NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 309 of 2015

1. Raj Kumar Satnami S/o Jethu Ram Satnami, aged about 36 years, R/o Satnami Para Kawardha, Tahsil and Police Station Kawardha, Civil and Revenue District Kabirdham C.G. **-------Driver**

2. Mahaveer Agarwal S/o Kishan Chand Agarwal, aged about 38 years, Occupation Transport Business R/o Gupta Para Kawardha, Tahsil and Police Station Kawardha, Civil and Revenue District Kabirdham C.G. **------Owner**

----Appellants

VERSUS

1. Gokul Sahu S/o Fatte Sahu, aged about 40 years.

2. Gaytri Sahu W/o Gokul Sahu, aged about 38 years

3. Rajkumari Sahu Wd/o late Neelkanth Sahu, aged about 20 years

4. Ku. Sheetala Sahu D/o Gokul Sahu, aged about 16 years

5. Deepak Sahu S/o Gokul Sahu, aged 13 years

   Respondent 4 and 5 are minor through their natural father Gokul Sahu S/o Fatte Sahu (Respondent 1)

   Respondent 1 to 5 are R/o Village Chardongari, Police Station Pipariya, Tahsil Kawardha, Civil and Revenue District Kabirdham C.G.

6. Branch Manager, Bajaj Alliance General Insurance Company Limited, Shiv Mohan Bhawan, Vidhan Sabha Road, Pandari Raipur C.G.

----Respondents

For Appellants	:	Mr. Dharmesh Shrivastava, Advocate
For Respondent No. 6	:	Mr. Sachin Singh Rajput, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

02/11/2020

1. Challenge in this appeal is to the award dated 16.02.2015 passed by learned Motor Accident Claims Tribunal, Kabirdham (Kawardha), District Kabirdham C.G. in claim case no. 27/2014, whereby learned Claims Tribunal allowed the

application filed under Section 166 of the Motor Vehicles Act, 1988 (for short "Act of 1988") in part and awarded Rs. 4,82,000/- as compensation, fastened liability upon non-applicant 1 and 2 (driver and owner of the offending truck).

2. Facts relevant for disposal of this appeal are that on 28.01.2014, Neelkanth was travelling on a truck bearing registration no. CG 09B 7004 (offending truck), driven by non-applicant 1 Rajkumar, loaded with sugarcane. When Neelkanth was on truck, non-applicant 1 drove it rashly and negligently, on account of which, he came in contact with electricity wire crossing over the road and met with an accident. Neelkanth, on account of electrocution, fell down from truck and suffered grievous injury. He was immediately taken to hospital where he was declared brought dead. Accident was reported to concerned police station, based on which, crime was registered and after completion of investigation, charge-sheet was filed against NA1 before the Court of jurisdictional Magistrate.

3. Claimants who are parents and siblings of late Neelkanth, filed an application under Section 166 of the Act of 1988, pleading therein that on the date of accident, deceased Neelkanth was aged about 28 years woking as labourer, earning Rs. 300/- per day, and claimed Rs. 28,70,000/- as total compensation.

4. Non-applicant Nos.1 & 2/driver and owner of offending truck submitted reply to the claim application. While denying the pleadings made therein, it was further pleaded that on the date of accident deceased was working as helper of truck driver, truck was loaded with sugarcane and was going to sugar factory. On the way at village -Chardongri, electric cable were laid very low, there were several crossing of electric wires over road. To protect the sugarcane loaded on truck from coming into contact with electricity wire, the

driver of truck directed deceased to look, guide in movement of truck and remove the electric wire likely to come in contact with sugarcane loaded on truck. When deceased was standing on the truck holding part of the truck body with his hand and guiding the driver of truck, cabin of truck came in contact with electric wire and deceased suffered electric shock. There was no rash and negligent driving of truck by respondent No.1. Deceased was working on daily wages at the rate of Rs.100/- per day. Offending truck was insured with non-applicant no.3-Insurance Company. The liability to pay the amount of compensation would be upon non-applicant No.3.

5. Non-applicant 3/ Insurance Company submitted reply to the claim application, while denying the pleadings made therein, it was further pleaded that the driver of the offending truck was not possessed with valid and effective driving licence, there was breach of policy conditions. Accident was not due to use of motor vehicle. Application for grant of compensation, as such, is not maintainable.

