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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 42 of 2017

1. M/s Ravi Shri Narayan Transport, through: Rakesh Jain S/o Sumermal Jain, R/o Village & Post Saja, Tahsil & P.S. Saja, District- Bemetara, (C.G.)

   owner of C.G. 07-C-7927

---- Appellant/Owner

Versus

1. Fattelal S/o Parten Sahu, aged about 53 years

2. Dhankunwar, W/o Fattelal Sahu, aged about 28 years,

   Both resident of village parpodha, Post Mohanbhatta, P.S. Saja, District- Bemetara (C.G.)

3. Gopal S/o Beniram Gond, aged about 34 years, R/o Village Prasbeda, P.S. & Tahsil Saja, District- Bemetara (C.G.) Driver Vehicle No. C.G. 07-C-7927

4. The United India Insurance Company Ltd. Branch- Durg; (through its Branch Manager), Paras Complex, Opposite SBI, Gurudwara, Station Road, Durg (C.G.)

   (Insurance Co. of Dumper No. C.G.-07C/7927)

---- Respondents

And

MAC No. 43 of 2017

1. M/s Ravi Shri Narayan Transport, through: Rakesh Jain S/o Sumermal Jain, R/o Village & Post Saja, Tahsil & P.S. Saja, District- Bemetara, (C.G.)

   owner of C.G. 07-C-7927

---- Appellant

Versus

1. Paretan S/o Jayram Sahu aged about 53 years,
2. Satbati, W/o Paretan Sahu, aged about 50 years,
3. Smt. Bhuneshwari W/o Late Kalyan Sahu, aged about 26 years,
4. Ku. Kajal D/o Late Kalyan Sahu, aged about 6 years
5. Ravi Kumar S/o Late Kalyan Sahu, aged about 4 years,
6. Harsh Kumar S/o Late Kalyan Sahu, aged about 2 years,

   Respondent/Appellant No. 4, 5, 6 minor through guardian mother respondent/ appellant No. 3.

   All resident of village Parpodha, Post Mohabhatta, P.S. Saja, District Bemetara (C.G.)

7. Gopal S/o Beniram Gond, aged about 34 years, R/o Village Parasbod P.S. & Tahsil Saja, District Bemetara (C.G.) Driver Vehicle No. C.G. 07-C 7927
8. The United India Insurance Company Ltd, Branch- Durg; (through its Branch Manager), Paras Complex, Opposite SBI, Gurudwara, Station Road, Durg (C.G.)

   (Insurance Co. of Dumper No. CG07-C/7927).

---- Respondents

For Appellants : Mrs. Renu Kochar, Advocate.
For Respondent/Claimants : Shri Amit K. Sahu, Advocate.
For Respondent/Insurance Company: Shri H. B. Agrawal, Sr. Advocate assisted by Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

09.01.2019

1. Since both the appeals arise out of the award dated 10-11-2016 passed by Additional Motor Accident Claims Tribunal, Bemetara, District Bemtara in Claim Case Nos. 38/2015 & 39/2015, respectively, both

claim cases arises from 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 16.12.2013, son of respondents No. 1 & 2/claimants (in MAC No. 42/2017) namely Aman Sahu, aged about 8 years was coming from village Kowda to parpodha along with Kalyan Sahu, who is husband of respondent No. 3 and father of respondents No. 4 to 6 (in MAC No. 43/2017) on a motor cycle bearing registration No. CG.07-LX-7675, which was being ridden by Kalyan Sahu and Aman Sahu was sitting on it as pillion rider, on the way to Parpodha village non applicant No. 1-Gopal (driver of the offending vehicle) while driving the offending vehicle Dumper (hyva) bearing registration No. C.G. 07-C-7927 rashly and negligently, dashed the motorcycle, as a result thereof both persons sustained grievous injuries and succumbed to these injuries.

03. On claim case No. 39/15 being filed by the claimants/parents of the deceased- Aman Sahu under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs, 7,00,000/- under various heads, the Tribunal considering the evidence led by both the parties, by the impugned award granted a total compensation of Rs. 5,30,000/- with interest @ 6% per annum from the date of filing of claim petition till its actual payment *whereas* in claim case No. 38/2015 being filed by the claimants/wife and children of deceased- Kalyan Sahu under Section 166 of the Motor Vehicles Act 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.11,00,772/- along with interest @ 6% per annum from the date of

application till realization. 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.

04. It is submitted by learned counsel for both the parties that no counter appeal is filed by the insurance Company and respondents.

05 Learned counsel for the appellant in both the appeals would submit that as per evidence adduced by the Non-applicant No. 1 & 2, there was no negligence on the part of the driver of the offending vehicle. She further submits that the Tribunal has wrongly exonerated the Insurance Company of its liability as the Insurance Company has failed to prove that there was breach of any of the policy conditions. As per Section 149 of the Motor Vehicle Act, the burden lies upon the Insurance Company to prove breach of policy conditions. Lastly she submits that considering the facts and circumstance of the case, if this finding comes to the conclusion that the Insurance Company has rightly been exonerated from its liability, in view of the Judgment of the Hon'ble supreme Court in **Amrit Paul Singh & Anr. Vs. Tata AIG General Insurance Co. Ltd. & Others reported in 2018(3) C.G.L.J. 313 (SC) &** ***Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796,*** this Court may direct the Insurance Company to first pay the amount of compensation to the claimant and then recover the same from the owner.

06. Learned counsel for the respondents/claimants submits that after

passing of the impugned award 10.11.2016, till date the claimants have not got any amount of compensation awarded by the Tribunal and, therefore, the Insurance Company may be directed to first pay the amount of compensation to the claimants and then recover it from the owner of the offending vehicle.

07. Learned counsel for the respondent /Insurance Company submits that learned Tribunal has passed the impugned award in accordance with law and there is no requirement of passing an order for pay & recover as absolute breach of policy was made out by the Insurance Company.

08. No other issues have been challenged by the parties.

09. As per evidence adduced by the parties, there is nothing much on record which could show that the offending vehicle was having valid permit on the date of accident, even as per seizure memo Ex. P/5, in both the cases, no permit was seized by the investigating Officer during investigation. According to Hemant Jaiswal, Clerk in Additional Regional Transport Officer, examined by the Insurance Company, he has stated in paras 1 & 2 of his statement that no information regarding permit was furnished by the parties and therefore he is unable to submit any document regarding permit etc. from the RTO Office. Abdul Naeem Khan (AW2) examined on behalf of Insurance Company has also stated that as per evidence policy permit was required for the offending vehicle, however, no permit was seized in this case and despite demand being made for submission of permit, the permit was not submitted by the owner. In this Case as per Ex. D/4 i.e. insurance policy the insured

vehicle was carrying heavy goods vehicle and its gross waight is 16,200kg and therefore, in view of Section 66 of the Motor Vehicle Act permit is necessary for plying the offending vehicle in public road. In this case neither the owner has been examined nor any document regarding permit has been produced.

10. Considering the facts and circumstances of the case, the nature and quality of the evidence adduced by the parties this Court is of the opinion that the Tribunal was fully justified in exonerating the Insurance Company on the ground of breach of policy.

11. So far as the arguments advanced by learned counsel appearing for the claimants with regard to direction for pay and recover to the Insurance Company is concerned, according to the claimants they have not received any amount out of the awarded compensation by the Tribunal till date and it seems very difficult to recover the compensation from the owner of the offending vehicle. Therefore, considering the facts and circumstance of the case, submission made by learned Counsel for the claimants, the fact that the claimant are unfortunate parents, wife and children of the deceased, they are deprived from their livelihood since 2013 and that the offending vehicle duly insured with non applicant No. 3/Insurance Company, keeping in view the decision of the Hon'ble Supreme Court in **Amritpal (Supra) &** ***Manuara Khatun(Supra)***, this Court feels it proper to order for pay and recover in theses appeals hence, non-applicant/Insurance Company is directed to pay compensation awarded by the Tribunal to the claimants in respective claim cases and then recover from non-applicants No. 1 & 2 driver and owner of the offending vehicle in accordance with law. However, rest of

the conditions shall remain intact.

12. With the aforesaid direction, both the appeals stand finally disposed of.

Sd/-

(Gautam Chourdiya)
Judge

Amita