

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on 26.4.2019****Judgment Delivered on 04.07.2019****MAC No. 1041 of 2014**

- Kireet Patel S/o Ganga Ram Patel Aged About 27 Years R/o Sonpur Road, Narayanpur, P.S., Tahsil & District Narayanpur C.G. Owner.

---- Appellant**Versus**

1. Smt. Mahangeen Bai Uike, W/o Sahnu Ram Uike Aged About 40 Years
2. Dipak Kumar Uike S/o Late Sahnu Ram Uike Aged About 19 Years
3. Surendra Kumar Uike S/o Late Sahnu Ram Uike Aged About 17 Years
4. Mahendra Singh Uike S/o Late Sahnu Ram Uike Aged About 13 Years

That, respondent No.3 & 4 are minors through its legal guardian Smt. Mahangeen Bai Uike.

All R/o Village- Salhe (Amapara), P.S. & Tahsil Bhanupratappur, District Uttar Bastar Kanker C.G.

Claimants

5. The Reliance General Insurance Company Limited, through Its Branch Manager, Kumhar Para, Jagdalpur, District Bastar.

---- Respondents

For Appellant	:	Shri Vishnu Koshta, Advocate along with Shri Shobhit Koshta, Advocate
For Res.No.1, 2 & 4	:	Shri Shalvik Tiwari, Advocate on behalf of Shri P. Kotecha, Advocate
For Respondent No.5.	:	Shri T. Nande, Advocate on behalf of Shri Saurabh Sharma, Advocate

CAV Order**Per Parth Prateem Sahu, J****04/07/2019**

1. This is owner's appeal challenging award dated 1.8.2014 passed by learned Additional Motor Accident Claims Tribunal, Bhanupratappur, District North Bastar Kanker in Claim Case No.120/12 whereby learned Claims Tribunal while allowing claim application in part awarded a sum of Rs.13,59,466/- as compensation and while exonerating insurance company fastened liability to pay compensation on appellant-owner of offending vehicle.
2. Brief facts relevant for disposal of this appeal are that on 30.12.2007 Sahnuram was travelling on Tata Pick-up 207 goods vehicle bearing registration No.CG21-D-0105 along with his goods and on the way near Aam Road, Village Jondhrapadar said vehicle met with an accident in which said Sahnuram sustained grievous injuries and succumbed to those injuries. Claimants, who are wife & children of deceased Sahnuram, filed claim application claiming Rs.36,25,016/- as compensation against appellant and respondent No.5 herein.
3. Non-applicant No.1-Appellant herein i.e. owner-cum-driver of offending vehicle, submitted his reply to claim application and pleaded that on the date of accident appellant was possessing valid & effective license and offending vehicle was fully insured with respondent No.5- Insurance Company.
4. Non-applicant No.2/respondent No.5- Insurance Company submitted its reply stating that on the date of accident about 12 persons were travelling in the offending vehicle i.e. an open

goods carriage vehicle, and further driver of offending vehicle was not having valid and effective driving license. Thus, there was violation of conditions of insurance policy and therefore, the insurance company is not liable to indemnify the insured. It was also pleaded that claim made by claimants is highly exaggerated.

5. On appreciation of pleadings and evidence on record, the Claims Tribunal allowed claim application in part and awarded compensation of Rs.13,59,466/- along with interest @ 6% p.a., exonerated insurance company on the ground of breach of terms and conditions of insurance company and saddled liability of payment of compensation on the owner of offending vehicle.
6. Learned counsel for appellant-owner submits that deceased was travelling in the vehicle along with his goods. Another claim case arising out of same accident was decided by learned Motor Accident Claims Tribunal, Balod holding insurance company liable to indemnify insured. In support of submissions, reliance is placed on the judgment delivered in Lakhmi Chand Vs. Reliance General Insurance reported in AIR 2016 SC 315 & Smt. Kamla Bai v. Tej Singh & ors reported in 2014 (1) CGLJ 374.
7. Learned counsel appearing on behalf of respondent No.5 Insurance Company would submit that in the given facts and circumstances of the case, the Claims Tribunal has rightly exonerated insurance company of its liability and fastened the same on appellant herein, which needs no interference by this

Court as the offending vehicle was being driven in violation of policy conditions by carrying passengers in a goods carriage vehicle. At the time of accident, no goods was found in offending vehicle, as pleaded in application. No premium was taken by insurance company for covering risk of passengers travelling in offending vehicle, which is a goods carriage vehicle, and therefore there is no liability of insurance company to indemnify insured with respect to award passed in favour of claimants on account of death of a passenger travelling in offending vehicle.

8. Learned counsel appearing on behalf of claimants/ respondents No.1, 2 & 4 submits that impugned award is passed after due appreciation of oral & documentary evidence available on record and that the Claims Tribunal has rightly assessed income of deceased as well as dependency. and awarded just compensatin. Hence, interference in the award is not called for.
9. I have heard learned counsel for parties and perused records.
10. Perusal of record would show that initially the Claims Tribunal passed an award on 31.3.2009 which was challenged by insurance company before this Court on the ground that ex-parte award was passed against it. This Court vide order dated 29.9.2011 set aside award dated 31.3.2009 and remanded back the matter to the Claims Tribunal for deciding claim application afresh after providing opportunity of hearing to all the parties, to amend pleadings, adduce evidence and further evidence.

11. Report of accident was lodged with the concerned police station within one hour & forty five minutes by Pramod Potai (AW-2) mentioning therein that due to rash and negligent driving by driver of offending vehicle, it turned turtle on the side of road resulting in death of Sahnu Ram and injuries to Santosh Pal, Mangaram, Uttam Dutta etc. FIR was marked as Ex.P-2. In FIR (Ex.P-2) & Final Report (Ex.P-1) deceased Sahnu Ram was shown to be a passenger travelling in offending vehicle along with others, however, there is no whisper or mention that they were travelling with goods in the offending vehicle. On the date of accident itself, offending vehicle was seized by police from the spot vide seizure memos of Ex.P-5 & P-6 and even in these documents also there is no mention that any goods was seized from the vehicle. Thus, from perusal of documents available on record i.e. Ex.P-1, P-2, P-5 & P-6, it is clear that though on the date of accident deceased Sanhu Ram was travelling in offending vehicle but not with his goods, as claimed by claimants, else the police personnel would have certainly seized goods/articles along with offending vehicle and would have mentioned said fact in seizure memos and the same fact must have also been narrated in FIR when it was lodged by one of the passengers and co-employee of institution.
12. Appellant- owner entered into witness box and stated that deceased was travelling in offending vehicle for safety and security of his loaded goods. He also admitted that deceased was working as Manager in Bamboo Art, Narayanpur and

going to attend art fair. He also stated that he has not taken any fare from deceased or other persons travelling in offending vehicle. Once it is admitted that deceased was travelling in a goods vehicle then burden was on the appellant/owner to prove the defence taken by him in pleadings by producing cogent and reliable piece of evidence. Appellant has neither pleaded in reply that the deceased was travelling on vehicle for safety of goods nor placed any evidence in support of his case and even failed to controvert contents of documents Ex.P-2 & Ex.P-3. In view of above evidence and material available on record, the argument advanced by learned counsel for appellant is not sustainable.

13. Issue of passenger travelling in goods vehicle was considered by Hon'ble Supreme Court in the matters of **New India Assurance Co. Ltd. v. Asha Rani & ors** reported in **(2003) 2 SCC 223** and held as under:-

“23.The applicability of the decision of this Court in *Mallawwa v. Oriental Insurance Co. Ltd.* in this case must be considered keeping that aspect in view. Section 2(35) of the 1988 Act does not include passengers in goods carriage whereas Section 2(25) of the 1939 Act did as even passengers could be carried in a goods vehicle. The difference in the definitions of “goods vehicle” in the 1939 Act and “goods carriage” in the 1988 Act is significant. By reason of the change in the definitions of the terminology, the legislature intended that a goods vehicle could not carry any passenger, as the words “in addition to passengers” occurring in the definition of goods vehicle in the 1939 Act were omitted. Furthermore, it categorically states that “goods carriage” would mean a motor vehicle constructed or adapted for use “*solely* for the carriage of goods”. Carrying of passengers in a “goods carriage”, thus, is not contemplated under the 1988 Act.

26. In view of the changes in the relevant provisions in the Act 1988 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 part". 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."

14. In the matter of **National Insurance Co. Ltd. v. Baljit Kaur & ors** reported in **(2004) 2 SCC 1** similar issue was again considered by Hon'ble Supreme Court and held thus:-

"17. By reason of the 1994 amendment what was added is "including owner of the goods or his authorised representative carried in the vehicle". The liability of the owner of the vehicle to insure it compulsorily, thus, by reason of the aforementioned amendment included only the owner of the goods or his authorised representative carried in the vehicle besides the third parties. The intention of Parliament, therefore, could not have been that the words "any person" occurring in Section 147 would cover all persons who were travelling in a goods carriage in any capacity whatsoever. If such was the intention, there was no necessity of Parliament to carry out an amendment inasmuch as the expression "any person" contained in sub-clause (i) of clause (b) of sub-section (1) of Section 147 would have included the owner of the goods or his authorised representative besides the passengers who are gratuitous or otherwise.

20. It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of an goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people."

15. If we consider facts of present case in the light of above law laid down by Hon'ble Supreme Court, from the facts of case at hand it is evident that claimants failed to prove by placing

cogent evidence and material on record that at the time of accident the deceased was travelling along with his goods. Contents of FIR and other documents of criminal case show that at the time of accident there was about 11 passengers travelling in offending vehicle. Therefore, it is clear that the deceased was not travelling on the vehicle along with goods for its safety but material available on record suggests that he was travelling as passenger along with other passengers. Since the deceased was travelling as a passenger in the offending vehicle, it is not the liability of insurance company to satisfy the award.

16. In view of above, the appeal being devoid of any substance is liable to be dismissed and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/