NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 799 of 2013

The Oriental Insurance Company Limited Bilaspur, Distt. Bilaspur C.G., Chhattisgarh

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

VERSUS

1. Smt. Bhagmati Bai W/o Late Kalam Prasad Patle Aged About 48 Years R/o Birgaon, P.S. And Tah. Mungeli, Distt. Bilaspur C.G.

2. Ajay Kumar Patle S/o Late Kalam Prasad Patle Aged About 22 Years R/o Birgaon, P.S. And Tah. Mungeli, Distt. Bilaspur C.G.

(Claimants)

3. Dinesh Kumar Gurjar S/o Shivnarayan Gurjar R/o Fadwaniya, P.S. Gourela Pendra, Tah. And Distt. Bilaspur, Chhattisgarh

4. Satyanarayan Yadav S/o Kunjbihari Yadav R/o Post R. Tharpathra, Village-Pendra, Tah. And Distt. Bilaspur, Chhattisgarh

-------**Non-applicants No. 1 & 2**

For Appellant	:	Mr. Pankaj Agrawal, Advocate
For Respondent No. 1&2	:	Mr. C.P. Lahrey, Advocate.
For Respondent No. 3&4	:	Mr. Ritesh Verma, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgement on Board

16/08/2019

1. This appeal has been filed under Section 173 of the Motor Vehicles Act challenging the impugned award dated 24-06-2013 passed by Additional Motor Accident Claims Tribunal, Mugeli, District Bilaspur C.G. in claim case No. 102/2011, whereby the learned Claims Tribunal allowed the claim application in part, awarded a total sum of Rs. 3,75,000/- along with interest @ 6% as compensation and fastened the liability for payment of amount of compensation on Insurance Company.

2. Brief facts relevant for disposal of this appeal are that on 04-03-2010 at about 05:00 PM, Kalam Prasad Patle was traveling on auto-rickshaw bearing Number

M.P. 18-L-0212 and going to village Gorela from village Pakariya. On the way, the said auto-rickshaw got overturned and met with an accident. In the aforementioned accident, Kalam Prasad Patle suffered grievous injuries and succumbed to those injuries on the spot. Matter was reported to concerned police station. Claimants/respondent No. 1 & 2 filed claim application for seeking compensation to the tune of Rs. 31,50,000/- from the non-applicants.

3. Non-applicants No. 1 & 2, who are the driver and owner of the offending vehicle respectively, submitted their reply to claim application and pleaded that the accident did not occur due to negligence on the part of respondent No. 3/non-applicant No. 1-driver of offending vehicle. They further pleaded that non-applicant No. 2-owner of offending vehicle was having valid permit, registration and also effective insurance policy and therefore the liability, if any, would be on insurance company i.e. non-applicant No. 3.

4. Non-applicant No.3 -Insurance Company submitted its reply and denied all the adverse pleadings made against it and pleaded that on the date of accident, the vehicle was not having valid permit, fitness and registration certificate and therefore it was not having any liability for payment of any amount of compensation.

5. Learned Claims Tribunal on the basis of pleadings and evidence placed on record by respective parties has held that the accident took place due to rash and negligent driving by driver of offending vehicle i.e. non-applicant No. 1. The vehicle was not driven in violation of conditions of insurance policy and awarded a total sum of Rs. 3,75,000/- as compensation alongwith interest @ 6% p.a. from the date of filing of application till its realization.

6. Learned counsel for appellant/insurance company submits that the learned Claims Tribunal recorded finding contrary to the evidence of NAW 1 & 2 wherein they have specifically stated that on the date of accident, offending vehicle was not having a valid permit issued by the competent authority. He

also submits that the offending vehicle was registered as passenger vehicle and insurance company has also issued insurance policy as three-wheelers passenger carrying vehicle, but the Claims Tribunal erred in not considering the contents of Ex. D-4 and held that appellant/insurance company failed to prove that there is violation of any of the conditions of insurance policy.

7. Learned counsel for respondent No. 1 & 2/claimants supported the award passed by the learned Claims Tribunal.

8. Learned counsel for respondent No. 3 & 4 submits that the Claims Tribunal after considering the document Ex.D-4 has rightly held that insurance company has failed to prove that there is violation of conditions of insurance policy.

9. I have heard learned counsel for the parties and perused the material available on record.

10. The only question raised by the learned counsel for appellant-insurance company is that offending vehicle/auto-rickshaw was insured as 'passenger carrying vehicle' and to ply offending vehicle on road, a permit is necessary.

11. Section 66 of the Motor Vehicles Act, 1988 (referred to as 'the Act, 1988) provides for necessity for permits, Section 66(1) of the Act, 1988 is reproduced herein below for ready reference:-

> “**66. Necessity for permits.- (1)** No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used:
>
> Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage:
>
> Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods

> carriage either when carrying passengers or not:
>
> Provided also that goods carriage permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use of the vehicle for the carriage of goods for or in connection with a trade or business carried on by him."

