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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1945 of 2018

- The New India Assurance Company Limited, Through its Branch Manager, Branch Office Civil Line Balodabazar, District Balodabazar – Bhatapara (C.G.)

---- Appellant/non-applicant No.3/Insurer

Versus

1. Set Kumar, S/o Jambe Lal Kurs, aged 22 years, R/o Village Sukhari, O.P. Baya, P.S. Rajadevari, Tahsil Kasdol, District Balodabazar Bhatapara (C.G.) **(Applicant)**

2. Marappan, S/o Singoda Gaunder, aged 45 years, R/o Veppam, Palayam, A. Area Mangalam, P.O.- Solasirmani via Tirchengo (Tamilnadu) **(Driver/Non-applicant No.1)**

3. Shri Raghupati Shubramanyam, R/o Dealers No. 8 SSS building V Road, Chamrajpith Bangalore, Karnataka, Pin No. 560018 **(Owner/Non-applicant No.2)**

---- Respondents

Miscellaneous Appeal (Civil) No. 2031 of 2018

- The New India Assurance Company Limited, Through its Branch Manager, Branch Office Civil Line Balodabazar, District Balodabazar – Bhatapara (C.G.)

---- Appellant/non-applicant No.3/Insurer

Versus

1. Dukaluram S/o Lekhan Bhoi, aged 50 years **(Applicant No.1)**

2. Smt. Sudiya Bai W/o Dukaluram Bhoi, aged 45 years **(Applicant No.2)**

   Both are R/o Village Sukhri, O.P. Baya, P.S. Rajadevari, Tahsil Kasdol, District Balodabazar, Bhatapara (C.G.)

3. Marappan, S/o Singoda Gaunder, aged 45 years, R/o Veppam, Palayam, A. Area Mangalam, P.O.- Solasirmani via Tirchengo (Tamilnadu) **(Driver/Non-applicant No.1)**

4. Shri Raghupati Shubramanyam, R/o Dealers No. 8 SSS building V Road, Chamrajpith Bangalore, Karnataka, Pin No. 560018 **(Owner/Non-applicant No.2)**

---- Respondents

<u>Miscellaneous Appeal (Civil) No. 2032 of 2018</u>

- The New India Assurance Company Limited, Through its Branch Manager, Branch Office Civil Line Balodabazar, District Balodabazar – Bhatapara (C.G.)

---- Appellant/non-applicant No.3/Insurer

Versus

1. Jethu Ram, S/o Vishram Bariha, aged 45 years
(Applicant No.1)

2. Jalkunwar, W/o Jethuram Bariha, aged 44 years
(Applicant No.2)

Both are R/o Village Kurkuti, O.P. Baya, P.S. Rajadevari, Tahsil Kasdol, District Balodabazar, Bhatapara (C.G.)

3. Marappan, S/o Singoda Gaunder, aged 45 years, R/o Veppam, Palayam, A. Area Mangalam, P.O.- Solasirmani via Tirchengo (Tamilnadu)
(Driver/Non-applicant No.1)

4. Shri Raghupati Shubramanyam, R/o Dealers No. 8 SSS building V Road, Chamrajpith Bangalore, Karnataka, Pin No. 560018
(Owner/Non-applicant No.2)

---- Respondents

<u>Miscellaneous Appeal (Civil) No. 2020 of 2018</u>

- The New India Assurance Company Limited, Through its Branch Manager, Branch Office Civil Line Balodabazar, District Balodabazar – Bhatapara (C.G.)

---- Appellant/non-applicant No.3/Insurer

Versus

1. Mahanand Bariha S/o Ratnu Bariha, aged about 50 years
(Applicant No.1)

2. Malti Bariha W/o Mahanand Bariha, aged 40 years
(Applicant No.2)

Both are R/o Village Kurkuti, O.P. Baya, P.S. Rajadevari, Tahsil Kasdol, District Balodabazar, Bhatapara (C.G.)

3. Marappan, S/o Singoda Gaunder, aged 45 years, R/o Veppam, Palayam, A. Area Mangalam, P.O.- Solasirmani via Tirchengo (Tamilnadu)
(Driver/Non-applicant No.1)

4. Shri Raghupati Shubramanyam, R/o Dealers No. 8 SSS building V Road, Chamrajpith Bangalore, Karnataka, Pin No. 560018
(Owner/Non-applicant No.2)

---- Respondents

Miscellaneous Appeal (Civil) No. 2030 of 2018

- The New India Assurance Company Limited, Through its Branch Manager, Branch Office Civil Line Balodabazar, District Balodabazar – Bhatapara (C.G.)

---- Appellant/non-applicant No.3/Insurer

Versus

1. Bharti W/o Late Tikaram Bariha, aged about 22 years
(Applicant No.1)
2. Kangalu, S/o Dhobai Bariha, aged 62 years
(Applicant No.2)
3. Rukhmani, W/o Kangalu Bariha, aged 60 years
(Applicant No.3)

All are R/o Village Kurkuti, O.P. Baya, P.S. Rajadevari, Tahsil Kasdol, District Balodabazar, Bhatapara (C.G.)

4. Marappan, S/o Singoda Gaunder, aged 45 years, R/o Veppam, Palayam, A. Area Mangalam, P.O.- Solasirmani via Tirchengo (Tamilnadu)
(Driver/Non-applicant No.1)
5. Shri Raghupati Shubramanyam, R/o Dealers No. 8 SSS building V Road, Chamrajpith Bangalore, Karnataka, Pin No. 560018
(Owner/Non-applicant No.2)

---- Respondents

And

Miscellaneous Appeal (Civil) No. 2026 of 2018

- The New India Assurance Company Limited, Through its Branch Manager, Branch Office Civil Line Balodabazar, District Balodabazar – Bhatapara (C.G.)

---- Appellant/non-applicant No.3/Insurer

Versus

1. Shankarshan Yadav, S/o Manshi Yadav, aged 50 years
(Applicant No.1)
2. Keto Bai, W/o Shankarshan Yadav, aged 48 years
(Applicant No.2)

Both are R/o Village Kurkuti, O.P. Baya, P.S. Rajadevari, Tahsil Kasdol, District Balodabazar, Bhatapara (C.G.)

3. Marappan, S/o Singoda Gaunder, aged 45 years, R/o Veppam, Palayam, A. Area Mangalam, P.O.- Solasirmani via Tirchengo (Tamilnadu)
(Driver/Non-applicant No.1)
4. Shri Raghupati Shubramanyam, R/o Dealers No. 8 SSS building V Road, Chamrajpith Bangalore, Karnataka, Pin No. 560018
(Owner/Non-applicant No.2)

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate
For Respondents	:	None

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

18.03.2019

1. As all these above appeals arise out of the same accident occurred on 23.10.2015 involving the same vehicle Truck Ashok Leyland bearing registration No. KA-01/AA/0546 (hereinafter referred to as "offending vehicle"), they are being disposed of by this common judgment.

2. All these appeals arise out of common awards dated 21.08.2018 passed by First Additional Motor Accident Claims Tribunal, Balodabazar (C.G.) in Claim Cases No. 114/2015, 113/2015, 107/2015, 104/2015, 105/2015 and 106/2015 awarding compensation in favour of the Claimants of Rs.57,498/-; 6,10,000/-; 6,10,000/-; 6,10,000/-; 7,90,114/- and 6,10,000/- with interest @ 7% per annum from the date of claim applications till realization respectively directing non-applicant No.3/Insurance Company to first pay the awarded sum to the Claimants and then to recover the same from the driver and owner of the offending vehicle.

3. Brief facts necessary for disposal of these appeals are that on the date of accident i.e. 23.10.2015 injured- Set Kumar, deceased persons namely – Gadaram @ Sanjay Bhoi, Prajapati Bariha, Sahettar Bariha, Tikaram Bariha and Ajit Yadav were going to do work in the offending vehicle, however, due to rash and negligent driving of the offending vehicle by non-applicant No.1 – Marappan, which was owned by non-applicant No.2 – Shri Raghupati Shubramanyam and duly insured at the relevant time with non-applicant No.3/The New India Assurance Company Limited, the said vehicle turned turtle near field of Ramesh Bhilala on the road of Abada to Ikrela. As a result thereof, the above mentioned persons travelling in the offending vehicle suffered grievous injuries and Gadaram @ Sanjay Bhoi, Prajapati Bariha, Sahettar Bariha, Tikaram Bariha and Ajit Yadav succumbed to the same.

4. On separate claim petitions under Section 166 of the Motor Vehicles Act being filed by the injured and the respective legal representatives of the deceased persons claiming compensation against their injury and death, the Tribunal considering the pleadings of the parties and the evidence adduced in support thereof, by the impugned awards dated 21.08.2018 granted compensation in favour of the Claimants in the respective claim cases as mentioned above.

5. Learned counsel for the Appellant/Insurance Company submits as under:

(i) that as per insurance policy risk of owner cum driver, legal liability to pay driver and conductor/cleaner employed for operation was only covered. Risk of labourers/passengers travelling in the offending vehicle was not covered under the policy because no premium was charged for covering the risk of labourer/passengers. In view of the matter labourer would be treated as passengers in the goods vehicle and thus injured was not the third party. In such a situation Appellant-Insurance Company cannot be directed to first pay the compensation amount and thereafter recover the same from owner and driver of the vehicle.

(ii) that as per permit of the offending vehicle no passengers/labourers can be carried in the vehicle whereas at the time of alleged accident 12 persons were travelling out of which five persons died and another received injuries and thus common award for five death cases and one injury has been passed by the Tribunal.

(iii) that pay and recover order only can be passed where risk is covered and other breach of policy condition has been found. But in the instant cases risk of labourer/passengers was not covered because injured and deceased persons were not the third party therefore order for pay and recover cannot be passed by the Tribunal. But the Tribunal by overlooking the above legal aspect wrongly directed to the Appellant for pay and recover.

6. Heard learned counsel for the Appellant and perused the material available on record.

7. 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.
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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".
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> 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)"
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> > "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 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."

8. Considering the facts and circumstances of the case and particularly the fact that on the date of accident, the offending vehicle was duly insured with the Insurance Company/non-applicant No.3 and that the deceased persons and injured were the gratuitous passengers, keeping in view of the decisions of the Hon'ble Supreme Court in the matter of *Manuara Khatun* (supra), this Court is of the opinion that the Tribunal was justified in directing non-applicant No.3/Insurance Company to first pay the awarded sum to the Claimants and then to recover the same from the driver and owner of the offending vehicle.

9. In the result, the above appeals being without any substance are liable to be dismissed and are accordingly dismissed.

10. No order as to cost.

Sd/-

(Gautam Chourdiya)
Judge

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