NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 10.06.2020

Judgment pronounced on 02.09.2020

MAC No. 517 of 2013

- Shri Ram General Insurance Company Ltd.-10003E-8 Rico Industrial Area, Sitapura, Jaipur, Rajasthan 302022 **---- Appellant/NA3**

Versus

1. Smt.Khomin Bai, Wd/o Late Jagdish Sahu Aged About 20 Years
2. Satish Kumar, S/o Late Jagdish Sahu Aged About 8 months, Minor, Thru-Natural guardian Mother Smt. Khomin Bai
3. Smt. Budhyarin Bai, Wd/o Ajit Ram Sahu Aged About 65 Years

   All R/o Village Faradfod, P.S. And Tah. Dondilohara, Distt. Durg C.G (Claimants)
4. Bihauram, S/o Lalaram Thakur R/o Village Faradfod, P.S. And Tah. Dondilohara, Distt. Durg, Chhattisgarh (NA1)
5. Yashpal Dewangan, S/o Santosh Dewangan, Caste-Kosta, R/o Faradfod, P.S. And Tah. Dondilohara, Distt. Durg, Chhattisgarh (NA2)
6. Ramnath Yadav, S/o Guhri Yadav R/o village Jhitiya, P.S. And Tah. Dondilohara, Distt. Durg, Chhattisgarh (NA4)
7. National Insu. Co.Ltd. Kamthi Line, Rajnandgaon, Distt. Rajnandgaon, Chhattisgarh (NA5)

---- Respondents

MAC No. 564 of 2013

- The National Insurance Co. Ltd. Thru- Sr. Divisional Manager, D.O. B-1, Taha Complex, Ring Road-1, Priyadarshini Nagar, Bilaspur, Chhattisgarh

---- Appellant/NA5

Versus

1. Khimin Bai, W/o Jagdish Sahu Aged About 22 Years
2. Satish Kumar S/o Late Jagdish Sahu Aged About 8 months Minor, Thru-Mother Khimin Bai Wd/o Jagdish Sahu
3. Smt. Budhiyarin Bai, Wd/o Ajeetram Sahu, Aged About 66 Years

   All R/o village Faradfod, Tah. Dondilohara, P.S. Deori, Distt. Durg, Chhattisgarh (Claimants)
4. Bihauram, S/o Lalaram Thakur Aged About 27 Years R/o Faradfod, Tah. Dondilohara, P.S. Deori, Distt. Durg , Chhattisgarh
5. Yashpal Dewangan S/o Santosh Dewangan, Caste-Kosta, R/o Faradfod, Tah. Dondilohara, P.S. Deori, Distt. Durg, Chhattisgarh
6. Shriram General Insu.Co.Ltd. 10003, E-8, Rico Industrial Area, Sitapura, Jaipur, Rajasthan 302022
7. Ramnath Yadav S/o Guhari Yadav R/o village Jhitiya, Tah. Dondi Lohara, Distt. Durg, Chhattisgarh

----Respondents

Counsel appeared in MAC-517 of 2013

For Appellant/Insurance Company	:	Shri Pankaj Agrawal, Advocate
For Respondents-1 to 3/Claimants	:	Shri Vipin Tiwari, Advocate
For Respondent- 7/Insurance Company	:	Shri RN Pusty, Advocate

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Counsel appeared in MAC-564 of 2013

For Appellant/Insurance Company	:	Shri RN Pusty, Advocate
For Respondents-1 to 3/Claimants	:	Shri Vipin Tiwari, Advocate
For Respondent- 6/Insurance Company	:	Shri Pankaj Agrawal, Advocate

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Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.

1. Since the above appeals arise out of the common award dated 14.02.2013 passed by the learned Additional Motor Accident Claims Tribunal, Balod, Distt-Durg, C.G in Claim Case No.252/2011, the same are being decided by this common order.

2. MAC-517 of 2013 was filed by appellant/Shri Ram General Insurance Company of Tractor challenging fastening of 50% liability upon it on the ground that deceased was travelling on Trolley at the time of accident and further that there was breach of conditions of Insurance Policy as no person can travel on Tractor or Trolley except the driver. The deceased was a 'gratuitous passenger' and his risk was covered under Policy.

3. MAC-564 of 2013 is preferred by appellant/National Insurance Company of Trolley challenging fastening of liability upon it to be erroneous, as the deceased was a 'gratuitous passenger' and no premium was paid for covering the risk of gratuitous passenger, and also on the ground that as the deceased was travelling on a goods vehicle, where there is no space for any person to sit except the driver of that vehicle, no liability could have been fastened upon appellant/National Insurance Company.