12. Sub-section 1 of Section 66 of the Act, 1988 clearly provides that no owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place without the permit granted by the any prescribed authority, Section 2(28) of the Act, 1988 defines the motor vehicle. The definition of the motor vehicle is reproduced herein below for ready reference:-

> **"2. Definitions.-** In this Act, unless he context otherwise requires,-
>
> (28) "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not bee attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted fro use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding [twenty-five cubic centimeters];"

13. In the insurance policy, which is placed on record as Ex.D-1, it has been mentioned under the heading 'Limitation as to use', *that the policy covers use only under a permit within the meaning of the Act, 1988 or such a carriage falling under sub-section 3 of Section 66 of the Act, 1988.* Further perusal of insurance policy reveals that this policy has been issued for the <u>vehicle carrying passenger</u>. Respondent No. 3 & 4 driver and owner of the offending vehicle, in their reply, have not made any specific pleading with respect to the permit.

14. Evidence of NAW-2 Mahesh Pratap Singh, who is Assistant Grade-3 working with Regional Transport Office, Shahdol, in very specific terms stated that as per the office records, no permit has been issued in favour of the offending vehicle. Learned Claims Tribunal has only considered Ex.D-4 in which there is

mentioned about the Rule 106 of the Chhattisgarh Motor Vehicles Rules, 1994 which provides for installation of taxi meters only, it does not provide with respect to issuance of the permit of other vehicle**.** In the matter of ***National Insurance Co. Ltd. v. Challa Bharathamma and others*** reported in (**2004) 8 SCC 517** the deceased was traveling in an auto-rickshaw and met with an accident, which was plied on road without any permit and in those circumstances the Hon'ble Supreme Court has held as under:

> "12. The High Court was of the view that since there was no permit, the question of violation of any condition thereof does not arise. The view is clearly fallacious. A person without permit to ply a vehicle cannot be placed on a better pedestal vis-a-vis one who has a permit, but has violated any condition thereof. Plying of a vehicle without a permit is an infraction. Therefore, in terms of Section 149(2) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication. The question of policy being operative had no relevance for the issue regarding liability of the insurer. The High Court was, therefore, not justified in holding the insurer liable."

15. In the case at hand also, admittedly, there is no valid permit for use of offending vehicle and thus learned Claims Tribunal committed error in holding that the insurance company is liable for payment of amount of compensation.

16. In the aforementioned facts and circumstances, when, once there is a valid and effective insurance policy on the date of accident and if there is violation with respect to the permit only, then the insurance company would be liable to first pay the amount of compensation and then to recover the same from the registered owner. Issue with respect to violation of conditions of insurance policy on account of not having valid permit at the time of accident has been considered by the Supreme Court in the matter of ***Amrit Paul Singh and another v. Tata AIG General Insurance Company Limited and others*** reported in **(2018) 7 SCC 558** Hon'ble Supreme Court while dealing with similar issue has held thus:-

> "We are disposed to think so in view of the

> series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh (supra) and Lakhmi Chand (supra) in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the "Tripitaka", that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the tribunal as well as the High Court had directed the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh (supra) and other cases pertaining to pay and recover principle."

17. Other relevant judgments in ***Manuara Khatun and others v. Rajesh Kumar Singh and others*** and ***Mamoni Saikia Mohanty and others v. Rajesh Kumar Singh and others*** reported in **(2017) 4 SCC 796**, the Hon'ble Supreme Court held thus:-

> "19. We find no merit in any of the submissions. Firstly, as mentioned above, we find marked similarity in the facts of this case and the one involved in National Insurance Co. Ltd. v. Saju P. Paul, (2013) 2 SCC 41. Secondly, merely because the compensation has not yet been paid to the claimants though the case is quite old (16 years) like the one in Saju P. Paul's Case (supra), it cannot be a ground to deny the claimants the relief claimed in these appeals. Thirdly, this Court has already considered and rejected the argument regarding not granting of the relief of the nature claimed herein due to pendency of the reference to a larger Bench as would be clear from Para 26 of the judgment in Saju P. Paul's Case (supra). That apart, learned counsel for the appellants stated at the bar that the reference made to the larger Bench has since been disposed of by keeping the issue undecided. It is for this reason also, the argument does not survive any more.

> 21. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Co. Ltd. (respondent No. 3) - they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Co. Ltd. respondent No.3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo)-respondent No.1 in execution proceedings arising in this very case as per the law laid down in Para 26 of Saju P. Paul's case quoted supra.
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> 22. Accordingly, the appeals succeed and are allowed. Impugned order is modified to the extent that respondent No. 3-United India Insurance Company Ltd. is accordingly directed to pay the awarded sum to the appellants (claimants). Thereafter respondent No. 3 - United India Insurance Company Ltd. would be entitled to recover the entire paid awarded sum from the owner (insured) of the offending Vehicle (Tata Sumo)-respondent No.1 in these very proceedings by filing execution application against the insured."

18. For the foregoing discussion, the appeal is allowed in part, and Impugned award is modified to the extent that Insurance Company is exonerated and now respondent No. 4 will be liable to pay amount of compensation to the claimants. However, in view of the above facts and circumstances and in the light of aforementioned judgment of the Supreme Court, though insurance company is not having any legal liability to pay amount of compensation to claimants, but the insurance company shall first pay the amount of compensation to the claimants and then recover the same from the respondent No. 4/owner of the offending vehicle, in the manner as provided by the Supreme Court in the matter of ***Oriental Insurance Co. Ltd. v. Nanjappan*** reported in **AIR 2004 SC 1631.** Rest of conditions imposed by Claims Tribunal shall remain intact.

Sd/-
(Parth Prateem Sahu)
Judge

Pawan