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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 563 of 2014

1. Firoj Khan S/o Shri Shahid Khan, aged about- 34 years, R/o Station Road, Gopiganj, Bhadohi (U.P.), present address: village- Turridih, Post Office & Police Station- Balrampur, Tahsil & Distt.- Balrampur (C.G.) (Owner of pickup No. U.P. 66 E- 8730).

2. Muneshwar S/o Shri Surajdev Uranv, aged about- 36 years, Occupation Vehicle Driver, R/o Village- Turridih, Post Office & Police Station- Balrampur, Tahsil & Distt.- Balrampur (C.G.) (Driver of pickup No. U.P. 66 E-8730).

---- Appellants

Versus

1. Shyamapati Wd/o Late Shri Updesh Singh, aged about- 25 years,

2. Priyesh Singh S/o Late Shri Updesh Singh, aged about- 1 year, Minor- Through his Guardian- his mother- shyamapati (respondent No. 1),

   The respondent No. 1 & 2 are resident of village- Tangarmahari, Post Office & Police Station- Balrampur, Tahsil & Distt.- Balrampur (C.G.).

3. Bharti Axa General Insurance Company Limited, 2nd Floor, Khichariya Complex, Nehru Parisar, Bhilai Nagar, Distt.- Durg (C.G.) (Insurer of pickup No. U.P. 66 E- 8730).

---- Respondents

For Appellants	: Shri R. R. Soni, Advocate.
For Respondent Nos 1 & 2	: None
For Respondent No. 3.	: Shri Ghanshyam Patel, Advocate and Shri D. L. Dewangan, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

18/03/2019:

This appeal is filed by the Non-applicant Nos. 2 & 3/driver & owner of the offending vehicle under Section 173 of the Motor Vehicles Act, 1988 (in short “the Act”) challenging the award dated 25.03.2014 passed by the learned Additional Tribunal, Ramanujganj of the learned Additional Motor

Accident Claims Tribunal, Ramanujganj, C.G. in Claim Case No. 48/2013, awarding total compensation of Rs.4,00,400/- in favour of claimants with interest @ 9% per annum from the date of application till realization, fastening liability on the non-applicant Nos. 2 & 3/driver & owner jointly and severally while exonerating non-applicant No.1/insurance company from its liability to pay compensation to the claimants.

02. As per averments in the claim petition, on 11.05.2011 at around 8.30 am Updesh Singh (since deceased) was coming back after attending the marriage of one person Vijay Uraon from village-Turridheeh, in the offending vehicle (pickup) bearing registration No. U.P. 66-E/8730, near village Bardar-Sanapara, non-applicant No. 2- Muneshwar, by driving the offending vehicle rashly and negligently, the said vehicle turned turtle, as a result of which, Updesh Singh sustained grievous injuries and during treatment died. The vehicle is owned by Non-applicant No. 3- Firoj Khan & insured with non-applicant No. 1- Bharti Axa General Insurance Company Ltd.

03. On claim petition being filed by the claimants, who are unfortunate wife & child of deceased – Updesh Singh, under Section 166 of the Act claiming compensation, the Tribunal considering the evidence led by the parties, by the impugned award granted compensation as mentioned above.

04. Learned counsel appearing for the appellants/owner & driver submits that the learned Tribunal has erred in exonerating the Insurance Company from payment of compensation on the ground that the alleged offending vehicle was insured as goods vehicle whereas at the time of accident the same was being used as passenger carrying vehicle (*Barat party*) but there is no clinching evidence or material available on record on the point of breach of policy conditions. He further submits that as per statement of wife of the deceased, she stated that her husband was sitting in the offending

vehicle as a family member of B*arat party*, not as a gratuitous passenger, therefore, the Claims Tribunal has committed legal error in exonerating the respondent No. 3/Insurance Company from its liability to pay compensation to the claimants.

05. On the other hand, learned counsel for the Respondent No. 3/ Insurance Company while supporting the impugned award submits that the vehicle in question was the good carrying vehicle and at the time of accident the said vehicle was being used as passenger carrying vehicle for carrying B*arat party.* He further submits that *a*s per charge-sheet (Ex. P/1 & P/2) the offence was registered against the driver of the offending vehicle. He further submits that as per statement of wife of the deceased at the time of accident the offending vehicle was using for carrying passenger (as B*arat party)* and her husband was sitting in that vehicle as family member of the B*arat party* therefore, as per terms of insurance policy his risk was not covered under the policy, therefore, learned Claims Tribunal has rightly exonerated the Insurance Company from its liability to pay compensation to the claimants.

06. Heard learned counsel for the appellant and perused the material available on record including the impugned award.

07. It is not in dispute that on the date of accident the deceased was trevelling in the offending vehicle; and the vehicle was registered as a goods carrying vehicle as per Ex.D/3/C. As per insurance policy (Ex. D/4/C), the policy is comprehensive insurance policy and the basic premium of Rs. 100/- was taken towards the risk of owner-driver and the premium of Rs. 75/- was taken as PA coverage for the risk of labours and other. At the time of accident the deceased was sitting in the offending vehicle as a B*arat party* but he was neither the employee of the owner, nor the authorised owner of the offending vehicle therefore, learned Tribunal has rightly exonerated the Insurance

Company from payment of compensation to the claimants.

08. As per pleading of applicant witness No. 1- Shyamapati and defence taken by the owner & driver of the offending vehicle, they have never taken this plea that the deceased was employee of the owner, and as per insurance policy, no any premium was taken by the Insurance Company regarding any gratuitous passenger or any passenger carrying in a goods vehicle.

09. As per Ex. P/1 chargsheet filed against the driver of the offending vehicle and FIR (Ex.P/2) lodged that the number of passengers were carrying in the goods vehicle as a Barat party and the claimant witness No. 1-Shyamapati, wife of the deceased stated that after attending a marriage her husband was returning in the offending vehicle. She also stated that her husband was working as labour (by work of loading and unloading the goods) under the owner of the offending vehicle. No pleading was made in the application nor any fact is mentioned before the Police Authority when the matter is investigated and nor any defence was taken by the Non-applicant Nos. 2 & 3/ driver & owner of the offending vehicle regarding the deceased was working as labour (by work of loading and unloading the goods) under the owner of the offending vehicle.

10. Therefore, considering the over all evidence, oral and documentary on record, the terms and conditions of the insurance policy, this Court is of the opinion that the Tribunal was fully justified in exonerating the Insurance Company from its liability and fastening the same on non-applicant No. 2 & 3 on the ground from being travelling breach of policy conditions as the deceased was trevelling in the offending vehicle in contravention of the policy conditions and risk of such person is not covered under the insurance policy issued by non-applicant No. 1/Insurance Company.

11. In view of foregoing, appeal, being devoid of merit, is liable to be and is hereby dismissed. No costs.

Sd/-

(Gautam Chourdiya)
Judge

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