4. Facts relevant for disposal of above two appeals are that, on 21.03.2011, Jagdish Sahu along with his companion namely, Samaru and Jahariram was travelling on a Tractor & Trolley bearing registration No.CG 04 DB-9708 & CG 07 N-3290 respectively, after unloading agricultural products (chaff) at village Tekapar and were returning to their village-Phardapgedh. On the way, in between village Rengadebri and Banjari, NA1/driver of Tractor-Trolley drove the vehicle rashly and negligently, on account of which, Jagdish Sahu fell down from Trolley and came under its wheel. Trolley was owned by NA4 and it was insured with NA5/National Insurance Company, appellant in MAC-564 of 2013.

5. Claimants, who are widow, minor children and widow mother of deceased filed an application under Section 166 of the Motor Vehicle Act seeking total compensation of Rs.20,20,000/- on account of untimely motor accidental death of Jagdish Sahu (hereafter referred to as 'deceased'), pleading therein that on the date of accident, deceased was aged about 25 years and was earning Rs.6,000/- per month. He was only

bread winner in the family and all the claimants were dependent upon the income of the deceased.

6. NA1, NA2 and NA4, who are driver, owner of Tractor and owner of Trolley respectively, submitted their reply to the claim application jointly, denying the fact of accident. They further pleaded that amount claimed in the claim application was highly exaggerated; on the date of accident, driver of offending vehicle was possessing valid and effective driving license; there was valid permit, fitness; and on the date of accident, Tractor was insured with NA3/Insurance Company, appellant in MAC-517 of 20013 and Trolley was insured with NA-5/Insurance Company, appellant in MAC-564 of 2013. The deceased fell down from the Tractor due to his own negligence.

7. NA3/Insurance Company of the Tractor submitted reply to claim application pleading therein that at the time of accident along with driver of Tractor, 3-4 other persons were also travelling on it, where there was only one seating capacity on the vehicle ie for driver. There was breach of conditions of Insurance Policy; the deceased was gratuitous passenger. Gratuitous passenger of Tractor or goods vehicle will not come within the purview of 3rd party. No premium was charged/ accepted by the Insurance Company for any passenger. There was no liability to make payment of any amount of compensation.

8. NA5/Insurance Company of Trolley pleaded that on the date of accident, driver was not possessing valid and effective driving license; the Tractor was used in breach of conditions of Insurance Policy; NA1, driver

is not under engagement of NA2/owner. Trolley was being used for other than agricultural purpose, there was breach of conditions of Insurance Policy. Deceased himself was responsible for the accident.

9. Learned Claims Tribunal, on appreciation of pleadings and evidence placed on record by respective parties, held that death of late Jagdish Sahu was on account of his falling down from the Tractor; the accident occurred on account of rash and negligent driving of Tractor by its driver/NA1; there was no breach of conditions of Insurance Policy and awarded Rs.4,57,000/- as compensation to the claimants, fastening liability upon both the Insurance Companies equally.

10. Shri Pankaj Agrawal, learned counsel appearing for Insurance Company of Tractor/ appellant in MAC-517 of 2013 submits that learned Claims Tribunal erred in fastening liability upon the Insurance Company ignoring the fact that the deceased was travelling on a goods vehicle as gratuitous passenger. There is no contractual liability between the Insured and Insurer of offending vehicle covering risk of deceased, who was a gratuitous passenger on the offending vehicle/Tractor. In alternate, it is further contended that the deceased was travelling on Trolley as per the evidence and material available on record, but even then erroneously 50% liability has been fastened upon Insurer of the Tractor whereas there was no involvement of Tractor in the accident. Learned counsel places his reliance on a judgment of Hon'ble Supreme Court in case of **United India Insurance Company Limited Vs Serjerao and others** reported in **2008 ACJ 254**.

11. Shri Viprasen Agrawal, learned counsel for claimants/respondents-1 to 3 submits that Tractor and Trolley were insured separately with two different Insurance Companies, who have filed MAC-517 & 564 of 2013. Deceased was travelling as agricultural labourer, as it is evident from the evidence available on record. It is also not in dispute that deceased while travelling as agriculture labour, fell down from the Tractor-Trolley and came under its wheel. Tractor was being used for agriculture purpose as it was carrying 'chaff', the deceased met with an accident while travelling on Trolley. It is also submitted that Trolley itself is not a motor vehicle, but once it is attached with Tractor, then only it becomes a motor vehicle. Therefore, learned Claims Tribunal has not committed any error in fastening liability upon both the Insurance Companies.

