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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 844 of 2013

- The Oriental Insurance Company Limited Divisional Office, Geetanjali Building, Korba, Branch Office D-Commercial Complex, T.P. Nagar, Korba, Tah. And Distt. Korba, Chhattisgarh **---- Appellant**

Versus

1. Smt.Ram Bai, W/o Late Bhuwan Singh Aged About 25 Years R/o Kukri Choli, P.S. Korba, Distt. Korba, Chhattisgarh
2. Shyam Lal S/o Late Laxman Lal Aged About 50 Years R/o Kukri Choli, P.S. Korba, Distt. Korba, Chhattisgarh
3. Angad Bai W/o Shyam Lal Aged About 47 Years R/o Kukri Choli, P.S. Korba, Distt. Korba, Chhattisgarh
4. Chhabi Lal Patel S/o Chain Sai Patel R/o Dewarmal, Chowki-Urga, P.S. Korba, Distt. Korba, Chhattisgarh
5. Praveen Kumar Pandey S/o K.P. Pandey Aged About 36 Years R/o Urga, Chowki- Urga, P.S. Korba, District : Korba, Chhattisgarh

---- Respondents

For Appellant	:	Shri Hanuman Prasad Agrawal, Advocate
For Respondents	:	None appears

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

13.05.2019

1. Appellant/Insurance Company preferred this appeal challenging the impugned award dated 26.07.2013 passed by learned Motor Accident Claims Tribunal, Korba (for short, 'Claims Tribunal') in Claim Case No.117 of 2011 wherein learned Claims Tribunal has partly allowed the claim application filed by the claimants and awarded a total sum of Rs.3,80,000/- as compensation along with interest @ 6% per annum from the date fixed for recording evidence.

2. Brief facts relevant for disposal of this appeal are that on 30.05.2006 at about 6 am Bhuvan Singh was travelling on a truck bearing No.CG12 C-1573 (offending vehicle) as labour for unloading bricks. On the way near

Hasdeo river, offending vehicle turned turtle due to rash and negligent driving of its driver Chabilal Patel/ respondent- 4. In this accident, Bhuvan Singh came under the bricks loaded on offending vehicle and succumbed to injuries. Respondents- 1 to 3/ claimants filed claim application before competent Claims Tribunal claiming Rs.41,15,400/- as compensation from non-applicants therein.

3. Claimants have pleaded in their claim application that on the date of accident deceased Bhuvan Singh was earning Rs.200/- and getting Rs.30/- as daily allowance.

4. Respondent- 5 owner of offending vehicle submitted reply to claim application and opposed pleading made against him. He further pleaded that no accident occurred with his truck.

5. Appellant- Insurance Company submitted reply to claim application and pleaded that claimants are not entitled for any amount of compensation. It was further pleaded that Insurance Company has not received any premium towards occupants of vehicle and deceased was travelling on offending vehicle which is goods vehicle and where there was no sitting capacity, therefore, there is violation of conditions of Insurance Policy. Further it was pleaded that death of deceased occurred due to negligence of deceased himself and therefore, there is contributory negligence on the part of deceased Bhuvan Singh himself and prayed for dismissal of claim application.

6. Learned Claims Tribunal while appreciating pleadings and evidence available on record, awarded a total sum of Rs.3,80,000/- as compensation to claimants and held Insurance Company liable for payment of amount of compensation.

7. Learned Counsel for appellant/ Insurance Company submitted that learned Claims Tribunal committed error in fastening liability on Insurance Company for payment of amount of compensation awarded ignoring the fact that there is violation of conditions of Insurance Policy as it was pleaded that deceased was travelling on offending vehicle on its 'Dala' where goods are to be loaded. He further submitted that under Insurance Policy Ex.D3, no premium was paid for occupants of offending vehicle, therefore, Insurance Company cannot be held liable for payment of compensation for death of a person who was travelling as gratuitous passenger on offending vehicle at the time of accident.

8. Respondents- 2 to 5 though were represented earlier by their respective counsel, but today even in the second round of the call, none appeared.

9. I have heard learned counsel for appellant/Insurance Company and perused records. Only ground raised by learned counsel for appellant is that deceased Bhuvan Singh on the date of accident was travelling in a goods vehicle and that too on its 'Dala', where goods are to be loaded, therefore, deceased was gratuitous passenger in offending vehicle. Hence, Insurance Company cannot be held liable for payment of compensation.

10. I have perused copy of Insurance Policy (Ex.D3) where in premium was paid only on head of Basic liability, 'Legal Liability Employee'/ Driver and own damage. No premium was paid towards cleaner or any occupant of vehicle. Registration certificate of offending vehicle mentions seating capacity as two. The persons to be seated in cabin of vehicle, where sitting space is provided.

11. Perusal of evidence of Rambai, AW2, widow of Bhuvan Singh would show that she categorically stated in her evidence that offending vehicle was loaded with bricks and her husband, deceased Bhuvan Singh was travelling by sitting on bricks, her husband went to load bricks on offending vehicle and also stated that deceased was working with respondent- 5 on his truck.

12. In view of pleadings and evidence available on record, it is not in dispute that deceased was working as labour on offending truck owned by respondent- 5 and also that deceased was travelling on truck by sitting on loaded bricks and not in its cabin. This fact is also appearing in copy of FIR as well as in pleadings. Even if he, being owner of goods, was travelling on truck for security of goods, he has to sit in cabin of truck, where seating facility is provided for travelling of persons/ labours.

13. Issue of passenger travelling in goods vehicle was considered by Hon'ble Supreme Court in the matter 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 there for.”

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. In light of aforementioned law laid down by Hon'ble Supreme Court, if I consider facts of this case, it came on record that deceased was travelling on a truck loaded with bricks and no premium was paid for occupants of the vehicle.

16. In the facts and circumstances of the case, learned Claims Tribunal committed error in fastening liability of payment of amount of compensation on appellant/Insurance Company which is not sustainable and it is hereby set aside.

17. Now, amount of compensation as awarded by learned Claims Tribunal is to be paid by non-applicants 1 and 2, who are driver and owner of offending vehicle jointly and severally in accordance with terms mentioned in the impugned award passed by the Tribunal.

18. The appeal is allowed in part. Appellant/ Insurance Company is exonerated from its liability.

19. Appellant/Insurance Company will be entitled for the refund of the amount of compensation so deposited by it in pursuance to the impugned award, after depositing of the entire amount by non-applicants- 1 and 2/ respondents- 4 and 5.

20. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma