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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 555 of 2014

- The Oriental Insurance Co. Ltd, Through Divisional Manager, Divisional Office, Bilaspur (C.G.).

---- Appellant

Versus

1. Smt. Sumitra Bai, W/o Late Shyam Singh, aged about 30 years,

2. Mankunwar, D/o Late Shyam Singh aged about 15 years,

3. Panmeshwar, S/o Late Shyam Singh aged about 10 years,

4. Sadhna D/o Late Shyam Singh aged about 09 years,

5. Sweta, D/o Late Shyam Singh aged about 08 years.

6. Raman Singh, S/o Late Shyam Singh aged about 05 years, Non-appellant Nos. 2 to 6 are minors filled claim under the guardianship of mother Smt. Sumitra Bai, W/o Late Shyam Singh.

   All the above Non- appellants are Cast by Gond and Resident of Village- Parwatipur, Police Station Premnagar, Zila- Sarguja (C.G.)

7. Samsood @ Hamind Khan, S/o Sultan @ Jaggu Khan Aged about 35 years Occupation- Driver, Cast- Muslim, Resident of Village- Majhreta, Post Patharia, Dist. Bilaspur (C.G.) present Address: Tripura Police Station, Chakarbhata, Dist.- Bilaspur (C.G.).

8. M/S Shivam Motor Pvt. Ltd. Sirgitti Industrial Area, Sector-"C" Post Box No. 17, Bilaspur Tehsil and Zila- Bilaspur (C.G.) (Director of M/s Shivam Motor Pvt. Ltd.), Bilaspur (C.G.)

---- Respondents

MAC No. 556 of 2014

- The Oriental Insurance Co. Ltd. Through Divisional Manager, Divisional Office, Bilaspur (C.G.).

----Appellant

Versus

1. Chhattrapal, S/o Ujiyar Singh, aged about-18 years, Cast- Gond. Residnet of Village Parwatipur, Police Station, Tahsil- Premnagat, Zilla- Sarjuga (C.G.).

2. Samsood @ Hamind Khan, S/o Sultan @ Jaggu Khan aged about 35

years, Occupation- Driver, Cast- Musim Resident of Village- Majhreta, Post Patharia, Dist.- Bilaspur (C.G., Present Address: Tipura Police Station Chakarbhata, Dist.- Bilaspur (C.G.)

3. M/s. Shivam Motor Pvt. Ltd. Sirgitti Industrial Area, Secotr- “C” Post Box No. 17, Bilaspur, Tehsil and Zila- Bilapur (C.G.) (Director of M/s. Shivam Motor Pvt. Ltd.), Bilaspur (C.G.)

---- Respondents

MAC No. 557 of 2014

- The Oriental Insurance Co. Ltd, Through Divisional Manager, Divisional Office, Bilaspur (C.G.).

----Appellant

Versus

1. Nanku Ram, S/o Jagat Ram, aged about- 30 years, Cast- Gond, Occupation- Agriculturist & Labour, Resident of Village Parwatipur, Police Station- Tahsil- Premnagat, Zilla- Sarjuga (C.G.).

2. Samsood @ Hamind Khan, S/o Sultan @ Jaggu Khan aged about 35 years, Occupation- Driver, Cast- Muwlim, Resident of Village- Majhreta, Post Patharia, Dist.- Bilaspur (C.G.) Pesent Address: Tripura Police Station, Chakarbhata, Dist.- Bilaspur (C.G.).

3. M/s Shivam Motor Pvt. Ltd. Sirgitti Industrial Area, Secotr- “C” Post Box No. 17, Bilaspur, Tehsil and Zila- Bilaspur (C.G.) (Director of M/s. Shivam Motor Pvt. Ltd.), Bilaspur (C.G.).

---- Respondents

For Appellant : Smt. Chitra Shrivastava, Advocate
For Respondent/claimant : Shri A. N. Pandey, Advocate.

For Respondent/Owner : Shri Ashutosh Ghade, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment On Board

14/02/2019

1. As all these three appeals filed under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') arise out of awards dated

20.03.2014 passed by Motor Accident Claims Tribunal, Surjapur, Chhattisgarh in claim cases no. 13/11, 14/11, 11/11, involving the vehicle Tata M. Magic bearing no. CG010-TC/117 (offending vehicle), they are being disposed of by this common judgment.

2. Brief facts necessary for disposal of these appeals are that on the date of accident i.e. 29.06.2010 Shyam singh (since deceased), Nanku Ram (injured) and Chatrpal (injured) were coming to village- Parvatipur sitting in a Tata M. Magic bearing No. CG10-TC/117 However, on the way near Salhi forest, due to rash and negligent driving of the said vehicle by non-applicant no.1, it turned turtle resulting in grievous injuries to the persons sitting in the vehicle and death of one passenger i.e. Shyam Singh. The offending vehicle, owned by non-applicant no.2/M/s Shivam Motors Pvt. Ltd. and insured with non-applicant no.3/Oriental Insurance Co. Ltd.

3. On claim petition being filed by the claimants/wife, children & parents against the death of Shyam Singh under Section 166 of the Act (registered as claim case no.13/11 in MAC No.555/14), the Tribunal considering the evidence led by the parties awarded a compensation of Rs.4,09,000/- with interest @ 8 percent from the date of application till its realization, fastening the liability on non-applicant nos. 1 & 2. However, the Tribunal directed that it is the Non-applicant No. 3/Insurance Company which shall first pay the amount of compensation to the claimants and thereafter recover the same from the Non-applicant Nos. 1 & 2.

4. On claim petition being filed by the claimant/injured under Section 166 of the Act (registered as claim case no.14/11 in MAC No.556/14), the Tribunal considering the evidence led by the parties awarded a compensation of Rs. 50,000/- with interest @ 8 percent from the date of application till its realization, fastening the liability as above.

5. On claim petition being filed by the claimant under Section 166 of the Act (registered as claim case no.11/11 in MAC No.557/14), the Tribunal considering the evidence led by the parties awarded a compensation of Rs. 50,000/- with interest @ 8 percent from the date of application till its realization, fastening the liability as above.

6. Learned counsel for the appellant/Insurance Company submits that the learned Tribunal made error by holding that the Insurance Company first pay the amount of compensation and then recover it from the Driver and owner of the offending vehicle as the policy does not cover the risk of the death or injuries of the persons who were travelling in the offending vehicle because the offending vehicle is goods carrying commercial vehicle but at the time of accident, it was used for carrying passengers. There is breach of policy condition, therefore the Insurance Company is not liable to indemnify the owner and pay the compensation.

7. Learned counsel for the respondents/claimants support the award impugned.

8. Learned counsel appearing for the owner opposed the contention made by learned counsel for the Insurance Company And also filed Cross objections in MAC No. 557/2014 and in MAC No. 555/2014 contending that learned Tribunal committed a gross error by exonerating the Insurance company on breach of policy conditions merely on the ground that the said vehicle was carrying certain persons though the same was only goods carrying vehicle. Learned counsel for the owner submits that as per Apex Court Judgment in the matter of National Insurance Company Limited Vs. Swarn Singh, reported in (2004) 3SCC 297, held that the insurance Company is entitled to be exonerated only and only where there is a 'willful breach' of policy conditions but in the instant case no evidence has come forth which would establish any “willful breach” on the part of the owner. Instead, the materials on record, particularly, the statement of Non-applicant No. 1/driver would clearly show that the act of carrying persons in the offending vehicle neither was authorized by the owner nor was within his knowledge. Therefore, it is prayed to set aside the finding recorded by the learned Tribunal for exoneration of Insurance company to pay compensation and modify the award impugned.

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

10. Sofar as the order of pay and recover is concerned, it is not in dispute that on the date of accident the offending vehicle was

duly ensured with Non-appellant No. 3 and further that due to rash and negligent driving of the said vehicle by Non-appellant No. 1 Shyam Singh died and Chchatrapal & Nanku suffered grievous injuries.

11. In the matter of ***Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796***, the Hon'ble Supreme Court has 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.
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> 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).

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 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 than 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. In view of the above this Court is of the opinion that the Tribunal was fully justified in passing the order it is the Insurance Company which shall first pay the amount of the compensation to the claimant in the respective

claim cases thereafter recover from the same by non-applicant Nos. 1 & 2 driver & owner.

13. As regards the cross objections filed by the claimants in MAC No. 557/2014 and MAC No. 555/2014, the Tribunal in para 17 of its award while considering the issue of use of the offending vehicle for carrying passengers observed that NAW 2- Amit Kumar has categorically stated that on the date of accident the deceased and other injured persons were travelling in the offending vehicle. The evidence of NAW 2 stands corroborated from the evidence of non-applicant No. 1-Samsood @ Hamind Khan, drive of the offending vehicle who has also admitted that the deceased and other injured persons were travelling in the offending vehicle as passengers. As per insurance policy (Ex. D/1) it is evident that risk of only driver, conductor & cleaner was covered under the policy and it does not cover the risk of any person being carried in the vehicle as a passenger. The finding so recorded by the Tribunal appears to be based on just & proper evidence available on record and as such requires no interference by this Court.

14. On the basis of aforesaid discussions, the appeals filed by the Insurance Company and the cross-objection filed by the owner being without any substance are liable to be dismissed and are, accordingly, dismissed.

Sd/-
Gautam Chourdiya
Judge

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