

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**Judgment reserved on 16.01.2019****Judgment delivered on 15.02.2019****M.A.(C) No. 74 of 2013**

Ravi Kumar S/o Jivrakhan Prasad Gupta Aged About 27 Years
 Vehicle Owner R/o Durjaband Para, Pandariya, P.S. and Tahsil
 Pandariya, District Bilaspur Chhattisgarh

---- Appellant**Versus**

1. Ashutosh S/o Om Prakash Tiwari Aged About 27 Years (as mentioned in award) Ashutosh, S/o Om Prakash Pathak aged about 27 years R/o Mahamaya Chauk, Pandariya, Tah. & P.S. Pandariya, District Bilaspur Chhattisgarh
2. Raj Kumar S/o Jumuk Lal R/o Bagmuda, Tah. & P.S. Pandariya, District Bilaspur Chhattisgarh
3. Oriental Insurance Company Ltd. through Branch Manager, Rajnandgaon, District Rajnandgaon Chhattisgarh

---- Respondents

For Appellant	:	Mr. Santosh Bharat, Advocate.
For Respondent No.3	:	Smt. Chitra Shrivastava, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu**C A V Judgment**

1. By this instant appeal, the appellant, who is owner of the Jeep bearing registration No. MP 26/E/2794 (hereinafter referred to as

'offending vehicle') has challenged the legality, validity and propriety of the impugned award dated 24.03.2005 passed by Additional Motor Accident Claims Tribunal, (Fast Track Court), Kabirdham, Chhattisgarh in Claim Case No.28/2003 wherein the learned Claims Tribunal has partly allowed the claim application filed by the claimant and awarded a total sum of Rs.39,000/- as compensation in an injury case and fastened the liability of payment of compensation on the Insurance Company and directed the Insurance Company to recover the amount of compensation from the owner of the offending vehicle.

2. Background facts in a nutshell are that, on 21.07.1996, Ashutosh along with other persons went to Puri on the offending vehicle, when they were returning from Puri, at that relevant time, the offending vehicle met with an accident and turn turtled near Redakhel, District Orissa due to rash and negligent driving of driver of the offending vehicle i.e. respondent No.2. In the said accident, the claimant sustained injuries over his person.
3. On account of injuries sustained by the claimant, he filed an application under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') claiming Rs.2,10,000/- as compensation on all heads.
4. The driver and owner of the offending vehicle have submitted reply to the claim application and stated that at the time of accident, driver was driving the vehicle very cautiously, but when

the driver put his vehicle on the side of the road to give pass to other vehicles, at that relevant time, front left spindle of the offending vehicle got damaged, due to which, accident took place. It has been pleaded that the accident took place due to mechanical fault and not due to rash and negligent driving of the driver of the offending vehicle. It has been further pleaded that on the date of accident, the offending vehicle was insured with the Insurance Company, therefore, the liability, if any, for payment of compensation would be on the Insurance Company.

5. The Insurance Company submitted reply to the claim application and pleaded that on the date of accident, though the offending vehicle was being registered as private vehicle, but the same is being used as 'Taxi', therefore, there is a violation of conditions of the insurance policy and the liability, if any, for payment of compensation would be on the owner and driver of the offending vehicle.
6. After appreciating the evidence, pleadings and material available on record, learned Claims Tribunal arrived at a finding that on the date of accident, the offending vehicle was being used as 'Taxi' as it was carrying passengers for 'hire' and exonerated the Insurance Company from its liability to pay the compensation and awarded a total sum of Rs.39,000/- as compensation in an injury case.
7. Learned counsel appearing for the appellant submitted that the offending vehicle was not given on hire and it is not being used as

'Taxi', but due to some personal relationship with the passengers travelling in the offending vehicle, the offending vehicle has been given to them for their tour to Puri with a condition that they will bear the cost of fuel of the offending vehicle. He further submitted that in one of the cases, other Claims Tribunal have held that at the time of accident, the vehicle in question is not being used as 'Taxi' and fastened the liability to pay the compensation on the Insurance Company.

8. Per contra, learned counsel appearing for the Insurance Company supported the award impugned and submitted that the learned Claims Tribunal has considered all the evidence and material available on record and arrived at a correct finding that there was violation of conditions of the insurance policy.
9. I have heard learned counsel appearing for the parties and perused the record carefully.
10. Claimant was examined himself as AW-1, who in his evidence stated that he along with other persons have taken the offending vehicle on rent. From the evidence of driver of the offending vehicle, namely, Raj Kumar (NAW-1) also shows that the owner of the vehicle used to give the offending vehicle on rent. In paragraph-9, he has stated that “रवि गुप्ता प्राईवेट में अपनी गाड़ी को चलाता था”.

11. From considering the above evidence and material available on record, it is evident that the offending vehicle was taken on hire and the claimant along with other persons went for a tour. The offending vehicle though registered as private vehicle, but was being used as a 'Taxi', which is violation of the conditions of the insurance policy, therefore, the Insurance Company cannot be held liable for payment of any amount of compensation because no premium has been charged for carrying passengers in a vehicle. In the case in hand, there is no privity of contract between insurer and insured to compensate the injury/death of the passengers travelling on vehicle for hire.
12. In view of the above, in the opinion of this Court, the learned Claims Tribunal has not committed any error in exonerating the Insurance Company from its liability to pay the compensation and has rightly fastened the liability to pay the compensation on the owner of the offending vehicle.
13. In the result, the appeal being devoid of merit is liable to be dismissed and is hereby dismissed.
14. No order as to costs.

Sd/-
(Parth Prateem Sahu)
Judge