

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 236 of 2012

- The Oriental Insurance Company Limited, Registered & Head Office, Rajnandgaon, Near LIC Office, Station Road, Rajnandgaon, District Rajnandgaon (C.G.)

---- Appellant/Insurer/Non-applicant No.3

Versus

1. Mangotin Bai, Wd/o Late Bisnath Gond, aged about 40 years by Caste-Gond
2. Narad S/o Late Bisnath Gond, aged about 19 years
3. Narendra S/o Late Bisnath Gond, aged about 15 years
4. Ku. Nandni, D/o Late Bisnath Gond, aged about 12 years

Minor 3 & 4 through guardian mother Mangotin Bai (Respondent No.1)

All are R/o Village Dhobedand Darratola, Tahsil Balod (Doundi), District Durg (C.G.)

(Claimants)

5. Komal Rawte S/o Ram Singh Rawte, aged about 29 years, R/o Village-Niyogipara, (Bhagolipara) Dallirajhara, Tahsil Balod, Up-Tahsil Dallirajhara, District Durg (C.G.)

(Non-applicant No.1/Driver)

6. Smt. Gomti Bai W/o Bhanwar Singh, aged about 40 years, R/o Kacche Dafai, Dallirajhara, Tahsil Balod, Up-Tahsil Dallirajhara, District Durg (C.G.)

(Non-applicant No.2/Owner)

---- Respondents

For Appellant	:	Shri Raj Awasthi, Advocate
For Respondents 1 to 4	:	Shri Amit Sahu, Advocate
For Respondents 5 & 6	:	None

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

24.04.2019

1. Being aggrieved with the award dated 09.12.2011 passed in Claim Case No. 181 of 2011 by the Additional Motor Accident Claims Tribunal, Balod, District Durg (C.G.), the Appellant/Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the liability fastened upon it.
2. Facts of the case, in brief, are that on 25.03.2009 deceased- Bisnath was sitting as labour (*Hammal*) in the offending vehicle Truck-Tipper bearing registration No. CG-07/ZC/3515 which was being driven by non-applicant No.1, owned by non-

applicant No. 2 and insured with non-applicant No.3. The said offending vehicle was going from Dallirajhara to Doundilohara, non-applicant No.1 driving the said vehicle in a rash and negligent manner, turned it turtle on the way near Shikaritola main-road, as a result thereof, Bisnath sustained grievous injuries and later on, died.

3. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.3,90,000/- in favour of the Claimants with interest @ 6% per annum from the date of filing of the application till realization and fastened the liability upon the non-applicant No. 3 along with non-applicant No.1 and 2 to pay compensation jointly and severally.

4. Learned counsel for the Appellant/Insurance Company submits that the deceased was travelling in the offending vehicle which was heavy goods vehicle and near about 50-55 persons were travelling for attending Mukti-Morcha rally and they were gratuitous passengers, therefore, no risk of such person is covered by the Insurance Company. He further submits that the offending vehicle is goods carrying vehicle and there is no permit for carrying passengers and there is specific breach of policy conditions by the owner and no premium has been taken by the Insurance Company for gratuitous passenger. He also submits that as per F.I.R. (Ex.-P/2) lodged by Vishram Singh, the deceased was going to attend rally organized by Mukti-Morcha and Vishram Singh also mentioned that near about 50-55 persons along with deceased were sitting in the offending vehicle for attending rally, therefore, the Tribunal has wrongly fastened the liability on the Insurance Company. In support of above contention reliance has been placed on the decision of the Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. Vs. Rattani and Others, 2009 (1) T.A.C. 420 (S.C.)**.

5. On the other hand, learned counsel for Respondents 1 to 4 opposes the contention made by the learned counsel for the Appellant and as per pleadings of the Claimants from beginning the deceased was working as labour in the offending vehicle and this fact was admitted by the owner/non-applicant No.2 in para-8 of her

written statement. As per evidence adduced by the Claimants, the Claimants examined three witnesses namely Mangotin Bai as AW-1, Mohan as AW-2 and Jaduram as AW-3 and all the witnesses have stated that the deceased was working as labour in the offending vehicle. No contrary evidence has been adduced by the Insurance Company except NAW-1 Shanturam Sahu who was not an eye-witness to the incident and he admitted this fact that he cannot say as to how many passengers were sitting in the offending vehicle. Further, the scribe of the F.I.R. was not examined by the Insurance Company, therefore, the owner has duly proved this fact that the deceased was working as labour in the offending vehicle and there is no substance in this appeal.

6. Heard the learned counsel for the parties and perused the impugned award including the records of the Claims Tribunal.

7. In *Rattani* case (supra), the Honb'le Supreme Court said regarding burden of proof that first information report itself made a part of claim petition. There cannot be any doubt that same can be looked into and admission made in pleadings inadmissible in evidence *proprio vigore*. Witnesses examined by claimants stated that about 30-40 persons were travelling in Tempo truck and all 30-40 persons could not have been representatives of owners of goods. Tribunal as also High Court committed a serious error in opining that Insurance Company was liable and since the victims of accident were travelling in truck as gratuitous passengers, Insurance Company is not liable to pay amount of compensation to the claimants.

8. But, in the present case, it was proved by the Claimants and owner of the offending vehicle that the deceased was working as labour in the offending vehicle and the Insurance Company has not adduced any evidence that the deceased was gratuitous passenger in the offending vehicle. Therefore, the judgment relied upon by the Insurance Company in the matter of *Rattani* (supra) is of no help to the Insurance Company.

9. It is not disputed that the offending vehicle was being driven rashly and negligently by non-applicant No.1, owned by non-applicant No.2 and insured with

non-applicant No.3. The specific pleading made by the Claimants that the deceased was working as labour is admitted by the owner of the offending vehicle and also witnesses of the incident namely Mangotin Bai as AW-1, Mohan as AW-2 and Jaduram as AW-3 which supported the contention as pleaded by the Claimants that the deceased was working as labour in the offending vehicle. As per ocular evidence adduced by the Claimants and the evidence of the owner of the offending vehicle, it has been proved that the deceased was working as labour under her employment. Definitely F.I.R. (Ex.-P/2) has been proved by the Claimants, but the author of the F.I.R. and lodger of the F.I.R. were not examined and on the basis of Ex.-P/3 Dehatinalishi, the F.I.R. was lodged. As per Ex.-D/1, insurance policy covers risk of 1+1 persons. No any evidence adduced by the Insurance Company that the deceased was not working as labour in the offending vehicle and was gratuitous passenger, therefore, the Tribunal has rightly fastened the liability upon the Insurance Company.

10. In the result, the appeal being without any substance is liable to be dismissed and is accordingly dismissed.

11. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge