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HIGH COURT OF CHHATTISGARH, BILASPUR
M. A. (C) No. 642 of 2013

United India Insurance Company Limited, through its Divisional Manager, Divisional Office, Guru Kripa Tawars Vyapar Vihar Road, Bilaspur, Distt.-Bilaspur (C.G.).

---- Appellant

Versus

1. Dharmpal S/o Late Ram Sunder, aged 40 years,
2. Smt. Shanti, W/o Dharmpal, aged 35 years,

   Both are by Caste-Rajwar, R/o Gonda, P.S. Pratappur, Distt.-Surguja (C.G.).
3. Narayan Singh Yadav, S/o Ramsai Yadav, aged 21 years, R/o Kalyanpur, P.S. Ambikapur, Distt. Surguja (C.G.).
4. Devnarayan Yadav, S/o Jagdev Yadav, aged 40 years, R/o Ambikapur, Distt.-Surguja (C.G.) through Narayan Singh Yadav (Respondent No.3), R/o Kalyanpur, P.S. Ambikapur, Distt. Surguja (C.G.).
5. H.S. Chhabda, S/o Late Gurubachan Chhabda, aged 35 years, R/o Bhelaikhurd, Tah.-Raipur, Distt. Surguja (C.G.).
6. Rajendra Singh, S/o Atalsai, aged 26 years, R/o Amdipara, P.O. Aara (Balrampur), Tah.-Rajpur, Distt.-Surguja (C.G.) through Respondent No.5 H.S. Chhabda.
7. Branch Manager, The Oriental Insurance Company Limited, Ambikapur, Distt.-Surguja (C.G.).

---- Respondents

For Appellant	: Mr. Dashrath Gupta, Advocate
For Respondents No. 1 & 2	: Mr. Sushil Dubey, Advocate
For Respondents No. 3 & 4	: Ms. Priyanka Mehta on behalf of Mr. Manoj Paranjpe, Advocate
For Respondent No.5 & 6	Mr. Amrito Das, Advocate
For Respondent No.7	: Mr. N. K. Malviya, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

03/05/2019

1. This appeal has been filed by appellant/Insurance Company under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as

M.V. Act') challenging the legality, validity and propriety of impugned award dated 18/03/2013 passed by First Additional Motor Accident Claims Tribunal, Ambikapur, Surguja (C.G.) (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.97/2011, whereby learned Claims Tribunal allowed the claim application in part filed by claimants and awarded a total sum of Rs.2,00,000/- as compensation in a death case.

2. Brief facts for disposal of this appeal are that Sakuntala, aged about 16 years, was travelling on a Jeep bearing registration No. CG-15-ZD-1630 (hereinafter referred to as 'offending Jeep') along with other persons. The said Jeep met with an accident near Chandni Chouk Mayapur and dashed with Tractor and Trolley bearing registration No.CG-15-A-5961 and CG-15-A-5962 respectively. In the aforementioned accident, Sakuntala and Phoolmat died.

3. Claimants who are parents of deceased filed claim application under Section 166 of the M.V. Act' before the competent Claims Tribunal for grant of compensation claiming Rs.13,57,000/- mentioning therein that on the date of accident, deceased was earing Rs.3,000/- per month and after death of Sakuntala, they were deprived of income earned by deceased Sakuntala.

4. Respondents No. 3 and 4 who are owner and driver of offending Jeep submitted reply to the claim application and pleaded that driver of offending Jeep was driving his vehicle with caution, but it is driver of Tractor Trolley who while driving his vehicle rashly and negligently,

dashed the offending jeep. It was further pleaded that on the date of accident, driver of offending Jeep, namely, Devnarayan Yadav was possessing valid and effective driving licence to drive the vehicle.

5. Appellant/Insurance Company submitted separate reply to the claim application and pleaded that offending Jeep was being insured for private use, but on the date of accident, offending Jeep is being used for commercial purpose i.e. for carrying passengers on fare. It was further pleaded that at the time of accident, it was carrying passengers more than its seating capacity, therefore, there was violation of conditions of insurance policy. It was lastly pleaded that accident took place due to rash and negligent act of driver of Tractor Trolley.

6. Respondents No.5 and 6 who are owner and driver of Tractor Trolley submitted reply to the claim application and pleaded that accident took place due to rash and negligent act of driver of offending Jeep and at the time of accident, Tractor Trolley was parked by its driver, 6-7 feet down the road on left side. It was further pleaded that driver of Tractor went to answer the nature's call, at that relevant time, accident took place, on the date of accident, Tractor Trolley was insured with respondent No.7 and owner of Tractor Trolley paid the premium of insurance to the authorized agent of Insurance Company on 22/04/2008 and also obtained receipt of amount of payment made against premium.

7. Respondent No.7/Insurance Company of Tractor Trolley submitted separate reply to the claim application and pleaded that it has not insured the Tractor Trolley nor received any amount of premium. Insurance Company has denied the receipt dated 22/04/2008 with respect to payment of amount of premium.

8. On the basis of aforementioned pleadings made by respective parties, learned Claims Tribunal framed six issues for consideration and after recording evidence of respective parties held that offending Jeep was insured with appellant/Insurance Company as a private car and arrived at a finding that due to rash and negligent driving of the driver of offending Jeep, accident took place. It has been further held that policy taken by the owner of the offending Jeep was 'Liability only Policy' and it covers the risk of third party. The premium was paid towards Basic T.P. and Compulsory P.A. to owner and driver. It was also held that as offending Jeep was insured against third party and appellant/Insurance Company failed to prove that passengers were travelling after making payment of fare and not as gratuitous passengers, therefore, occupants of offending vehicle will be treated as third party and appellant/Insurance Company was held liable to make payment of amount of compensation. It was further held that as the driver of offending Jeep only found to be rash and negligent in the accident, therefore, non-applicants No.1 to 3 were made liable for payment of amount of compensation and not to owner, driver and Insurance Company of Tractor Trolley i.e. non-applicants No.4 to 6.

9. Learned counsel appearing for appellant/Insurance Company submitted that offending Jeep was insured as private car, but at the time of accident, it was found that the said Jeep was carrying passengers and no amount of premium was paid for covering risk of passengers/occupants of the vehicles, therefore, Insurance Company is not liable to pay any amount of compensation. He further submitted that the policy covers risk of third party only. He also submitted that on the date of accident, there was breach of terms and conditions of insurance policy, therefore, Insurance Company is not liable to indemnify the amount of compensation. He lastly submitted that learned Claims Tribunal has held that it is only negligence of driver of offending Jeep, whereas accident occurred between two vehicles, in such cases, both vehicles are jointly and severally liable for payment of amount of compensation against death or bodily injury suffered by any of the occupants of the vehicle.

10. Per contra, learned counsel appearing for respondents No.1 and 2 supported the award and submitted that learned Claims Tribunal after considering the material and evidence available on record has rightly fastened the liability upon appellant/Insurance Company as well as respondents No.6 and 7 to pay the compensation and it does not call for any interference.

11. Learned counsel appearing for respondents No.3 and 4 supported the impugned award and in alternate submitted that if the Court finds

that there is violation of conditions of insurance policy then direction for pay and recover may be ordered.

12. Learned counsel appearing for respondents No.5 and 6 who are owner and driver of Tractor Trolley submitted that argument raised by learned counsel for the appellant is not sustainable in view of specific evidence of witness, namely, Jagdev (AW-2) who is said to be one of the occupants of offending Jeep, which met with an accident. He further submitted that Jagdev (AW-2) specifically stated in his evidence that it is the driver of offending Jeep who dashed his vehicle with Tractor Trolley. He lastly submitted that in view of specific evidence available on record, learned Claims Tribunal has rightly passed the impugned award holding that respondents No.3 and 4 as well as appellant/Insurance Company are jointly and severally liable for payment of amount of compensation.

13. Learned counsel appearing for respondent No.7/Insurance Company of Tractor Trolley adopted the argument raised by learned counsel appearing for respondents No. 5 and 6 and submitted that learned Claims Tribunal has rightly held that accident took place due to sole negligence of driver of offending Jeep, therefore, respondent No.7/Insurance Company is not liable for payment of any amount of compensation.

