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HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 394 of 2015

Branch Manager, The Oriental Insurance Company Limited, M.B. Trade Centre, 2nd Floor, Gandhi, Chowk, Dhamtari, District Dhamtari, Chhattisgarh

---- Appellant

Versus

1. Smt. Vimla Devi Wd/o Late Chatur Ram Sahu, Aged About 45 Years
2. Ramesh Kumar S/o Late Chatur Ram Sahu, Aged About 28 Years

   Both are R/o Village Gobra, Post Charmudiya, Tahsil Kurud, District Dhamtari, Chhattisgarh

3. Tumesh Kumar Sahu S/o Late C.R. Sahu, Aged About 21 Years, R/o Village Gobra, Post Charmudiya, Tahsil Kurud, District Dhamtari, Chhattisgarh

---- Respondents

For Appellant	:	Ms. Richa Dwivedi, Advocate on behalf of Mr. Pankaj Agrawal, Advocate
For Respondents	:	None

Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board

02/01/2020

1. The appellant/Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (in short 'M.V. Act') challenging the legality, validity and propriety of impugned award dated 03/01/2015 passed by Chief Motor Accident Claims Tribunal, Dhamtari, Chhattisgarh (in short 'Claims Tribunal') in Claim Case

No.167/2013, wherein the learned Claims Tribunal awarded a sum of Rs.1,00,000/- as compensation in favour of the claimants along with interest at the rate of 6% per annum from the date of filing of claim application till its realization.

2. Facts of the case in nutshell, are that, on 07/06/2013, Chatur Ram Sahu went to agricultural field on Tractor bearing No. CG05/G/3610 and Trolley bearing No.CG05/A/3593 (in short 'offending vehicle') and returning from the agricultural field after loading chaff bags. Chatur Ram Sahu was sitting over chaff bags loaded on the Trolley, when it reached near *Purana Mata* Pond, at that relevant time, high tension electric wire fell down and Chatur Ram Sahu came into contact with the said electric wire. He suffered electric shock and fell down from the loaded Trolley. In the aforementioned accident, he suffered grievous injuries over his head, chest and other parts of the body and succumbed to those injuries on spot.

3. The accident was reported to concerned Police Station, based upon which, First Information Report bearing No.200/13 was registered against driver of offending vehicle. Claimants who are widow and son of deceased Chatur Ram Sahu filed claim application before the competent Claims Tribunal under Section 163-A of the M.V. Act for grant of compensation claiming Rs.6,81,000/- in total on different heads.

4. Non-applicant No.1/driver of offending vehicle did not appear before learned Claims Tribunal and was proceeded *exparte*.

5. Non-applicant No.2/Insurance Company submitted reply to claim application and denied all the adverse pleadings made in the claim application. It was pleaded that Chatur Ram Sahu himself was owner of the offending vehicle and on the date of accident, it was driven by son of deceased Chatur Ram Sahu. At the time of accident, deceased was sitting over jute begs loaded on Trolley with chaff and met with an accident due to his own negligence. It was also pleaded that there was no involvement of any other motor vehicle in the accident, but deceased Chatur Ram Sahu came in contact of high tension electric wire and thereby suffered shock and met with an accident. It was lastly pleaded that there was breach of conditions of insurance policy, Insurance Company is not liable for payment of any amount of compensation.

6. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties held that Chatur Ram Sahu came into contact with high tension electric wire, fell down from Trolley, suffered grievous injuries over his person and succumbed to those injuries. There was no contributory negligence on the part of the deceased; breach of conditions of insurance policy has not been proved and thereby awarded total sum of Rs.1,00,000/- as compensation taking into consideration premium towards personal accident coverage to owner driver.

7. Ms. Richa Dwivedi, learned counsel appearing for the appellant-Insurance Company submits that deceased Chatur Ram Sahu himself was owner of the offending vehicle, he was not driving the tractor instead he was travelling as gratuitous passenger over the Trolley. Claimants are not entitled for any amount of compensation. She further submits that only Tractor was insured and Trolley attached to the Tractor was not insured with the appellant- Insurance Company, whereas accident took place when deceased Chatur Ram Sahu was travelling on Trolley as gratuitous passenger, therefore, the appellant-Insurance Company cannot be held liable for payment of any amount of compensation as the appellant has not issued any insurance policy for insuring the Trolley. She further submits that learned Claims Tribunal committed an error in awarding Rs.1,00,000/- towards personal accident, which is for the owner-cum-driver of the vehicle. Deceased Chatur Ram Sahu was not driving tractor but was sitting on Trolley as gratuitous passenger in breach of policy conditions.

