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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 714 of 2017

- M/s Banke Bihari Industries, Proprietor Santosh Kumar, S/o Late. Dwarka Prasad, aged about 41 years, R/o-M/s Banke Bihari Industries, Vidhan Sabha Road, Sakri, Raipur, Post Office & Police Station- Vidhan Sabha, Raipur, Tahsil & District- Raipur (C.G.) (Non-applicant No. 2) (Registered owner of the vehicle Tata bearing registration No. C.G. 04/JB/9258),

---- Appellant

Versus

1. Durjan Gendre, S/o Thakur Ram Gendre, aged about 42 years,
2. Smt. Jamuna Bai Gendre W/o Durjan Gendre, aged about 46 years,
3. Bedram Gendre S/o Thakur Ram Gendre, aged about 22 years,

   (1 to 3 are claimants/ applicants)

   All R/o- Village- Pangaon, Post Office- Pangaon, Police Station- Balodabazar, District- Balodabazar- Bhatapara (C.G.).

4. Sanjay Rai Bangali, S/o Santosh Rai Bangali, aged about 28 years, R/o- Village- Sakri Vidhan Sabha Road, Raipur, Police Station & Post Office- Vidhan Sabha, District- Raipur (C.G.)(Non-applicant No. 1) (Driver of vehicle Tata bearing registration No. C.G.04/JB/9258),
5. The New India Assurance Company Ltd., Through Divisional Manager (Division No. 2), Tahsil & District- Raipur (C.G.) (Non-applicant No. 3) (Insurer of Vehicle Tata bearing registration No. C.G.04/JB/9258)

---- Respondents

For Appellant : Shri Rajkumar Pali, Advocate.
For Respondent Nos 1 to 3 : Shri Vikash Shrivastava, Advocate on behalf of Shri Arvind Shrivastava, Advocate
For Respondent No. 4. : None
For Respondent No.5 : Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

01/04/2019:

This appeal is filed by the Non-applicant No. 2/owner of the offending vehicle under Section 173 of the Motor Vehicles Act, 1988 (in short "the Act") challenging the award dated 30th January, 2016 passed by 7th Additional Motor Accident Claims Tribunal, Raipur in Claim Case No. 87/2013, awarding compensation of Rs.4,97,500/- in favour of claimants with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant No.2/owner while exonerating non-applicant No.3/insurance company of its liability.

02. As per averments in the claim petition, when on 05.09.2012 at around 3.00 pm Om Prakash Gendre (since deceased) was traveling in the offending vehicle (Tata) bearing registration No. CG.04/JB/9258, near Saddu MGM Hospital, non-applicant No. 1- Sanjay Rai Bangali, while driving the offending vehicle rashly and negligently, dashed the divider of the road, as a result of which door of the offending vehicle opened and deceased Om Prakash Gendre thrown out from the vehicle and thereafter died on the spot.

03. On a claim petition being filed by the claimants, who are unfortunate parents and uncle of deceased – Om Prakash Gendre, 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 appellant/owner submits that at the time of accident, deceased was sitting in the cabin and premium was taken by the Insurance Company for six persons sitting in truck therefore, Claims Tribunal has committed legal error in exonerating the respondent No. 5/Insurance Company from its liability to pay compensation to the claimants only on the ground that the deceased was not sitting in a cabin of Truck but

was sitting in the “Dala”.

05. Learned counsel for the claimants/respondent Nos. 1 to 3 supported the award.

06. On the other hand, learned counsel for the Respondent No. 5/ Insurance Company while supporting the impugned award submits that as per complete charge sheet filed before concerned Judicial Magistrate in criminal case No. 257/2012, it is apparent that the deceased was sitting in the offending vehicle and he fell down from it and due to which, he died on the spot. He submits that as per final report (Ex. P/1), First Information Report (Ex.P-2), dehati Nalisi (Ex.P-3), Merg intimation (Ex.P-4), Naksha Panchnama (Ex. P/6) and the statement of Sunil Chelak (AW-2), it is evident that the deceased was sitting in the “Dala” of the offending vehicle and, therefore, as per insurance policy his risk was not covered. Therefore, learned Tribunal has rightly exonerated the Insurance Company from its liability to pay compensation to the claimants.

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

08. In this case, claimants have also filed misc. appeal, being MAC No. 1686/2016, seeking enhancement but that appeal was dismissed by this Court vide order dated 01.02.2017 for the reason it was filed after an inordinate delay of 194 days and no other appeal filed by other claimant.

09. It is not in dispute that on the date of accident the deceased was trevelling in the offending vehicle as a gratuitous passenger and died due to rash and negligent driving of the said vehicle by non-applicant No. 1 it is also not in dispute that at the relevant time the offending vehicle was duly ensured with the non-applicant No. 3 as per insurance policy (Ex.D/5). From the perusal of the insurance policy, it is seen that the Insurance Company had

taken premium of Rs. 6588/- towards own damage (OD) and premium of Rs. 11940/- towards basic TP coverage. As per NAW No. 02 Satendra Kumar Aahuja examined on behalf of the Insurance Company any person who is sitting outside the cabin in the vehicle is not covered under the insurance policy. According to NAW No. 01 Ashok Kumar Bhosle the vehicle in question is goods vehicle the driver and any person sitting in the vehicle over the goods amounts to violation of the provisions of the Motor Vehicle Act. As per final report, FIR, Dehati merg intimation spot map etc. and the evidence of NAW No. 2- Parashuram Sahu it is clear that on the date of accident the deceased was not sitting in the cabin of the vehicle but was sitting in the Dala. The claimant was pleaded that the deceased was sitting in the cabin of the offending vehicle but no evidence to substantiate the same has been adduced by the claimant or non-applicant No. 1 & 2.

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. 1 & 2 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. 3.

11. In view of foregoing, appeal, being devoid of merit, is liable to be and is hereby dismissed.

Sd/-

(Gautam Chourdiya)
Judge

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