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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 666 of 2013

- The Oriental Insurance Company Limited, Branch Office- Sunday Market, Raigarh, Distt. Raigarh C.G., (Non-applicant No.3)

---- Appellant

Versus

1. Larha And Ors S/o Thuku Aged About 45 Years R/o Sulesa, P.S. And Tah. Bagicha, Distt. Jashpur C.G.,

2. Minor Munu, S/o Larha Aged About 15 Years Through Natural guardian Father Larha, R/o Sulesa, P.S. And Tah. Bagicha, Distt. Jashpur C.G., **(Non-applicants No.1 & 2/Claimants)**

3.1 Hiramuni Bai D/o Late Putru @ Sutru R/o Sulesa, P.S. And Tah. Bagicha, Distt. Jashpur C.G.,

3.2 Ku. Mira Bai D/o Late Putru @ Sutru R/o Sulesa, P.S. And Tah. Bagicha, Distt. Jashpur C.G.,

3.3 Nirmal Ram S/o Late Putru @ Sutru R/o Sulesa, P.S. And Tah. Bagicha, Distt. Jashpur C.G.,

3.4 Nilam Ram S/o Late Putru @ Sutru R/o Sulesa, P.S. And Tah. Bagicha, Distt. Jashpur C.G., **(Non-applicant No.3)**

4. Samundar Sai S/o Indarsai R/o Chhirodih, P.S. Sanna, Tah. Bagicha, Distt. Jashpur C.G., **(Non-applicant No.2)**

---- Respondents

For Appellant	:Shri Neelkanth Malviya, Advocate.
For Respondents 1 to 3.4	:Shri Sachin Singh Rajput with Shri Sangeet Kumar Kushwaha, as per Court Order dated 01.04.2014
For Respondent 4	:None, though served.

Hon'ble Shri Justice Sanjay Agrawal

Award On Board

13.08.2019

1. This Miscellaneous Appeal has been preferred by Non-applicant No.3/the Oriental Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988)

questioning the legality and propriety of the Award dated 05.04.2013 passed by the Motor Accidents Claims Tribunal, Jashpur in Claim Case No.45/2010, by which, the Claims Tribunal, while allowing the claim in part, has awarded a total sum of Rs.1,86,000/- with 6% interest per annum from the date of filing of claim petition till its realisation while fastening the liability upon the insurance company. The parties to this appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated the facts of the case are that on 11.05.2006 at 5.00-6.00 PM deceased Jageshwar @ Janglu was returning from village Rouni to Bagicha (district Jashpur) by offending vehicle "Tractor" bearing its registration No. C.G/14-A/1885. At the relevant time, the alleged offending vehicle, owned by non-applicant No.2 Samundar Sai, was being driven rashly and negligently by its driver Putru @ Satru @ Sutru, non-applicant No.1 (since deceased now represented by his legal representatives). As a result of which, it turned turtle and the deceased fell down and came under the said vehicle and expired on the spot. On account of the alleged accident, a claim enumerated under Section 166 of the Act of 1988 has been made by the claimants by alleging inter alia that the deceased, who was 22 years old, was a labourer and used to earn Rs.100-120/- per day, and therefore, a total amount of compensation to the tune of Rs.14,71,000/- has been claimed on various heads.

3. The aforesaid claim has been contested by non-applicants No. 1 & 2 by saying that the vehicle in question was insured with non-applicant No.3/insurance company, therefore, in case of any liability being fastened, the same could be indemnified by the Non-applicant No.3/

insurance company.

4. Non-applicant No.3, the insurer of the vehicle in question, contested the claim by saying that the vehicle in question was insured for agricultural purposes and the Kisan Package Policy was issued in this regard. It is contested further on the ground that the driver of the offending vehicle was not possessing the valid and effective driving license and the vehicle in question was being used other than its purposes by carrying the passengers as '*Barati*', and therefore, no liability could be fastened upon it.

5. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 11.05.2006 due to rashness and negligent driving of the driver of the offending vehicle, resulting into, the sad demise of said Jageshwar @ Janglu. It held further that the driver of the offending vehicle was possessing valid and effective driving license to drive the same and in absence of any evidence adduced by the insurer, it cannot be held that the alleged offending vehicle was being used in violation of the insurance policy. As a consequence, while fastening the liability upon the insurance company, awarded a total sum of Rs.1,86,000/- with 6% interest per annum from the date of filing of claim petition till its realisation.

6. Being aggrieved, Non-applicant No.3, the insurance company has preferred this appeal. Shri Neelkanth Malviya, learned counsel for the appellant submits that the award impugned as passed by the Claims Tribunal holding that the vehicle in question was being used without violating the terms and conditions of the insurance policy is apparently contrary to law. According to him, a bare perusal of the claim petition, it

is evident that the deceased was travelling in the alleged vehicle and the evidence of the claimants would show further that the vehicle in question was being used by carrying the passengers as '*Barati*', and therefore, under such circumstances, it ought not to have fastened the liability upon the insurance company. Without considering all these material facts in its proper manner, the award impugned has been passed, which deserves to be set aside/modified.

7. On the other hand, Shri Sachin Singh Rajput, learned counsel for non-applicants No.1 to 3.4 submits that in absence of any evidence led by the insurer in order to establish the fact that the vehicle in question was being used in violation of the insurance policy, the Claims Tribunal has not committed any illegality in fastening the liability upon the insurance company. The award impugned is, therefore, not liable to be interfered.

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

9. The main contention of Non-applicant No.3/appellant herein is that the vehicle in question insured exclusively for the agricultural purposes was being used in violation of the insurance policy by carrying passengers as '*Barati*' at the relevant time and was being driven by a driver, who was not holding a valid and effective driving license, therefore, no liability as such could be fastened upon it.

10. Based upon the aforesaid averments made in the written statement by the insurer, the burden was heavily upon the insurance company to establish the said facts. However, perusal of the record would show that in order to establish the said facts, no evidence was led by the insurance company. It appears further from perusal of the photocopy of

the driving license produced on record that the driver of the offending vehicle was authorised to drive the alleged offending vehicle as he was entitled to drive not only the light motor vehicle but also the transport vehicle.

11. It is the settled principles of law that if the insurance company wants to prove that it is not liable, then it is the bounden duty of the insurance company to prove not only the terms and conditions of the policy but also to establish the fact that it has been violated. In absence thereof, the insurance company cannot get its exoneration from its liability. At this juncture, the principles laid down by this Court in the matter of ***Oriental Insurance Company Limited*** vs. ***Swatantra Kumar Verma and others***, passed on 20.09.2016 in M.A. No.216/2006 are to be seen where at paragraph 11, it has been held as under:-

> "**11.** As far as the second ground raised by the insurance company is concerned, I am not in agreement with the submission. If the insurance company, in any case, wants to prove that it is not liable or that its liability is limited, but admits that the vehicle was insured with it, it is bound to prove the terms of the insurance policy. In this case, though the policy has been filed on record, no attempt has been made to prove the policy or conditions thereof. It is urged by Learned Counsel for the insurance company that relying upon this very insurance policy, the insurance company has made liable. The insurance company has not denied the fact that it has issued the insurance policy. The defence raised by the Company is that as per the terms of policy, it is not liable to cover liability in respect of passengers travelling in motor vehicles. This has to be proved by the insurance company. An insurance policy can even be tendered if it is not objected by the other side. To get itself excluded or to limit its liability the insurance company will have to prove the policy of insurance."

12. By applying the aforesaid principles to the case in hand and in absence of any evidence led by the insurance company, it is difficult to hold that the terms and conditions stipulated in the alleged insurance policy have

been violated by the insured, as contended by learned counsel for the appellant. Under such circumstances, I do not find any infirmity in the award impugned as passed by the Claims Tribunal in fastening the liability upon the insurance company. The findings so recorded by the Claims Tribunal, therefore, deserve to be and are hereby affirmed.

13. In view of the foregoing discussions, the appeal being devoid of merit is hereby dismissed. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge

Anjani