6. Upon appreciation of pleadings and evidence brought on record by the respective parties, learned Claims Tribunal held that death of Neelkanth was a result of rash and negligent driving of the offending truck by non-applicant 1. Truck was overloaded with goods (sugarcane), hence, there was breach of permit conditions, as such, there was breach of policy conditions and fastened liability to satisfy the amount of compensation upon the appellants (driver and owner of offending truck). Claims Tribunal awarded Rs. 4,82,000/- as total compensation.

7. Mr. Dharmesh Shrivastava, learned counsel for the appellants submits that, the Claims Tribunal erred in fastening liability upon the appellants, overlooking the fact that on the date of accident, there was valid and effective

insurance policy covering the risk of deceased. He further contended that on the date of accident, offending vehicle was having permit to transport goods and on the basis of which, offending truck was transporting Sugarcane, accident took place during that period on public road. It is not a case where offending truck was not having valid permit of its use on public place. Claims Tribunal taking into consideration the fact that the truck was overloaded has arrived at a finding that there was breach of policy conditions. He contended that the Insurance Company has not examined any witness in their support to prove that there was breach of policy conditions. In the facts of the case where the offending vehicle was insured, having valid permit and the driver was holding valid and effective driving license, it is the burden upon the Insurance Company to prove that there was breach of policy conditions in which it utterly failed. In absence of evidence of breach of policy condition, finding recorded by Claims Tribunal that there was breach of policy conditions is not sustainable. He also contended that merely overloading of the goods than that mentioned in the permit itself will not absolve the Insurance Company from its liability under the insurance policy. In support of his contention, he places his reliance on the judgment passed by the Supreme Court in case of ***National Insurance Com. Ltd. vs. Anjana Shyam and others*** reported in **(2007) 7 SCC 445**. He further submitted that the amount of compensation awarded by the Claims Tribunal is on higher side.

8. Per contra, Mr. Sachin Singh Rajput, learned counsel appearing for Respondent 6/ Insurance Company, while controverting the submissions made by learned counsel for the appellants, submits that, the finding recorded by the Claims Tribunal is based on the facts and evidence placed on record. Claims Tribunal considering the copy of permit placed on record by claimants as Ext. P-11, and oral evidence has rightly held that there was

breach of permit conditions and exonerated the Insurance Company from its liability. He contended that Rajkumar, driver of offending vehicle in his evidence admitted that on the date of accident, truck was loaded with 24 tonnes of Sugarcane whereas under the permit, the truck was authorised to transport only 16 tonnes of weight, hence, *prima facie*, it is evident that there was breach of policy conditions. He further contended that the judgment relied upon by the learned counsel for the appellants ie. **Anjana Shyam (supra)**, is on different facts. The impugned award passed by the Claims Tribunal is just and proper in the facts and circumstances of the case, which does not call for any interference.

9. I have heard learned counsel for the respective parties and also perused the record of the claim case.

10. To appreciate the submissions made by the learned counsel for the appellants that the finding recorded by the Claims Tribunal with regard to policy conditions, is without any evidence. I have perused the record of the claim case. Insurance Company has not disputed the issuance of insurance policy (Ext. P-12). Issuance of permit by the Competent authority and offending truck was running under the valid permit is also not disputed. Copy of permit is filed as Ext. NA-2(c)/ Ext. P-11. Under the permit, the weight limit has been mentioned as 15,900 kgs. In evidence, driver of the offending truck at paragraph 7 of the cross-examination, admitted that the weight of the sugarcane transported on the date of accident was 24 tonnes. He also admitted that there was overloading on the truck.

11. In the aforementioned facts of the case, the question raised by the learned counsel for the appellants for consideration of this Court is whether overloading of the goods in a goods vehicle will automatically lead to breach

of policy conditions and exoneration of Insurance Company from its liability?

12. Section 147 of the Act of 1988 deals with “Requirements of policies and limits of liability”. Section 149 deals with “Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks”. Sub-section 2 of Section 149 excludes the insurer from satisfying the judgments and awards under certain conditions. Section 149(2) of the Act is reproduced herein below for ready reference.

