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HIGH COURT OF CHHATTISGARH, BILASPUR

M.A(C) No.1588 of 2015

Future Generali India Insurance Company Limited Through Branch Manager, Shop No. 03, 2nd Floor, Maruti Business Park, Police Station Azad Chowk, Civil And Revenue District Raipur Chhattisgarh......Insurer Of Vehicle No. C G 05 D 1150.........Insurer Of Vehicle No. Cg 05 D 1150

---- Appellants

Versus

1. Ramsundar Netam S/o Late Sukru Ram Netam, Aged About 49 Years R/o Village Kauhabahra, Tahsil Nagri, Police Station Nagri, Civil And Revenue District Dhamtari Chhattisgarh........Claimant
2. Dewanand Sahu S/o Punit Ram Sahu, Aged About 36 Years R/o Village Sankra, Tahsil Nagri Police Station Nagri, Civil And Revenue District Dhamtari Chhattisgarh.......Driver Of Vehicle No. C G 05 D 1150..........Dead
3. Uttamchand Jain S/o Khemchand Jain, Aged About 40 Years R/o Infront Of Uttam Medical Stores, Tahsil Nagri, Police Station Nagri, Civil And Revenue District Dhamtari Chhattisgarh.....Owner Of Vehcile No. C G 05 D 1150

---- Respondents

Shri Rohitashva Singh, Counsel for the Appellant.
Shri DN Prajapati, counsel for Respondent No.1.
Respondent No.2 is reported to be dead.
None for Respondent No.3, though served.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Award On Board

01.10.2019

1. This Miscellaneous Appeal has been preferred by the Non-Applicant No.3-Future General India Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988) questioning the legality and propriety of the award dated 09.09.2015 passed by the Chief Motor Accidents Claims Tribunal, Dhamtari (CG) (for short 'the Claims Tribunal') in Claim Case Nos.131/2014 by which, the Claims Tribunal while allowing the claim in part, awarded a total sum to the tune of Rs.3,99,000/- with 6% interest per annum from the date of filing of the claim Petition till its

realization, 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 25.04.2014, deceased Brijlal Netam was coming from village Nagri to village Lalanj by the offending vehicle 'metador' 407 bearing its registration No.CG 05/D/1450, which was owned by Uttamchand Jain, Non-Applicant No.2, insured with Non-Applicant No.3-Future General India Insurance Company Limited. At the relevant time, the vehicle in question was being driven in a rash and negligent manner by its driver Non-Applicant No.1- Devanand Sahu, owing to which, deceased Brijlal Netam and one Akshay Mandavi sustained serious injuries and died on the spot.

3. On account of the aforesaid accident, Claimant Ram Sunder, being the legal representative of the deceased Brijlal Netam instituted a Claim Petition enumerated under Section 166 of the Act of 1988 alleging *inter alia* that the deceased, a 35 years old, was a driver by profession and used to earn Rs.3,000/- per month and, thus a total amount of compensation to the tune of Rs.26,00,000/- has been claimed under various heads.

4. Non-Applicant No.2, owner of the vehicle in question contested the claim mainly on the ground that the deceased was in a drunken condition and he himself was responsible for the alleged accident as he fell down all of a sudden from the said vehicle. It is pleaded further that the driver of the offending vehicle was holding valid and effective driving license and since the vehicle in question was insured with the said Insurance Company, therefore in case of any liability being fastened, the same could be indemnified by the Insurance Company. While Non-Applicant No.3, the Insurance Company has

contested the Claim mainly on the ground that the vehicle in question was insured as a goods vehicle and at the relevant time, it was being used for carrying passengers in violation of the insurance policy. It is also pleaded by the Insurance Company that the driver of the offending vehicle was not having valid and effective driving license and therefore, it cannot be held liable for the alleged accident.

5. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 25.04.2014 due to rash and negligent driving of the driver of the offending vehicle resulting into the sad demise of Brijlal Netam and one Akshay Mandavi. It held further that the driver of the offending vehicle was holding the valid and effective driving license and in consequence, while fastening the liability upon the Insurance Company, awarded the said amount of compensation as observed hereinabove.

6. Being aggrieved, Non-Applicant No.3, the Insurance Company has preferred this Appeal. Shri Singh, learned Counsel for the Appellant submits that while passing the award impugned, the Claims Tribunal has committed an illegality in holding that the vehicle in question was not being used in violation of the insurance policy. While inviting attention to issue No.3, it has been submitted that the main defence taken by the Insurance Company was with regard to the fact that the vehicle in question insured as a goods vehicle was being used for carrying passengers, however, the same has not been taken into consideration and even in absence of giving any finding on this aspect, the Claims Tribunal has committed an illegality in fastening the liability upon the Insurance Company. In support, he placed reliance upon the decision rendered in the matter of *New India Assurance Co. Ltd. vs. Asha Rani and*

others reported in **(2003) 2 Supreme Court Cases 223.**

7. On the other hand, learned Counsel for the Respondents, while supporting the award impugned, submits that the driver of the offending vehicle was holding the valid and effective driving license and therefore, the Claims Tribunal has not erred in coming to the conclusion that the vehicle in question was not being used in violation of the insurance policy.

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

9. From perusal of the record, it is evident that Non-Applicant No.3, the Insurance Company has taken a very specific defence in its written statement that the vehicle in question, which was insured as a goods vehicle, was being used other than its purposes at the relevant time by carrying passengers on it. In order to substantiate the said fact, one Vikram Mahapatra, who was the Assistant Manager in the Insurance Company and was working as Legal Officer was examined, who in turn has stated very specifically that the vehicle in question was insured as a goods vehicle and at the relevant time, so many persons along with the deceased were travelling in the alleged vehicle. The statement so made by him could not have been rebutted in his cross-examination. That apart, the documentary evidence produced by the Claimants themselves marked as Ex.P-1 (charge sheet) and Ex.P-2 (F.I.R) would corroborate his version. It therefore, appears that the deceased along with others, was travelling in the alleged vehicle as a passenger at the relevant time.

10. What is therefore reflected from the aforesaid evidence is that the vehicle in question which was insured as a goods vehicle was being used in violation of its policy by carrying passengers. However, while entertaining the

issue No.3, this particular aspect was not even touched by the Claims Tribunal while arriving to a conclusion that the alleged offending vehicle was not being used in violation of the insurance policy. At this juncture, the principles laid down in the matter of *New India Assurance Co. Ltd. vs. Asha Rani and others* (supra)**,** as relied upon by Shri Singh, learned Counsel for the Appellant are to be seen where the Supreme Court while interpreting the definition of "goods vehicle" as provided in the Motor Vehicle Act, 1939 and the definition of "goods carriage" as provided under the Act of 1988, has observed at paragraphs 23 and 26 that the goods vehicle could not be used for carrying passengers. The observation of those paragraphs reads as under:-

> "23. The applicability of the decision of this Court in *Mallawwa v. Oriental Insurance Co. Ltd (1999) 1 SCC 403 : 1999 SCC (Cri) 58* in this case must be considered keeping that aspect in view. Section 2(35) of the 1988 Act does not include passengers in goods carriage whereas Section 2(25) of the 1939 Act did as even passengers could be carried in a goods vehicle. The difference in the definitions of "goods vehicle" in the 1939 Act and "goods carriage" in the 1988 Act is significant. By reason of the change in the definitions of the terminology, the legislature intended that a goods vehicle could not carry any passenger, as the words "in addition to passengers" occurring in the definition of goods vehicle in the 1939 Act were omitted. Furthermore, it categorically states that "goods carriage" would mean a motor vehicle constructed or adapted for use "solely for the carriage of goods". Carrying of passengers in a "goods carriage", thus, is not contemplated under the 1988 Act."
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> "26........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 therefor."

11. By applying the aforesaid principles to the case in had, it is evident that the vehicle in question, insured as a goods vehicles, was being used for

carrying passengers in violation of the insurance policy. As such, the finding of the Claims Tribunal fastening the liability upon the Insurance Company cannot be held to be sustainable in the eye of law. The finding so recorded is, therefore, liable to be and is hereby set aside. The Appellant -Insurance Company is accordingly exonerated from its liability.

12. Although, as observed hereinabove, the Appellant-Insurance Company is held to be exonerated from its liability but undisputedly, the insurance policy (Ex.D-1) was in existence. Therefore, by applying the principles of pay and recover as laid down in the matter of *National Insurance Co. Ltd. vs. Swaran Singh and others* and *Manager, National Insurance Company Limited vs. Saju P. Paul & Another* reported in **A.I.R 2004 Supreme Court 1531 and (2013) 2 Supreme Court Cases 41** respectively**,** it is hereby directed that the Appellant-Insurance Company shall first pay the awarded sum as determined by the Claims Tribunal to the Claimant-Ramsunder Netam and then to recover the said awarded sum from the owner and driver of the offending vehicle in Execution Proceedngs arising in this very case.

13. The Appeal is accordingly allowed with the aforesaid observation. Rest of the observations of the Claims Tribunal shall remain intact. No order as to costs.

Sd/-
(Sanjay Agrawal)
Judge

Priya