12. Shri Ratan Pusty, learned counsel appearing for NA5/appellant in MAC-564 of 2013 also raised similar ground that the deceased was a gratuitous passenger, not covered under the Policy; there was no seating capacity in Tractor-Trolley, except its driver; offending vehicle/Tractor was not meant for carrying passengers or labour and admittedly, at the time of accident, 3-4 persons were travelling on the Tractor. Referring to the provisions of Section 147 of the Motor Vehicles Act, he argued that there is no statutory liability under the Act for covering the risk of the gratuitous passenger travelling on goods vehicle. It is also submitted that the deceased met with an accident due to his own negligence and therefore, the claim application under Section 166 of the Act is not maintainable.

13. Learned counsel places reliance on the judgement passed by Hon'ble Supreme Court in case of **Oriental Insurance Company Limited**

Vs Premlata Shukla and others reported in **2007 AIR SCW 3591** and argued that the claimants have placed copies of documents vide Ex.P1 and P2, which are Final Report and FIR showing the deceased to be travelling on the Tractor by sitting on the side of driver. The contents of FIR are to be read as a whole and the whole FIR is to be admitted as a piece of evidence. He further submits that as there is specific mention of travelling of deceased on Tractor, no liability can be fastened upon the appellant/Insurance Company (Insurer of Trolley).

14. We have heard learned counsel for the parties and perused the record.

15. The claimants in their claim application have pleaded that the deceased travelled on Tractor-Trolley from village Phardapgedh to Tekapar, carrying fodder. The accident took place while they were returning to their village after unloading the 'chaff'. Deceased fell down from the vehicle and came under the wheels of Trolley. In spite of their pleadings, claimants filed documents Ex.P1 to P6 ie documents prepared by the Police during the course of investigation of crime. Ex.P2 is copy of FIR lodged by Benuram Halba, examined as PW1, who is one of the occupants of Tractor travelling on the date of accident as labourer. In the FIR, it is mentioned that deceased was travelling on Tractor sitting by side of its driver and other labourers were also sitting by the side of driver on the Tractor. From perusal of contents of FIR, lodged on the very next date of accident, it is clear that the deceased was travelling on the Tractor. Copy of Insurance policy has been marked as Ex.D1, wherein seating capacity of the Tractor has been shown as 1 + 1 including driver. The

Schedule of premium would show that the premium charged by the Insurance Company was for Basic OD Cover and under Liability part it is mentioned Basic TP Cover, PA for Owner and Driver, Employees- IMT-29. Schedule of premium is reproduced herein below for ready reference:

A. Own Damage		B. Liability	
Basic OD Cover	1,341.00	Basic TP Cover	800.00
Less : Detariff Discount on Basic OD	468.00	Add: GR36A-PA for Owner Driver	100.00
Less: No Claim Bonus-GR27	468.00	Add:LL to Employees-IMT-29	25.00
OD Total	1,404.00	TP Total	925.00
		Total Premium	2,329.00
		Add:Service Tax	240.00
		Total Amount	2,569.00

16. Perusal of Schedule would show no premium is charged by the insurer for covering the risk of any other person except the owner-driver and the legal liability to employee (driver). Copy of registration particulars of Tractor is placed on record, which is also marked as Ex.D1 showing seating capacity of Tractor as only one. Claimant-1/respondent-1 Khiminbai, widow of deceased was examined before the Tribunal as AW1. In her evidence she stated that deceased was travelling on Trolley. Benuram Halba, who lodged the FIR, stated in his evidence that after unloading the 'chaff', they were returning to their village and were travelling on Trolley. In cross-examination this witness admitted that the FIR bears his signature and further admits that he did not intimate the Police while lodging report that deceased was sitting on Trolley. While he was lodging FIR, Samaru also accompanied him to Police Station and further that, the Police lodged report as per the intimation given by him.

17. In view of aforementioned evidence available on record, particularly the whole statement of Benuram Halba, where he admits that the FIR Ex.P2 was lodged on his information; and it was recorded as per information given by him. The learned Claims Tribunal has not considered oral evidence available on record before it in its entirety along with the contents of FIR, and arrived at a wrong conclusion that the deceased was travelling on Trolley.

