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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 590 of 2015

- The Reliance General Insurance Company Limited, District Raipur, Address- 5th Floor, National Corporate Park, G.E. Road, Police Station Saraswati Nagar, Civil and Revenue District Raipur (C.G.)

---- Appellant/non-applicant No.2/Insurer

Versus

1. Sultana Gawde, aged about 35 years, W/o Shri Jalaram Gawde
2. Ku. Priya Gawde, aged about 15 years, (Minor) D/o Shri Late Jalaram Gawde
3. Rikhiram Gawde, aged about 13 years, (Minor) S/o Shri Late Jalaram Gawde
4. Rambharos Gawde, aged about 60 years, S/o Late Rajwaram,
5. Smt. Ramin Bai, aged about 58 years W/o Rambharos Gawde

Respondents No. 2 and 3 are minor hence represented by their mother Respondent No.1 Sultana Gawde

All resident of Village Gidhali, Post Kurutola, Tahsil Charama, P.S. Charama, District Kanker, Civil and Revenue District Kanker, C.G.
(Claimants)

6. Yogendra Kumar Yadav S/o Ramadhin Yadav, R/o Village Domaharra, Thana Kanker, District Uttar Bastar, Kanker, Civil and Revenue District Bastar, (C.G.)

(Owner andDriver)/non-applicant No.1

---- Respondents

For Appellant	:	Shri Rohitashava Singh Advocate
For Respondents 1 to 5	:	Shri Pravin Tulsyan, Advocate
For Respondent No. 6	:	Shri Bishnu Muni, Advocate appears on behalf of the D.N. Prajapati, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

15.02.2019

1. This appeal has been preferred by the Appellant/non-applicant No.2 under Section 173 of the Motor Vehicles Act, 1988 against the award dated 21.01.2015 passed by the Additional Motor Accident Claims Tribunal, North Bastar, Kanker (C.G.) in Claim Case No. 03 of 2014.

2. The Claimants/Appellants, unfortunate wife, mother, father and children of deceased- Jalaram Gwade, claimed compensation of Rs.13,00,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act for death of deceased in the motor accident.

3. Facts of the case, in brief, are that on 19.05.2014, when deceased- Jalaram Gwade was going towards Markatola Nakapara Main Raod by driving his motorcycle bearing registration No. CG-07/ZJ/5548, non-applicant No.1- Yogendra Kumar Yadav, driver-cum-owner of the offending vehicle- Jeep bearing registration No. CG-04/T/2799, which was insured with Appellant/non-applicant No.2, driving the said Jeep in a rash and negligent manner, dashed the motorcycle of Jalaram Gwade, as a result thereof, he sustained grievous injury on his head and other parts of the body and later on Jalaram Gwade died on the same day.

4. The learned Tribunal, in the impugned award has awarded a compensation of Rs.9,35,000/- in favour of the Appellants/Claimants with interest @ 7.5% per annum from the date of application till its realization and has fastened the liability upon the Insurance Company/Appellant to pay compensation to the Claimants.

5. As submitted by both the parties, no counter appeal has been filed by the Respondents.

6. Learned counsel for the Appellant/Insurance Company submits that the Tribunal has wrongly fastened liability on the Insurance Company. He further submits that there is specific breach of policy conditions because as per Ex.-D-1, the vehicle-Jeep was insured as passenger carrying vehicle and the policy is a package policy. He also submits that the offending vehicle was being used without fitness and permit as the same was not produced by Respondent No.6/non-applicant No.1 even after direction by the Tribunal and the offending vehicle was being used in contravention of insurance policy conditions as well as Motor Vehicles Act.

7. Learned counsel for the Respondents oppose the contention made by the learned counsel for the Appellant and support the award impugned passed by the

Tribunal, which does not call for any interference in the instant appeal.

8. I have heard the learned counsel appearing for the parties and perused the impugned award including the record of the Claims Tribunal.

9. Appellant/Insurance Company examined one Abhishek Singh as NAW-1. NAW-1 admits in para-1 that as per insurance policy Ex.-D-1, the offending vehicle is insured as passenger carrying vehicle and the same was being driven without permit and fitness certificate. As per order-sheet dated 30.10.2014, non-applicant No.2/Insurance Company moved an application for direction to Respondent No.6/non-applicant No. 1 to produce permit and fitness certificate of the vehicle in question before the Tribunal and the same was allowed directing non-applicant No. 1 to produce copies of permit and fitness certificate and also supply the copy of the same to non-applicant No.2 and the case was fixed for 03.11.2014. On 03.11.2014, at the request of non-applicant No.1, further time was granted to submit the same, but the permit and fitness certificate were not submitted by the non-applicant No.1. Thereafter, on 20.11.2014 & 05.12.2014, non-applicant No.1 also prayed for further time to submit the permit and fitness certificate and the matter was fixed for 08.01.2015, but the owner failed to produce the permit and fitness certificate of the offending vehicle. Thus, even after giving many opportunities to non-applicant No.1 to produce the permit and fitness certificate, he failed to produce the same. Therefore, the Tribunal has closed the matter after recording evidence of the non-applicants and passed the award in favour of the Claimants.

