

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 227 of 2014****Judgment reserved on 16.08.2019****Judgment delivered on 08.11.2019**

1. Branch Manager, United India Insurance Co. Ltd. Branch Office Mendekar Complex, Rajendra Nagar Chowk, Distt. Bilaspur, Chhattisgarh

----Appellant/Non-applicant No. 3**VERSUS**

1. Malik Ram Verma S/o Late Baratu Verma Aged About 42 Years R/o Badrab, Tah. Mungeli, Distt. Mungeli, Chhattisgarh **-----Claimant**

2. Sumeet Vishwakarma S/o Kaijram Vishwakarma Aged About 22 Years R/o Badrab, Thana- Pathariya, Tah. Mungeli, Distt. Bilaspur, Now Distt. Mungeli C.G. **(Driver)**

-----Non-applicant No. 1

3. Aadik Ram Sahu S/o Kishun Ram Sahu R/o Badrab, Thana- Pathariya, tah. Mungeli, Distt. Bilaspur, Now Distt. Mungeli C.G. **(Owner)**

-----Non-applicant No. 2**-----Respondents**

For Appellant : Mr. Pankaj Agrawal, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**CAV Order**

1. The appellant-Insurance Company has filed this instant appeal under Section 173 of Motor Vehicles Act challenging the impugned award dated 30-11-2013 passed in claim case no. 208/11, where in learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs. 2,02,000/- as compensation in a death case.
2. Facts of the case in nutshell are, on 09-06-2008, non-applicant No. 1/Respondent No. 2, while driving tractor bearing no. CG.10.D.2562 (hereinafter "offending vehicle") met with an accident on which Duasa Bai was traveling. In the aforementioned accident, deceased Duasa Bai came under the

wheels of the offending vehicle and suffered grievous injuries over her head, she was taken to Primary Hospital, Pathariya, where she was declared dead. Said accident was reported to the concerned police station on the same date alleging the accused to be non-applicant no. 1/respondent No. 2-driver of the offending vehicle and First Information Report (F.I.R.) (Ex. A/2) was registered as crime bearing no. 88/2008 . After investigation, police filed its final report (Ex. A/1) under Section 173 of Cr.P.C. before the competent Court.

3. Respondent No. 1/Claimant filed a claim application before the competent Claims Tribunal claiming Rs. 6,50,000/- as compensation against the death of Duasa Bai.
4. Non-applicant No. 1 & 2 appeared before the Claims Tribunal and submitted their reply in which they have pleaded that there was no negligence on the part of non-applicant No. 1, denied the fact of accident by the offending vehicle. Pleadings with respect to the income of the deceased was also denied. They have also pleaded that on the date of accident offending vehicle was insured with Non-applicant No. 3-Insurance Company and therefore liability, if any, would be on the Insurance Company.
5. Non-applicant No. 3- Insurance Company also submitted its reply separately denying adverse pleadings with respect to accident and quantum of the claim. It was also pleaded that the offending vehicle was insured as Miscellaneous and Special type of vehicles package policy, there was violation of conditions of the insurance policy as the accident took place when deceased Duasa Bai was traveling on offending tractor, where there is no seating capacity except driver and therefore the Insurance Company is not liable to pay any amount of compensation. They have specifically pleaded that contents mentioned in F.I.R., Final report and Merg Intimation Report (Ex. A/6) that Duasa Bai was traveling on engine of offending vehicle and therefore there is violation of conditions of insurance policy.

6. Learned Claims Tribunal while appreciating the pleadings made by the respective parties framed as many as 4 issues for consideration with respect to the violation of conditions of insurance policy. Learned Claims Tribunal after conclusion of trial, on appreciation of the evidence and other materials placed on record held that there was no violation of conditions of insurance policy and allowed the claim application in part and awarded a total sum of Rs. 2,02,000/- as compensation.
7. Learned counsel for the appellant submits that in Merg Intimation Report which was informed by one Narayan Verma clearly mentions that non-applicant no. 1/respondent no. 2, was carrying stone ballast in his tractor. He was carrying deceased Duasa Bai and two children on tractor engine and at that relevant time, deceased Duasa Bai fell down. He further submits that the same fact has also been mentioned in F.I.R. Ex. A/2 and in final report Ex. A/1. Learned counsel for the appellant referred to the evidence of AW-2 Narayan Verma who lodged the F.I.R. and argued that even in his cross examination AW-2 witness admitted that he has lodged the F.I.R. and admitted the fact that death of Duasa Bai was due to her falling off from offending vehicle. He submits that as there is no seating capacity on the engine of tractor except driver, therefore there is violation of conditions of insurance policy, but the Claims Tribunal committed error in not considering the entire evidence available on record and held that there is no violation of conditions of insurance policy.
8. No one appeared on behalf of the other respondents.
9. I have heard learned counsel for the parties and perused the material available on record minutely.
10. Perusal of Ex.A-6 which is a Merg Intimation Report lodged by Narayan Verma on 09-06-2008 at about 10 AM just after 3 hours of accident; based on the Merg Intimation Report, F.I.R. was also registered, on the basis of the information

given by Narayan Verma and after completion of investigation, final report was filed by the investigating agency.

11. Perusal of all the aforementioned documents would show that the deceased Duasa Bai was traveling on the engine of the offending vehicle, complaint to police station was prompt within few hours of accident by the third person who was also produced as one of the witnesses before the Claims Tribunal. The complainant who lodged the F.I.R. has been examined as AW-2 by the claimants, though he stated that he has not seen the accident but in cross examination, in para-5, he admits that he lodged report in police station, he lodged report stating deceased to be sitting on tractor and it is correct that accident took place due to felling of the deceased from the offending vehicle. He also admits that the offending vehicle was driven by non-applicant no. 1/respondent no. 2. The claimants in claim application have pleaded that at the time of accident, deceased was traveling on tractor, AW-1, in his examination-in-chief has stated that deceased was traveling on tractor.

12. From perusal of the aforementioned documentary evidence as well as the oral statements of the witness, available on record, it is clear that the deceased on the date of accident was traveling on engine of the offending vehicle. Even in claim application, the claimants have very specifically pleaded that deceased was traveling on tractor which was driven by non-applicant no. 1/respondent No. 2, rashly negligently, causing her death.

13. Learned Claims Tribunal though framed very specific Issue that whether by carrying Duasa Bai on offending vehicle by non-applicant no. 1/Respondent No. 2, there is violation of conditions of insurance policy and answered it negative. While deciding Issue no. 2, learned Claims Tribunal has not discussed any evidence or material but held that the burden to prove issue with respect to violation of conditions of insurance policy was on non-applicant no. 3-Insurance Company.

14. Insurance Company has examined Raji Ram who is working as Administrative Officer in the Insurance Company and he stated that the offending vehicle was insured by their company for the period from 05-02-2008 to 04-02-2009. He also stated that deceased was traveling on the offending vehicle where there is only one seating capacity i.e. for the driver and as the deceased was traveling on the engine of the offending vehicle, therefore, there is violation of conditions of insurance policy. Witness Raji Ram proved the insurance policy as Ex. NAW-1 and further in cross examination he stated that in the conditions of insurance policy, it is mentioned that vehicle to be used only for agricultural purposes. He also denied the suggestion that there was no violation of conditions of insurance policy.

15. Perusal of insurance policy (Ex. NA-1) would show that in particulars of the vehicle insured, it has been mentioned that it was a 'new vehicle' and in the column of trailer, it has been mentioned as '0' (zero) and engine number as well as chassis number have been specifically mentioned along with maker/model of vehicle mentioned as Swaraj Tractor.

16. Perusal of registration certificate, available on record, would show that the registration number of the tractor has been mentioned as CG.10D.2561 and engine number as well as chassis number have also been mentioned therein same as mentioned in the insurance policy and tractor trailer number in the registration certificate has been mentioned as CG.10D.2562. As per the registration certificate of the offending vehicle, seating capacity has been shown only one whereas the deceased was traveling on the engine of the offending vehicle. In view of the aforementioned evidence and material available on record, it is apparent that there was violation of the conditions of the insurance policy.

17. Insurance Company, in its pleadings, very specifically pleaded that the accident took place when deceased was traveling on engine of the offending vehicle and

the same statement has been given by the NAW-1 Administrative Officer of the Insurance Company and the witness of appellants/claimants.

18. As provided under Section 169 of the Motor Vehicles Act, 1988 and Rules framed thereunder, the proceedings before the Motor Accident Claims Tribunal are summary in nature. Learned Claims Tribunal is duty bound to inquire into the facts and circumstances of the case on the basis of the material available on record, but in the instant case, learned Claims Tribunal had not considered the document i.e. registration certificate available on record along with the insurance policy Ex. NAW-1, which clearly shows that there was violation of conditions of insurance policy. Therefore, the finding recorded by the learned Claims Tribunal with respect to Issue no. 2 is not sustainable and is hereby set aside.

19. It is held that there was violation of conditions of insurance policy and therefore the Insurance Company will not be liable to satisfy the amount of compensation. Hon'ble Supreme Court in the matters of **National Insurance Company Ltd. v. Chinnamma and others** reported in (2004) 8 SCC 697 and **New India Insurance Company v. Darshana Devi and others** reported in (2008) 7 SCC 416 has clearly discussed the issue with respect to the person traveling on the tractor and met with an accident. Relevant paragraphs of the judgments are reproduced below: [In Chinnamma and others, pp. 698 & 702, paras 4, 5 & 16]

“4. A claim petition was filed by the respondents herein before the Additional Motor Accidents Claims Tribunal, Nellore claiming a sum of Rs. 1,00,000. The appellant herein denied and disputed its liability to pay any amount to the respondents by way of compensation inter alia on the ground that the deceased was travelling in the said tractor as a “paid passenger”.

5. The learned Additional Motor Accidents Claims Tribunal inter alia held that carrying the goods i.e. vegetables, by the deceased as owner thereof would entitle the applicants to receive compensation from the appellant.

16. A tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2(14) of the Motor Vehicles Act. The tractor was meant to be used for agricultural purposes. The trailer attached to the tractor, thus, necessarily is required to be used for agricultural purposes, unless registered otherwise. It may be, as has been contended by Mrs. K. Sharda Devi, that carriage of vegetables being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes but the same by itself would not be construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities. The deceased was a businessman. He used to deal in vegetables. After he purchased the vegetables, he was to transport the same to the market for the purpose of sale thereof and not for any agricultural purpose. The tractor and trailer, therefore, were not being used for agricultural purposes. However, even if it be assumed that the trailer would answer the description of "goods carriage" as contained in Section 2(14) of the Motor Vehicles Act, the case would be covered by the decisions of this Court in *Asha Rani*¹ and other decisions following the same, as the accident had taken place on 24-11-1991 i.e. much prior to coming into force of the 1994 amendment."

[In *Darshana Devi and others*, pp. 423, para 19]

"19. Yet again, in *Oriental Insurance Co. Ltd. v. Brij Mohan*² wherein one of us (S.B. Sinha, J.) was a member, this Court noticed *Asha Rani*¹ and other decisions. Following the same, it was stated: (SCC pp.61-62, para 10)

"10. Furthermore, the respondent was not the owner of the tractor. He was also not the driver thereof. He was merely a passenger travelling on the trolley attached to the tractor. His claim petition, therefore, could not have been allowed in view of the decision of this Court in *New India Assurance Co. Ltd. v. Asha Rani*¹ wherein the earlier decision of this Court in *New India Assurance Co. v. Satpal Singh*³ was overruled. In *Asha Rani* it was, inter alia, held: (SCC p. 235, paras 25-27)

'25. Section 147 of the 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service

1 (2003) 2 SCC 223

2 (2007) 7 SCC 56

3 (2000) 1 SCC 237

vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen Compensation Act. It does not speak of any passenger in a "goods carriage".

26. In view of the changes in the relevant provisions in the 1988 Act vis-a-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 travelling in a goods vehicle, the insurers would not be liable therefor.

27. Furthermore, sub-clause (i) of clause (b) of sub-section (1) of Section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.' "

20. For the foregoing discussions and the law laid down by the Hon'ble Supreme Court, the appeal is allowed. Finding recorded by learned Claims Tribunal holding the appellant-Insurance Company to be liable to satisfy the amount of compensation is hereby set aside; now, non-applicant No. 1 & 2/Respondent No. 2 & 3 are held to be liable to satisfy the amount of compensation awarded by the Tribunal as per the conditions mentioned in the impugned award.

21. The appellant will be entitled to receive back the amount so deposited by it after deposit of the entire amount of compensation by the respondent No. 3 before the learned Claims Tribunal.

22. The impugned award is modified to the extent indicated above accordingly. No order as to cost(s).

Sd/-
(Parth Prateem Sahu)
Judge