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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 685 of 2014

- The Oriental Insurance Co. Ltd. Through - Divisional Manager, Address- Gittanjali Building, Main Road, Korba C.G.

---- Appellant

Versus

1. Hirendra Kumar Dewangan S/o Bodhanram Dewangan Aged About 23 Years R/o Village Chhurikala, Kathghora, Distt. Korba C.G.,
2. Ramesh Kumar Agrawal S/o Ram Kumar Agrawal R/o Chhurikala, Kathghora, Distt. Korba C.G., (Driver and owner of offending vehicle Mahendra Load King bearing registration No. CG 12 9633).

---- Respondents

MAC No. 686 of 2014

- The Oriental Insurance Co. Ltd. Through - Divisional Manager, Address- Gittanjali Building, Main Road, Korba C.G.,

---- Appellant

Versus

1. Nankiram Dewangan S/o Chandrika Dewangan Aged About 25 Years R/o Village Chhurikala, Kathghora, Distt. Korba C.G.
2. Ramesh Kumar Agrawal S/o Ram Kumar Agrawal R/o Chhurikala, Kathghora, Distt. Korba C.G. (Driver and owner of offending vehicle Mahendra Load King bearing registration No. CG 12 9633).

---- Respondents

MAC No. 687 of 2014

- The Oriental Insurance Co. Ltd. Through - Divisional Manager, Address- Gittanjali Building, Main Road, Korba C.G.

---- Appellant

Versus

1. Mahendra Kumar Dewangan S/o Bodhanram Dewangan Aged About 24 Years R/o Village Chhurikala, Kathghora, Distt. Korba

C.G.

2. Ramesh Kumar Agrawal S/o Ram Kumar Agrawal R/o Chhurikala, Kathghora, Distt. Korba C.G., (Driver and owner of offending vehicle Mahendra Load King bearing registration No. CG 12 9633).

---- Respondents

For Appellant	:	Smt. Chitra Shrivastava, Advocate
For Respondent No.1	:	Shri Rajendra Tripathi, Advocate.
For Respondent No.2	:	Shri Samir Singh, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment on Board

22/02/2019

As all these above appeals arise out of the common award dated 11.4.2014 passed by Additional Motor Accident Claims Tribunal, Katghora, Distt. Korba passed in Claim Cases No.80/11, 79/11 & 52/11, they are being disposed of by this common judgment.

02. As per averments in the claim petitions, on 5.7.2010 Hirendra Kumar, Mahendra Kumar, Nankiram Dewangan and some other persons were travelling in the vehicle Mahendra Load King bearing registration No. CG 12-9633 along with their goods. However, due to rash and negligent driving of the said vehicle by non-applicant No.1 Ramesh Kumar Agrawal, the vehicle turned turtle, as a result of which Hirendra Kumar, Mahendra Kumar and Nankiram Dewangan suffered grievous injuries. At the time of accident, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.

03. Injured Hirendra Kumar, Mahendra Kumar and Nankiram Dewangan filed separate claim petitions u/s 166 of the Motor Vehicles

Act, 1988 (in short “the Act”), registered as Claim Cases No.80/11, 79/11 & 52/11 respectively seeking compensation for the injuries sustained by them. The Tribunal considering the pleadings of the parties and the evidence adduced by them, by the impugned common award granted compensation of Rs.9,33,600/- in favour of injured claimant Hirendra Kumar Dewangan, Rs.45,000/- in favour of injured claimant Mahendra Kumar Dewangan; and Rs.35,000/- in favour of injured claimant Nankiram Dewangan; with interest @ 6% per annum from the date of claim petitions till realization, fastening liability on non-applicant No.2/insurance company i.e. appellant herein.

04. MAC No.685/14 arises out of Claim Case No.80/11, MAC No.686/14 arises out of Claim Case No.52/11 & MAC No.687/14 arises out of Claim Case No.79/11. All these appeals have been filed by non-applicant No.2/insurance company under Section 173 of the Act challenging the liability fastened upon it by the Tribunal in the aforesaid claim cases.

05. Learned counsel for the appellant/insurance company submits that though she has also challenged the quantum of compensation in the memo of appeals, however, she is not pressing the said ground and is confining her argument only to the extent of fastening of liability on the insurance company. She submits that the vehicle in question was admittedly a goods carrying vehicle as per RC Book and insurance policy proved by the parties and no any extra premium was taken by the insurance company for covering the risk of passengers being carried in the said vehicle. The policy is Act Only policy. Further, as per evidence adduced by the claimants themselves, fare was

charged by the driver & owner for carrying the claimants and their goods. Under Section 147 of the Act, the passengers travelling in the goods carrying vehicle, whether as a gratuitous passenger or otherwise, are not covered and therefore, the Tribunal was not justified in fastening liability on the insurance company.

Reliance has been placed on the decision of the Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Cholleti Bharatamma and others, (2008) 1 SCC 423***.

06. On the other hand, learned counsel for the respondent/non-applicant No.2-Driver & owner of the offending vehicle, submits that since the claimants were sitting in the offending vehicle along with their goods in the capacity of owner of the goods, in view of provisions of Section 147 of the Act, the Tribunal was justified in fastening liability on the insurance company.

07. Learned counsel appearing for the respondent/claimants supports the impugned award and submits that the Tribunal has rightly fastened liability on the insurance company.

08. No counter appeal has been filed by the respondents as submitted by learned counsel for the parties.

09. Heard learned counsel for the respective parties and perused the material available on record.

10. It is not disputed by the parties that non-applicant No.1 Ramesh Kumar Agrawal, driver & owner of the offending vehicle, caused the accident due to rash and negligent driving of the vehicle, in which the

claimants suffered grievous injuries. It is also not in dispute that the offending vehicle is a goods carrying vehicle, which was duly insured with non-applicant No.2 at the relevant time.

11. Hirendra Kumar Dewangan (AW-1), injured claimant in claim case No.80/11, in para-20 of his cross-examination has stated that 20-22 persons, including himself with his bundles of clothes, were sitting in the vehicle with their goods. All of them are engaged in different business. He admits that fare was charged for carrying passenger and the goods both.

12. Mahendra Kumar Dewangan, injured claimant in claim case No.79/11, has also admitted in para-21 of his cross-examination that driver of the offending vehicle used to charge Rs.400/- as a fare for carrying him and his goods for every market day. However, on the date of accident, fare was not taken due to accident. He admits that on the fateful day, 10-12 persons were sitting in the vehicle, who were engaged in different trades and all were having their goods. He further states that the vehicle was fully loaded with goods, there was not sufficient space for passengers and they used to go to market by the said vehicle only.

13. Likewise, Nankiram Dewangan, injured claimant in claim case No.52/11, has admitted that they used to pay fare for their goods only. He states that they were sitting in the vehicle for keeping guard on their goods. In para 6 he admits that on the date of accident, 50 persons were sitting in the vehicle, out of them 20-25 got down from the vehicle at Chhuri. He states that driver and Khalasi were also there in the vehicle, every person was having 3-4 bundles and as such, the vehicle

was fully loaded.

14. As per Ex.4C i.e. Dehati Nalishi lodged by injured claimant Mahendra Dewangan, on the date of accident he along with his friends Pawan Dhobi, Nankiram, Hirendra Dewangan, Goutam, Ramkumar and others was going to weekly market by the offending vehicle which was being driven by non-applicant No.1 in a rash and negligent manner and since the vehicle turned turtle, they suffered injuries.

15. NAW-1 Sandeep Kumar Singh, Assistant Manager, Oriental Insurance Co. Ltd., has stated that as per RC book (Ex.D/1), sitting capacity of the offending vehicle is 1 + 2 including the driver. This statement remains unrebutted in cross-examination.

16. In the matter of ***New India Assurance Co. Ltd. Vs. Asha Rani and others, 2003 ACJ 1***, the Hon'ble Supreme Court observed as under:

> “25. Section 147 of 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a 'goods carriage'.
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> 26. In view of the changes in the relevant provisions in 1988 Act vis--vis 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 party'. Keeping in view the provisions of 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 therefor."

17. In ***National Insurance Co. Ltd. Vs. Bommithi Subbayamma and others, 2005 ACJ 721***, the Hon'ble Supreme held as under:

> 8. The question again came up for consideration before a 3-Judge Bench of this Court, of which we are members, in National Insurance Co. Ltd. v. Baljit Kaur and Ors. 2004 ACJ 428 (SC), wherein upon considering the effect of amendment carried out in Section 147 of the Motor Vehicles Act, 1988 by Motor Vehicles (Amendment) Act, 1994, it was opined:
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> > "By reason of the 1994 Amendment what was added is "including the 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 the 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 the Parliament to carry out an amendment inasmuch as 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.
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> The observations made in this connection by the Court in *Asha Rani, 2003 ACJ 1 (SC)*, to which one of us, Sinha, J, was a party, however, bear repetition :
>
> > "26. In view of the changes in the relevant provisions in the 1988 Act 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 party". 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 therefore."

In Asha Rani (supra) it has been noticed that Sub-clause (i) of Clause (b) of Sub-section (1) of Section 147 of the 1988 Act speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. Furthermore, an owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers travelling in the vehicle. The premium in view of the 1994 Amendment would only cover a third party as also the owner of the goods for his authorised representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise.

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 a 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 any premium was paid to the extent of the benefit of insurance to such category of people."

18. In the case of *Cholleti Bharatamma* (supra) also the Hon'ble Supreme Court, considering its earlier judgments, including the ones

referred to above, held that the Act does not contemplate that a goods carriage shall carry a large number of passengers with small percentage of goods as considerably the insurance policy covers the death or injuries either of the owner of the goods or his authorized representative. 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, and the insurers would not be liable therefor. The words “injury to any person” in Section 147(1)(b) would only mean a third party and not a passenger travelling in a goods carriage whether gratuitious or otherwise.

19. Thus, considering the facts and circumstances of the case, the evidence adduced by the claimants themselves admitting the fact that on the fateful day they along with 20-25 persons were travelling in the vehicle in question, which is a goods carriage, after paying fare for the passengers as also for the goods to the driver & owner, the documentary evidence in the form of FIR and Dehati Nalishi; the fact that admittedly the sitting capacity of the vehicle is 1 + 2; no premium was taken for covering the risk of the passengers travelling in the vehicle by the insurance company; the provisions of Section 147 of the Act in light of the principles of law laid down by the Hon'ble Supreme Court in the above referred cases, this Court is of the opinion that the Tribunal was not justified in fastening liability on the insurance company. Accordingly, the insurance company is exonerated of its liability and non-applicant No.1/driver & owner of the vehicle is held liable for paying compensation to the claimants.

20. However, keeping in view the decisions of the Hon'ble Supreme

Court in ***Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796*** and ***Shivawwa and another Vs. Branch Manager, National India Insurance Company Limited and another, (2018) 5 SCC 762*** this Court feels it proper to order for pay and recover in this case.

21. In the result, the appeals filed by the insurance company are allowed. While exonerating the insurance company of its liability, non-applicant No.1/driver & owner of the vehicle is held liable for paying compensation to the claimants. However, as observed above, it is the insurance company which shall first pay the compensation to the respective claimants as awarded by the Tribunal and then shall be at liberty to recover the same from the driver & owner. Rest of the conditions of the impugned award shall remain intact.

Sd/

(Gautam Chourdiya)
Judge

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