10. In the matter of ***Amrit Paul Singh and Another*** Vs. ***Tata AIG General Insurance Company Limited and Others, (2018) 7 SCC 558***, the Supreme Court held in para-24 as under:

> "24. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a permit. The Appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have

> been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exception 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 ***National Insurance Co. Ltd.*** Vs. ***Swaran Singh, (2004) 3 SCC 297*** and ***Lakhmi Chand*** Vs. ***Reliance General Insurance, (2016) 3 SCC 100*** in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle is 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 and as well as the High Court had directed that 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."

11. In the matter of ***Manuara Khatun and others*** Vs. ***Rajesh Kumar Singh and others, (2017) 4 SCC 796***, the Supreme Court held as under:

> "13. The only question, which arises for consideration in these appeals, is whether the appellants are entitled for an order against the Insurer of the offending vehicle, i.e., (respondent No.3) to pay the awarded sum to the appellants and then to recover the said amount from the insured (owner of the offending vehicle-Tata Sumo)-respondent No.1 in the same proceedings.
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> 14. The aforesaid question, in our opinion, remains no more res

integra. As we notice, it was subject matter of several decisions of this Court rendered by three Judge Bench and two Judge Bench in past, viz., National Insurance Co. Ltd. vs. Baljit Kaur & Ors., (2004) 2 SCC 1, National Insurance Co. Ltd. vs. Challa Upendra Rao & Ors., (2004) 8 SCC 517, National Insurance Co. Ltd. vs. Kaushalaya Devi & Ors., (2008) 8 SCC 246, National Insurance Co. Ltd. vs. Roshan Lal, (2017) 4 SCC 803 and National Insurance Co. Ltd. vs. Parvathneni & Anr., (2009) 8 SCC 785.

15. This question also fell for consideration recently in Manager, National Insurance Company Limited vs. Saju P. Paul & Anr., (2013) 2 SCC 41 wherein this Court took note of entire previous case law on the subject mentioned above and examined the question in the context of Section 147 of the Act. While allowing the appeal filed by the Insurance Company by reversing the judgment of the High Court, it was held on facts that since the victim was travelling in offending vehicle as “gratuitous passenger” and hence, the Insurance Company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, this Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the Insurance Company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of “pay and recover”.

16. R.M. Lodha, J. (as His Lordship then was and later became CJI) speaking for the Bench held in paras- 20 and 26 as under: (Saju P. Paul Case)”

> “20. The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the Insurance Company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle (Respondent 2 herein).
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> 26. The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in Baljit Kaur, (2004) 2 SCC 1 and Challa Upendra Rao, (2004) 8 SCC 517 should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, the claimant was 28 years old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get

> compensation so far due to the stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The Insurance Company has already deposited the entire awarded amount pursuant to the order of this Court passed on 1-8-2011 (National Insurance Co. Ltd. vs. Saju P. Paul) and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent No.1) may be allowed to withdraw the amount deposited by the Insurance Company before this Court along with accrued interest. The Insurance Company (the appellant) thereafter may recover the amount so paid from the owner (Respondent 2 herein). The recovery of the amount by the Insurance Company from the owner shall be made by following the procedure as laid down by this Court in Challa Upendra Rao (supra)."

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 Saju P. Paul's Case (supra). 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.

20. It is for all these reasons, we find no good ground to take a different view that the one consistently being taken by this Court in all previous decisions, which are referred supra, in this regard.

21. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Company (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 Company-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."

12. When the matter is examined in its totality, in my opinion, in the present case Appellant/Insurance Company examined Abhishek Singh as NAW-1 regarding breach of permit and proved this fact that on the date of accident, the owner of the offending vehicle had no permit and the owner has utterly failed to prove that on the date of accident, he was having permit. Therefore, the Tribunal has certainly fallen in error in fastening the liability upon the Insurance Company, Appellant herein, to pay compensation and the same is not sustainable in the present case. Thus, it is held that non-applicant No.1, Respondent No.6 herein, is liable to satisfy the claim of the Claimants. However, considering the facts and circumstances of the case, the fact that on the date of accident admittedly the vehicle in question was duly insured with non-applicant No.2/Insurance Company, keeping in view of the judgments of the Hon'ble Supreme Court in *Amrit Paul Singh*; *Saju P. Paul* and *Manuara Khatun* (supra), this Court feels it proper to order for 'pay and recover' in this case. Hence, the Appellant/Reliance General Insurance Company Limited is directed to pay the awarded sum to the Claimants 1 to 5 within a period of two months from today and then recover the same from the owner (Respondent No.6 herein) as per law laid down in *Saju P. Paul* (supra).

14. In the result, the appeal is allowed in part. The award is modified to the above extent. Rest of the conditions of the award shall remain intact.

15. No order as to cost.

Sd/-

(Gautam Chourdiya)
Judge

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