> “149. **Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.—**
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> (1) x x x x x x x x
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> (2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—
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> (a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—
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> (i) a condition excluding the use of the vehicle—
>
> (a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or
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> (b) for organised racing and speed testing, or
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> (c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or
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> (d) without side-car being attached where the vehicle is a motor cycle; or
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> (ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been

> disqualified for holding or obtaining a driving licence during the period of disqualification; or
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> (iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or
>
> (b) that the policy is void on the ground that it was obtained by the non- disclosure of a material fact or by a representation of fact which was false in some material particular."

13. From bare perusal of the aforementioned provisions, it is clear that the Insurer can avoid its liability under the conditions enumerated under sub-section 2 of Section 149. In the case at hand, there do not exist any of the conditions as enumerated under Section 149(2). Vehicle was plied on public place under the permit. It was being used for carrying goods for which the offending vehicle was having the permit as transport vehicle for carrying goods. It was not used as mentioned under Section 149(2)(a)(i). Limits as to use of vehicle mentioned in Policy (Ex.P12) which reads as under :

> "Limitation as to use : The Policy covers use only under a permit within the meaning of Motor Vehicle Act, 1988 or such a carriage falling under Sub-section 3 of Section 66 of the Motor Vehicle's Act 1988. The Policy does not cover use for : Organised racing, Pace making, Reliability Trials, Speed Testing"

14. Reverting back to the present case, as discussed in preceding paragraphs that, on the date of accident, there was valid permit of the offending truck for transporting goods and there was valid insurance policy covering the risk of deceased. Admittedly, the Insurance Company has not examined any witness to prove that there was breach of policy conditions. Breach of policy conditions has been asserted by the Insurance Company in their reply only on the ground that the driver of the offending truck was not possessed with valid and effective driving licence to drive the vehicle on the date of accident. Copy of licence is placed on record as Ext. P-13, wherein the licence to drive

transport vehicle was valid till 14.11.2016, whereas the date of accident was of 28.01.2014. Insurance Company has not brought any evidence to prove that the copy of licence available on record was not valid and effective on the date of accident. Claims Tribunal has also not exonerated the Insurance Company on the ground that driver of the offending truck was not possessed with valid and effective driving licence but has exonerated the Insurance Company only on the ground of overloading. Issue of overloading on the vehicle has been considered by the Hon'ble Supreme Court in case of **Anjana Shyam (supra)** and further in case of ***United India Insurance Co. Ltd. v. K. M. Poonam and others*** reported in **(2015) 15 SCC 297**.

15. In the aforementioned cases, both the vehicles which were involved are passenger carrying vehicles, on the date of accident, vehicles were found to be carrying more passengers than permitted by the Competent authority under the permit. In the aforementioned cases, the Insurance Company was not exonerated from its liability to satisfy the amount of compensation but it has only been held that the Insurance Company is liable to satisfy the amount of compensation under the provisions of Section 147 and Section 149 of the Act of 1988, up to the limits of the policy. Sofar as the facts of the present case are concerned, there was valid and effective insurance policy, vehicle was running under the permit. But it is a case where the Claims Tribunal arrived at a finding that vehicle was over loaded as such there was breach of permit conditions, as per oral evidence, which came during the course of investigation. There is no pleading with regard to overloading of the goods by the Insurance Company in its reply.

16. In the aforementioned facts and circumstances of the case and taking into consideration the aforementioned rulings of hon'ble Supreme Court, in the opinion of this Court in absence of pleading of over loading, non examination

of any witness on behalf of Insurance Company, grounds available to avoid liability under Act and policy, respondent No.6 failed to prove fundamental breach, hence, the finding recorded by the Claims Tribunal that there was breach of policy conditions and exoneration of respondent No.6-Insurance Company is not sustainable and it is hereby set aside.

17. In the result, appeal is allowed. Liability to satisfy the amount of compensation now shall be upon Respondent No.6/Insurance Company with appellants jointly and severally. Impugned award is hereby modified to the extent as indicated herein-above. Rest of the conditions imposed by the Claims Tribunal shall remain intact.

Sd/-
(Parth Prateem Sahu)
Judge

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