AFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 469 of 2013

Ravi Ku. Sahu S/o Dayaram Sahu Aged About 30 Years R/o. Village-Baldevpur, P.S.-Khairagarh, Revnue/Distt- Rajnandgaon C.G.

---- Appellant

Versus

1. Kailash S/o Maniram Nishad Aged About 6 Years Minor.
2. Kuleshwar S/o Maniram Nishad Aged About 3 Years Minor.
3. Smt. Jambai W/o Maniram Aged About 23 Years.
   Legal Guardian Mother of Respondent No.1 & 2.
4. Ramadhin S/o Somsingh Aged About 65 Years, Caste- Nishad.
5. Smt. Ramtilabai W/o Ramadhin Nishad Aged About 62 Years.
   All above are R/o Vill- Gumanpur, P.S. Matapar, Civil/Revenue Distt-Rajnandgaon, Chhattisgarh. (Claimants).
6. Branch Manager Shriram General Insu. Co. Ltd, Branch Office Rajnandgaon, Distt. Rajnandgaon C.G.

--- Respondents

For Appellant	:	Mr. H.S. Ahuluwallia, Advocate.
For Respondent No.6	:	Mr. Deepak Gupta, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J
Judgment on Board

Per P. R. Ramachandra Menon, CJ
22/05/2020

1. This appeal has been preferred by the appellant-Owner of the 'light goods vehicle' (TATA 207 -Pick Up) bearing registration No.CG04-J-6901 (for short 'the offending vehicle'), being aggrieved of the Award passed by the Additional Motor Accident Claims Tribunal (for short 'the Tribunal') in Claim Case No.27/2011, whereby the liability in respect of the person, who was travelling in the vehicle and had sustained fatal injuries ultimately leading to his death, has been ordered to be satisfied by the appellant-Owner of the vehicle, after exonerating the Insurer.

2. Heard Mr. H.S. Ahuluwalia, learned counsel for the appellant and Mr. Deepak Gupta, learned counsel for the respondent/Insurance Company.

3. The factual matrix, as pleaded by the appellant, reveals that, on 18.2.2011, the 'appellant/owner' himself was driving the vehicle and while so, the deceased, by name Maniram Nishad, who was standing on the side of the road sought a 'lift', which was given by the appellant and accordingly, he was travelling in the said goods carriage, which was admittedly not carrying any goods at the relevant time. While proceeding along the road, the appellant lost control over the vehicle and hit against a tractor which was lying/parked ahead. As a result, Maniram Nishad sustained fatal injuries, who finally succumbed to the same; in turn, leading to the claim petition filed by the legal representatives.

4. The claim was resisted by the Insurance Company, mainly pointing out that the offending vehicle was not being driven with a valid driving license at the relevant time; having no authorisation to drive a transport vehicle. This was sought to be rebutted by the appellant-Owner, who himself was driving the vehicle, by producing Ex.D-1 & D-2, the license to drive a “Light Motor Vehicle”.

5. The Tribunal observed that the vehicle involved being a goods vehicle, there was no valid authorisation to drive the same and in the said circumstance, after quantifying the compensation at Rs.4,99,100/-, it was directed to be satisfied with interest at the rate of 6% p.a. by the appellant/ insured / owner, virtually exonerating the Insurance Company for breach of the policy/statutory conditions. This is sought to be challenged by filing this appeal, at the instance of the Insured/Owner.

6. The learned counsel for the appellant submits that the appellant is having 'Heavy vehicle driving license', with authorisation to drive a

'Heavy goods vehicle' as well; which unfortunately could not be produced before the Tribunal. In the said circumstance, it is produced before this Court alongwtih IA No.3. The liability is sought to be satisfied by the Insurance Company and hence, the appeal.

7. Section 3 of the Motor Vehicles Act, 1988 (for short, 'the MV Act') stipulates that, it is necessary to have an authorisation to drive a 'transport vehicle'. The aforesaid provision and such other provisions of the MV Act came up for consideration before the Hon'ble Supreme Court in the matter of **Mukund Dewangan v. Oriental Insurance Company Limited**[1]. With reference to definition of the term 'light motor vehicle' under Section 2(22) of the MV Act, (which takes within its scope 'motorcycle with gear' & 'light motor vehicle' (non-transport) having gross vehicle weight less than 7500 kg), it was held that, anybody having an 'LMV' license is free to drive a 'light motor vehicle', whether it be a 'passenger carrying vehicle' or a 'light goods vehicle', without any further authorisation to drive a transport vehicle, provided he satisfies the requirement under Section 2(22) of the MV Act, as above. The dictum therein was doubted and it came to be referred for consideration by a larger Bench, for the reasons stated in **Bajaj Alliance (sic Allianz) General Insurance Co. Ltd. v. Rambha Devi & Ors**[2]**.** However, in the year 2019, the Apex Court noted the position in **M.S. Bhati v. National Insurance Company**[3] and the merit was decided in terms of the law declared in **Mukund Deewangan's case** (supra); obviously since it was the legal position as on date and the reference was still to be answered.

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1 (2017) 14 SCC 663
2 (2019) 12 SCC 816
3 (2019) 12 SCC 248

This being the position, we find it appropriate to hold that the 'LMV license' produced by the appellant was equally good enough to drive a 'transport vehicle' as well on the relevant date i.e. on 18.02.2011.

8. However, a more important question requires to be considered before acceding to the prayer made by the appellant to shift the liability to the shoulders of the respondent/Insurance Company. This question is whether the policy issued by the respondent would cover risk of the deceased, in view of the admitted facts and figures. A copy of the policy (which is forming part of the records) placed for perusal of this Court by the learned counsel, shows that, it is a "GCCV (Goods Carrying Commercial Vehicle) Package Policy"; which is not limited to 'third party risk' alone. Apart from own-damage risk, premium has been paid for coverage under different heads. The schedule of premium, as given in the policy is extracted below :-

SCHEDULE OF PREMIUM			
A. OWN DAMAGE		**B. LIABILITY**	
BASIC OD COVER	4,485.00	BASIC TP COVER	5,580.00
LESS:DETARIFF DISCOUNT ON BASIC OD	897.00	ADD : GR36A-PA FOR OWNER DRIVER	100.00
LESS : NO CLAIM BONUS-GR27	718.00	ADD : LL TO EMPLOYEES COUNT : 1	25.00
OD TOTAL	2,871.00	ADD : LL TO PAID DRIVER COUNT : 1	25.00
		TP TOTAL	5,730.00
		TOTAL PREMIUM	8,601.00
		ADD : SERVICE TAX	886.00
		TOTAL AMOUNT	9,487.00

9. It is seen that a sum of Rs.5,580/- has been paid towards the basic statutory third party liability; Rs.100/- is paid towards personal accident coverage for 'Owner-Cum-Driver'; Rs.25/- is paid as premium in respect

of 'legal liability coverage' towards the employee of the insured and a further sum of Rs.25/- is paid towards similar coverage in respect of the paid driver. The point to be answered is whether the deceased would fall in any of the above categories mentioned in the policy issued by the Insurance Company (who stands exonerated by the Tribunal, though on a different ground).

10. The case put up by the appellant before the Tribunal and this Court is quite specific. The appellant has pleaded that the deceased was standing on the side of the road and he sought a lift in the vehicle, which was consciously acted upon by the appellant-Owner, who himself was driving the vehicle at the relevant time. It was accordingly, that the deceased was permitted to travel in the vehicle, which is admittedly a 'goods carriage'. The appellant does not have a case that the deceased was an employee of the appellant/Insured. There is also no case that the deceased was travelling in the vehicle, accompanying his goods. On the other hand, the appellant had specifically contended that no goods were being carried in the vehicle at the relevant time, as mentioned above. The admitted facts do not require to be proved, by virtue of Section 58 of the Evidence Act.

11. In view of the clear admission by the appellant that the deceased was only a stranger and was permitted to travel in the vehicle (goods carriage) because of the mercy shown by the appellant (who himself was owner as well the driver of the vehicle at the relevant time), the deceased was only a 'gratuitous passenger'. This being the position, the question is whether a 'gratuitous passenger' can be permitted to travel in a 'goods carriage' and whether his risk could be covered under the

policy. This issue has been categorically considered and answered by the Apex Court in the matter of **New India Assurance Company Limited v. Asha Rani and Ors**[4]; holding it emphatically in the 'Negative'. The said position was further considered by the Apex Court and explained in **National Insurance Co. Ltd vs Baljit Kaur And Ors**[5]**.** Series of decisions came thereafter and the legal position stands settled as on date.

12. Insofar as the deceased was only a 'gratuitous passenger' (not being owner of the goods or employee of the Insured), such risk is not covered by the policy to shift the liability from the Owner to the Insurer and no premium has been accepted in this regard. By virtue of the law declared by the Supreme Court, no gratuitous passenger could have been carried in the goods carriage, except to the extent as specifically provided under the statue policy. Since the appellant-Owner himself was driving the vehicle at the relevant time, he alone is to be blamed and nobody else.

13. In the above circumstances, we are of the view that the challenge raised by the appellant/Insured, seeking to cause the liability to be shifted to the shoulders of the respondent-Insurance Company is not liable to be entertained.

14. Appeal fails and it is dismissed accordingly.

Sd/-	Sd/-
(P. R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	Judge

Jamal

4 (2003) 2 SCC 223
5 (2004) 2 SCC 1