8. I have heard learned counsel for the appellant and perused the records carefully.

9. The Insurance Company has taken specific plea that there was breach of conditions of insurance policy as deceased Chatur Ram Sahu (owner of the offending vehicle) was travelling on Trolley loaded with goods. It was also the case of the appellant that the learned Claims Tribunal erred in awarding an amount of compensation taking into consideration the premium for PA cover to owner-cum-driver. Admittedly, the deceased was not driving the offending vehicle at the time of accident.

10. The Tractor Trolley on which the deceased was travelling was a goods carriage vehicle and the deceased was sitting over goods loaded on Trolley. This being so, the Tractor Trolley was being used as a goods carrying vehicle. The issue with regard to carrying passenger in a goods carrying vehicle has been settled by the Hon'ble Supreme Court in case of **New India Assurance Co. Ltd. v. Asha Rani** reported in **(2003) 2 SCC 223** has held as under :

> "26. In view of the changes in the relevant provisions in the 1988 Act vis-a-vis the 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". 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."

The Hon'ble Supreme Court further considering its judgment of **Asha Rani (supra),** in case of **National Insurance Co. Ltd. v. Chollety Bharatamma** reported in **(2008) 1 SCC 423** has further held thus :

“12. Yet again in *New India Assurance Co. Ltd. v. Vedwati, (2007) 9 SCC 486*, this Court held: (SCC p. 490, para 6)

'*9*. … The difference in the language of 'goods vehicle' as appearing in the old Act and 'goods carriage' in the Act is of significance. A bare reading of the provisions makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger. This is clear from the expression 'in addition to passengers' as contained in the definition of 'goods vehicle' in the old Act. The position becomes further clear because the expression used 'goods carriage' is solely for the carriage of 'goods'. Carrying of passengers in a goods carriage is not contemplated in the act. There is no provision similar to Clause (ii) of the proviso appended to Section 95 of the old Act prescribing requirement of insurance policy. Even Section 147 of the Act mandates compulsory coverage against death of or bodily injury to any passenger of 'public service vehicle'. The proviso makes it further clear that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle would be limited to liability under the Workmen's Compensation Act, 1923 (in short 'the WC Act').

> *10*. The inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor."
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> 19. It is now well settled that the owner of the goods means only the person who travels in the cabin of the vehicle."

11. In the aforementioned judgments, the Hon'ble Supreme Court has held that the provisions of M.V. Act 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 and the insurer would not be liable for the same and further it has been held that, even if owner of the goods is travelling in the vehicle then, he has to board/sit in the cabin of the vehicle and not on the platform or over the loaded goods.

12. In the light of aforementioned law laid down by Hon'ble Supreme Court, if the facts of the case are considered, it is the case of the claimants themselves that the deceased was travelling on a Trolley loaded with goods, he was sitting over the goods on Trolley and due to electric shock received by him lying overhead, he fell down from the Trolley. Even if, it is considered that the deceased to be the owner of the goods being owner of the Tractor as pleaded in the claim application, then also the deceased could have travelled in the vehicle only on the place provided for sitting. Admittedly, there is no sitting space in the Trolley and as per certificate of registration, the seating capacity of the Tractor is only 'one', on which, the driver was sitting and driving the Tractor attached with Trolley. There was no sitting space for any other person in Tractor Trolley, except the driver of the Tractor. Admittedly, the deceased was not driving the Tractor.

13. In these circumstances, when under Section 147 of the M.V. Act, the deceased cannot be included in the word “any other person” being occupant of the vehicle nor driving the vehicle, the insurer would not be liable therefor.

14. So far as the award of amount of compensation by the learned Claims Tribunal to the extent of premium paid towards personal accident coverage is concerned, when the vehicle is being used in breach of conditions of insurance policy, the Insurance Company cannot be held liable to pay the amount of compensation even under personal accident cover premium for owner-cum-driver is paid in the policy.

15. For the foregoing reasons, the appeal is allowed and the impugned award passed by learned Claims Tribunal is hereby set aside.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh