judge

Amita