14. I have heard learned counsel appearing for parties and perused the entire record carefully.

15. Undisputedly, deceased Shakuntala was travelling in offending Jeep and returning from one of the marriage ceremony. The offending Jeep met with an accident with Tractor Trolley. Jagdev (AW-2) in his statement categorically stated that when they were returning from village Aamadarha, at that relevant time, respondent No.3/driver of offending Jeep was driving its vehicle in a rash and negligent manner. In cross-examination, he stated that driver of offending Jeep dashed the Tractor Trolley, due to which accident took place. He denied the contents of First Information Report that he reported in such a manner as mentioned in the First Information Report. He further denied that while lodging the First Information Report, he mentioned that driver of Tractor Trolley by his rash and negligent driving, dashed the offending Jeep.

16. From aforementioned evidence of eyewitness Jagdev (AW-2), it is clear that he did not proof contents of the First Information Report. He stated that he had not made complaint as mentioned in First Information Report and it is the driver of offending Jeep who dashed the Tractor Trolley by his rash and negligent driving.

17. In view of above, learned Claims Tribunal has not committed any error in holding that accident took place due to composite negligence of respondent No.3/driver of offending Jeep.

18. So far as argument of learned counsel for appellant/Insurance Company that there was violation of conditions of insurance policy, therefore, Insurance Company is not liable for payment of any

amount of compensation or indemnify the risk of owner of offending Jeep is concerned, I have perused insurance policy (Ex. D-16), which is issued for a private car with an endorsement of 'Private Car Liability Only Policy'. The schedule of premium shows that Rs.2,500/- towards Basic Third Party, Rs.100/- towards Compulsory P.A. to owner, Rs.25/- towards Workman Compensation to one employee and Rs.1/- towards stamp duty and thereby total premium of Rs.2,625/- was paid by owner of offending Jeep to appellant/Insurance Company.

19. From perusal of insurance policy (Ex. D-16), it is apparent that no premium was paid to appellant/Insurance Company for occupants of vehicle according to its seating capacity. The insurance policy was proved by Danial Lakra (NAW(3)-4), Senior Assistant of appellant/Insurance Company, who stated in his statement that he exhibited the insurance policy and categorically stated that premium was paid by the owner towards basic T.P., P.A. to owner and driver only and no premium was paid towards occupants of the vehicle. No specific questions were put to him with respect to nature of policy.

20. From the above discussions and nature of policy purchased by owner of offending Jeep, it is clear that policy has been issued for 'Private Car Liability Only Policy' and no premium was paid with respect to occupants of the vehicle.

21. Perusal of evidence of Dharampal (AW-1) and Jagdev (AW-2) would show that they have not stated that offending Jeep was hired, but in

fact, Dharampal (AW-1) denied the suggestion given to him that offending Jeep was hired by Shivprasad from its owner and contrary to the same, appellant/Insurance Company failed to produce any evidence to support its case that at the time of accident, offending Jeep was being used for commercial purpose.

22. Now the question arises for consideration before this Court is whether occupants of the vehicle, in the facts of the case, are covered under the insurance policy (Exs. D-15 and D-16) or not ?

23. Undisputedly, the policy was issued for 'Private Car Liability Only Policy' and no premium was paid for occupants of the vehicle. The said policy is issued under the contract between owner and insurer to indemnify the risk of payment of certain amount of premium to cover a particular risk. In the instant case, there was no contract between owner and insurer to indemnify the risk against occupants/passengers of the vehicle, therefore, appellant/Insurance Company cannot be held liable to make payment of any amount of compensation as awarded by learned Claims Tribunal. Learned Claims Tribunal committed error in holding the occupants of vehicle as third party for the Jeep.

24. In view of above discussions, finding recorded by learned Claims Tribunal that appellant/Insurance Company is liable to satisfy the award treating occupants to be third party and liable under the policy being 'Liability Only Policy' covering risk of third party is set aside.

25. Learned counsel for respondents No.3 and 4 submitted that though in the eyes of law the appellant/Insurance Company may not be liable for payment of amount of compensation, but keeping in mind the beneficial object of M.V. Act, the Hon'ble Supreme Court in enn number of cases directed the insurer to first pay the amount of compensation and then to recover the same from the insured. She placed reliance in the matter of **Manuara Khatun and Others v. Rajesh Kumar Singh and Others[1].**

26. I have considered the submissions made by learned counsel for respective parties and also perused the judgment rendered by Hon'ble Supreme Court in the matter of **Manuara Khatun** (supra), wherein the claimants are legal representatives of deceased who was travelling on a Tata Sumo Jeep (private car), gratuitous passenger, which met with an accident.