18. The Hon'ble Supreme Court in case of **Premlata Shukla** (supra) while dealing with issue with respect to FIR or Criminal records of Criminal Case in claim cases, held as under :

> “13. However, the factum of an accident could also be proved from the First Information Report. It is also to be noted that once a part of the contents of the document is admitted in evidence, the party bringing the same on record cannot be permitted to turn round and contend that the other contents contained in the rest part thereof had not been proved. Both the parties have relied thereupon. It was marked as an Exhibit as both the parties intended to rely upon them.”

19. In the case at hand, the person, who lodged the FIR, admitted before learned Claims Tribunal that the FIR has been recorded as per the information given by him and therefore, the documentary evidence and oral evidence of AW2 could not have been ignored by the learned Claims Tribunal. Only observation which could be made by this Court is that the finding recorded by learned Claims Tribunal that the deceased was travelling on Trolley is perverse and not sustainable. It is held that the deceased was travelling on Tractor.

20. In view of above, the ground raised by appellant/Insurance Company in MAC-564 of 2013 as ground No.(f) is allowed.

21. So far as the fastening of liability to pay amount of compensation upon the Insurance Company in the facts and circumstances of the case is concerned, it is the case of claimants and also very clear from the evidence available on record ie Ex.P2 and the evidence of AW2 Benuram Halba that the deceased met with an accident while travelling on Tractor. The offending Tractor is a goods carrying vehicle as it was attached with the Trolley at the time of accident. There is no seating capacity on Tractor except the driver as per the registration particulars issued by the Assistant Regional Transport Officer, Raipur wherein seating capacity is mentioned as one in the particulars of Tractor. As we have held in the preceding paragraphs that as per the evidence the deceased was travelling on Tractor.

22. The issue of a person travelling on Goods vehicle has been considered and decided by Hon'ble Supreme Court in case of **New India Assurance Company Limited Vs Asha Rani** reported in **2003 (2) 223** wherein it has been held that there is no liability upon the Insurance Company for covering the risk of gratuitous passenger who was travelling on goods vehicle and the Insurance Company cannot be held liable for satisfying the amount of compensation as there is no coverage of risk of gratuitous passenger.

23. The issue of person travelling on a tractor who met with an accident resulting in permanent disability was considered and decided by Hon'ble

Supreme Court in the matter of **Shivaraj Vs Rajendra and Another** reported in 2018 (10) SCC 432 and it was held thus:

> "10. The High Court, however, found in favour of Respondent 2 (insurer) that the appellant travelled in the tractor as a passenger which was in breach of the policy condition, for the tractor was insured for agriculture purposes and not for carrying goods. The evidence on record unambiguously pointed out that neither was any trailer insured nor was any trailer attached to the tractor. Thus, it would follow that the appellant travelled in the tractor as a passenger, even though the tractor could accommodate only one person, namely, the driver. As a result, the Insurance Company (Respondent 2) was not liable for the loss or injuries suffered by the appellant or to indemnify the owner of the tractor. That conclusion reached by the High Court, in our opinion, is unexceptionable in the fact situation of the present case."

24. If in the light of aforementioned law laid down by Hon'ble Supreme Court, facts of the present case are considered, what cannot be ignored is that the FIR lodged by Benuram Halba, AW2 mentions the travelling of deceased on Tractor. AW2 specifically stated that FIR has been lodged as per the information given by him. Copy of Insurance Policy of Tractor available on record as Ex.D1 shows that the premium was charged for covering the risk of Owner, Driver and paid driver as it is mentioned for legal liability for employee and the Policy was proved by NAW1, who was Executive Officer of Insurance Company.

25. In view of material available on record, we are of the considered view that learned Claims Tribunal committed an error in recording finding that there was no breach of conditions of Insurance Policy. The said

finding being contrary to the facts and law is not sustainable and is hereby set aside.

26. We hold that Insurance Company will not have any liability to satisfy the amount of compensation. Now, the liability to satisfy the amount of compensation of Rs.4,57,000/- awarded by learned Claims Tribunal will be upon NA1, 2 and 4/respondents-4, 5 and 6.

27. In the result, both the appeals are allowed and the impugned award is modified to the extent that both the insurance companies are exonerated from their liability to indemnify the insured and now respondents- 4, 5 & 6 are held liable to make payment of the entire compensation awarded by the learned Claims Tribunal. Other conditions contained in the impugned award passed by the learned Claims Tribunal shall remain intact.

28. Both the Insurance Companies will be entitled to recover all the amount deposited by them in pursuance of the impugned award from NA1, 2 and 4 including mandatory deposit under Section 173(1) of the Motor Vehicles Act, 1988 in accordance with law.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

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