27. From perusal of aforementioned judgment, it is not clear that whether owner of offending Jeep has paid an amount of premium for the occupants of vehicle or not.

28. Payment of premium covering risk of party i.e. owner, driver or occupants of vehicle will depend upon payment of amount of premium. The liability of Insurance Company is a contractual liability and Insurance Company can be held liable only when there is a contract to cover the risk of persons who are actually covered in the

1 **(2017) 4 SCC 796**

policy purchased by owner of vehicle and issued by Insurance Company.

29. In cases where the risk of occupants, driver and third party etc. are covered, but due to some violation of conditions of insurance policy like driver was not possessing valid and effective driving licence, no permit or private vehicle carrying passenger etc., then a direction can be issued to Insurance Company to first pay the amount of compensation and then to recover the same from the owner of vehicle as there was violation of conditions of insurance policy.

30. In the case at hand, policy which was issued for offending Jeep is Private Car Liability Only Policy and no premium was paid for the occupants. Since owner has not paid any amount of premium for the occupants, then in that case, there is no contractual relationship between owner and Insurance Company to cover risk of occupants.

31. There is no dispute that the accident took place between two vehicles i.e. Jeep and Tractor. Claimants are legal representatives of deceased, occupant of the Jeep, of which, appellant is insurer. As the deceased was not a driver of any of the two vehicles, but only occupant of one of the vehicles, then it is not required to look into as to driver of which vehicle was negligent. For deceased occupant, there was composite negligence on account of each wrong doers i.e. driver of both the vehicles. Even if one of the vehicles (Tractor) was standing stationary by the side of public road without lights. In the facts and circumstances of the case when the claimants are legal

representatives of deceased, occupant of one of the vehicles, there will be composite negligence of both the wrong doers.

32. The issue of involvement of two vehicles in an accident and deceased was not the driver of any of the two vehicle was observed by the Hon'ble Supreme Court in the matter of **T. O. Anthony v. Karvarnan and others**[2] and held thus:-

> “6. “Composite negligence” refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of

2 **(2008) 3 SCC 748**

> some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence.
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> 7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is, his contributory negligence. Therefore, where the injured is himself partly liable, the principle of “composite negligence” will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error.”

33. In view of above law laid down by Hon'ble Supreme Court, if the facts of the case is considered, it shows that deceased was only occupant

of one of the two vehicle involved in accident and not a driver and therefore, for the deceased, there was composite negligence of both the drivers of the vehicles. In the case at hand, driver, owner and insurer of both the vehicles are arrayed as party. There was no requirement to ascertain the negligency of the driver in the facts of the case, therefore, finding recorded by learned Claims Tribunal that accident took place due to sole negligence of non-applicant No.2 is not sustainable and is set aside.

34. Now, it is to be considered as who are liable for payment of the amount of compensation. As already held in preceding paragraphs that deceased was occupant of Jeep and no premium was paid for occupants while purchasing insurance policy (Ex. D-15). The policy is 'Liability Only Policy'. Appellant cannot be held liable for payment of amount of compensation as no amount of premium was paid for occupants. Learned Claims Tribunal had categorically recorded a finding in paragraph-46 of its award that Tractor Trolley was insured with non-applicant No.6/respondent No.7 (Oriental Insurance Company Limited) which was not challenged by respondent No.7.

35. In view of above finding and in the light of law laid down by Hon'ble Supreme Court, now respondents No.3 to 7 i.e. non-applicants No.1, 2, 4, 5 and 6 will be jointly and severally liable to pay the amount of compensation.

36. In the result, the appeal is allowed and impugned award dated 18/03/2013 is modified to the extent as mentioned below:-

(i) the finding of learned Claims Tribunal to the extent that appellant/Insurance Company is liable for payment of amount of compensation is set aside.

(ii) respondents No.3 to 7 (non-applicants No.1, 2, 4, 5 and 6) are jointly and severally liable to pay the amount of compensation on the same terms and conditions as directed by learned Claims Tribunal.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh