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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc Appeal (C) No. 586 of 2013

(Arising out of Award dated 15.03.2013 passed by the learned Additional Motor Accident Claims Tribunal, North Bastar-Kanker in Claims Case No.10/2012)

1. Hirendra Nagwanshi son of late Devnath Nagwanshi, aged about 25 years,
2. Ku. Pushpalata Nagwanshi daughter of Late Devnath Nagwanshi, aged about 22 years,

   Both are resident of Village – Thanabodi, Tahsil & Police Station – Narharpur, Civil & Revenue District – Kanker (C.G.)

---- Appellants/Claimants

Versus

1. Padmadhar son of Sonadhar, aged about 22 years, resident of Village-Kirandul, Post & Police Station – Kirandul, Civil & Revenue District-Dantewada (C.G.) (Vehicle Driver)
2. Smt. Kamla Nagwanshi wife of late Devnath Nagwanshi, aged about 42 years, resident of Village – Thanabodi, Tahsil & Police Station-Narharpur, Civil & Revenue District-Kanker (C.G.)
3. Bajaj Allianz Insurance Company Limited, through the Branch Manager, Shiv Mohan Bhawan, Vidhansabha Road, Pandri, Police Station Pandri, Civil & Revenue District-Raipur (C.G.)

---- Respondents

For Appellants	:	Shri D. N. Prajapati, Advocate
For Respondent No.3	:	Shri Raj Awasthi, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per, P. R. Ramachandra Menon, Chief Justice

08.06.2020

1. Dismissal of the claim petition preferred by the children of the deceased involving a Light Motor Vehicle / Passenger Vehicle (Bolero Jeep), owned by their mother - the 2nd Respondent, in which the deceased father was travelling at the relevant time, is put to challenge in this appeal.

2. The case of the Appellants/Claimants was that, on 26.06.2011, the deceased Devnath Nagwanshi, who was working as Inspector of Police posted as Thana-in-charge of Police Station, Kirandul, was returning towards the Police Station after patrolling, alongwith other staff of the Police Department. When the vehicle reached the place of occurrence, the Bolero Jeep overturned due to an 'explosive blast' planned by the Naxalites, whereby serious injuries were caused to the deceased, ultimately leading to his death. Contending that the deceased was earning a sum of Rs.30,000/- per month and was aged about 48 years, a sum of Rs.35,30,000/- was claimed as compensation from the 1st Respondent -Driver, the 2nd Respondent-mother and owner of the vehicle (widow of the deceased) and the 3rd Respondent-Insurer.

3. The 1st and 2nd Respondents filed their version pointing out that the vehicle, at the relevant time, was insured with the 3rd Respondent. The case put up by the 3rd Respondent/Insurer was that there was no cause of action to file any claim against them; that the vehicle at the relevant time was being used by the Police Department, despite its being a 'private vehicle' and that there was breach of the policy conditions. It was also contended that the accident took place due to 'explosive blast' and further that the claim petition was not maintainable under the Motor Vehicles Act, 1988 (for short, 'the MV Act'). It was further contended that the deceased was not a 'third party' and there was no negligence on the part of the driver of the vehicle insured. After considering the pleadings and the available materials on record, the Tribunal held that

the death of the deceased was not because of the use of the motor vehicle, but due to the 'explosive blast'. It was also observed that there was breach of the policy conditions, as the vehicle was being used for patrolling purpose and not for the private purpose covered by the policy. It was accordingly held that the claim petition was not maintainable under the MV Act and that no negligence on the part of the driver was proved by the claimant; thus dismissing the claim. This is put to challenge in this appeal preferred by the claimants, as mentioned already.

4. Heard Shri D.N. Prajapati, the learned counsel for the claimants as well as Shri Raj Awasthi, the learned counsel appearing for the Respondent-Insurance Company.

5. The learned counsel for the Appellants submits that the Tribunal has gone *per se* wrong in holding that the death of the deceased was not because of the use of motor vehicle. The term 'use' has been explained by the Apex Court on many an occasion including as per the verdict in ***Shivaji Dayanu Patil Vs. Smt. Vatschala Uttam More***[1] and ***Samir Chanda Vs. Managing Director, Assam State Trans. Corp.***[2]***,*** which covers the instant case as well. The learned counsel submits that the deceased very much comes under the category of 'third party' and that the Respondent-Insurance Company, having accepted the premium covering the third party risk, cannot be exonerated from the liability.

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[1] AIR 1991 SC 1769
[2] 1998 ACJ 1351 (SC)

6. The learned counsel for the Respondent/Insurance Company virtually sought to sustain the Award passed by the Tribunal dismissing the claim for the reasons stated therein. It is also pointed out that the vehicle was insured strictly for the private use, whereas it was admittedly used for departmental purpose, carrying other police staff for patrolling duty and hence, there was clear violation of the policy conditions and therefore, there is no liability for the Insurer. It is further pointed out that no liability can be mulcted upon the Insurer unless the Driver is found rash and negligent in driving the vehicle; which element is conspicuously absent in the instant case filed under Section 166 of the MV Act.

7. Chapter XI of the MV Act deals with the insurance of motor vehicles against third party risks and the statutory liability is only to the extent as mentioned under Section 147 of the said Act. By virtue of the scheme of the statute and mandate of the above provision, no vehicle can be plied on the road without insurance to the statutory extent as above; which covers the risk of the third parties and others to the extent as mentioned therein. But nothing prevents the Owner / Insured from getting wider coverage by paying additional premium to cover such other risks as well, which is permissible under the relevant provisions of law. The 1st question to be considered is whether the deceased - father of the claimants, who was travelling in the Bolero Jeep, owned by his wife / the 2nd Respondent herein could be regarded as a 'third party'. Going by Section 147 of the MV Act, there cannot be any doubt that the

person who has virtually borrowed the vehicle from his wife / the 2nd Respondent herein and was travelling in the same at the relevant time is not a 'third party', to be compensated by the Insurer. We find support from the ruling rendered by the Apex Court in ***National Insurance Company Limited vs. Balakrishnan & Others[3].***

8. The next question to be considered is whether any 'wider coverage' was sought for and obtained by the 2nd Respondent - owner of the vehicle *i.e.*, wife of the deceased. A copy of the policy has been marked as Exhibit-D/4 and forms part of the file. The (policy) is names as : “Private Car / Package Policy”. The 'Schedule of Premium' is extracted below :

SCHEDULE OF PREMIUM

<table>
<tr><th colspan="2">Own Damage</th><th colspan="2">Liability</th></tr>
<tr><td>Total Own Damage Premium</td><td>15390</td><td>Basic Third Party Liability</td><td>2500</td></tr>
<tr><td colspan="2" rowspan="4"></td><td>PA Cover for Owner-Driver of Rs. 200000</td><td>100</td></tr>
<tr><td>PA Cover for 8 Passenger of Rs.100000 each</td><td>400</td></tr>
<tr><td>LL to employee other than paid driver/cleaner (IMT 29)</td><td>25</td></tr>
<tr><td>Total Act Premium :</td><td>3025</td></tr>
<tr><td>Total Premium</td><td>18415</td><td colspan="2" rowspan="6">***All Premium Figures are in Rupees</td></tr>
<tr><td>Special Discount</td><td>0</td></tr>
<tr><td>Net Premium</td><td>18415</td></tr>
<tr><td>Service Tax</td><td>1842</td></tr>
<tr><td>Edu Cess</td><td>55</td></tr>
<tr><td>Final Premium Rs.</td><td>20312</td></tr>
</table>

9. From the above it is seen that, apart from the premium for 'own damage', the owner had paid a premium of Rs.2,500/- towards “Third Party Liability”, a sum of Rs.100/- towards “Personal Accident Cover for

3 (2013) 1 SCC 731

the Owner-Driver to an extent of Rs.2,00,000/-", a premium of Rs. 400/- towards the "Personal Accident Cover for 8 passengers @ Rs.1,00,000/- each" and a sum of Rs.25 towards "Legal Liability to employee other than paid driver/cleaner (IMT 29)". This shows that the Respondent-Insurer had collected premium to provide Personal Accident coverage for 8 passengers @ Rs.1,00,000/- each. The deceased was none other than the husband of the 2nd Respondent - owner and was travelling in the vehicle at the relevant time, who is entitled to have atleast that much of coverage; if no wider cover is available.

10. In this context, a larger question may arise for consideration. A question had come up for consideration before the Apex Court as to whether a gratuitous passenger travelling on a Motorcycle on meeting with an accident would get coverage under the Policy. After meticulous analysis of the facts and figures, in the light of the relevant provisions of the Act and also the Circulars dated 16.11.2009 and 03.12.2009 issued by the Insurance Regulatory and Development Authority (IRDA), the Apex Court held in ***Balakrishnan's case (supra)*** that such gratuitous passenger, whether travelling on a Motorcycle or as a passenger in a Car, will not get any coverage under "Act Policy". However, based on the Circulars issued by the IRDA, a distinction was drawn and it was held that if the Policy is a "Comprehensive / Package Policy", the liability would be covered. The observations made in paragraphs 24 and 26 are relevant, which are extracted below:

"24. It is extremely important to note here that till 31-12-2006 the Tariff Advisory Committee and, thereafter, from 1-1-2007 IRDA functioned as the statutory regulatory authorities and they are entitled to fix the tariff as well as the terms and conditions of the policies by all insurance companies. The High Court had issued notice to the Tariff Advisory Committee and the IRDA to explain the factual position as regards the liability of the insurance companies in respect of an occupant in a private car under the "comprehensive/package policy". Before the High Court, the Competent Authority of IRDA had stated that on 2-6-1986, the Tariff Advisory Committee had issued instructions to all the insurance companies to cover the pillion rider of a scooter/motorcycle under the "comprehensive policy"and the said position continues to be in vogue till date. It had also admitted that the "comprehensive policy" is presently called a "package policy". It is the admitted position, as the decision would show, the earlier circulars dated 18-3-1978 and 2-6-1986 continue to be valid and effective and all insurance companies are bound to pay the compensation in respect of the liability towards an occupant in a car under the "comprehensive/package policy" irrespective of the terms and conditions contained in the policy. The competent authority of the IRDA was also examined before the High Court who stated that the circulars dated 18-3-1978 and 2-6-1986 of the Tariff Advisory Committee were incorporated in the Indian Motor Tariff effective from 1-7-2002 and they continue to be operative and binding on the insurance companies. Because of the aforesaid factual position, the circulars dated 16-11-2009 and 3-12-2009, that have been reproduced hereinabove, were issued.

25. xxx xxx xxx

26. In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/ package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act policy" stands on a different footing from a "comprehensive/package policy". As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "comprehensive/package policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier

> pronouncements were rendered in respect of the "Act policy" which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a "comprehensive/package policy", the liability would be covered. These aspects were not noticed in the case of *Bhagyalakshmi v. United Insurance Company Limited, (2009) 7 SCC 148* and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same."

Based on the above finding, the Apex Court set aside the verdict under challenge and remitted the matter to the Tribunal to scrutinize the Policy in a proper prospective and if necessary, by taking additional evidence and thus, to consider the liability of the Insurer, if any. The above dictum was followed by a subsequent co-ordinate Bench of the Apex Court in ***Jagtar Singh alias Jagdev Singh v. Sanjeev Kumar & Others***[4] as well and the matter was remitted to the Tribunal for similar consideration as above.

11. But here, there is a dispute for the Respondent-Insurance Company that they are not liable to satisfy the claim because of the violation of the conditions in the policy, insofar as the vehicle was not being in private use at the relevant time. It is true that, the policy was issued for the 'private use' and not for any commercial activity. It is also true that, the deceased at the relevant time was returning towards Police Station, Kirandul after conducting the patrolling duty along with some other police officials. There is nothing unusual on the part of a person like

[4] (2018) 15 SCC 189

the deceased who had taken the vehicle, registered in the name of his wife, to go to the Office/Police Station and permitting some of his colleagues as well to travel in the said vehicle, <u>so long as it was not any for hire or reward</u>. The circumstances under which the said vehicle was taken for the field duty, instead of taking the departmental vehicle, are not made out.

12. The relevant clause in the Exhibit-D/4 Policy, stipulating '**Limitation as to use**' is extracted below :

> "**LIMITATION AS TO USE :** The Policy covers use of the vehicle for any purpose other than : Hire or reward, Carriage of goods (other than samples or personal luggage), Organised racing, Pace making, Speed testing, Reliability trials, Any purpose in connection with Motor Trade."

From the above, it is clearly discernible that the only restriction to oust the liability of the Insurer is when the vehicle is plied for "hire or reward" or for carrying goods (other than samples or personal luggage) or used to Organise racing, pace making, speed testing, reliability trials or any purpose in connection with Motor Trade. No case is made out by the Respondent-Insurance Company that the vehicle (Bolero Jeep) at the relevant time was being operated for 'hire or reward'. Even according to them, it was used for travelling by the deceased along with some other members of the police force. Permitting some colleagues also to travel along with the deceased in the vehicle, actually registered in the name of the 2nd Respondent/wife, is not a prohibited activity to take the risk outside the coverage under the policy; unless it is established that the vehicle was being operated for 'hire or reward'.

13. In the above circumstance, we are of the view that the matter requires more serious consideration at the hands of the Tribunal. This is more so, since we are not having the full text of the terms and conditions of the Policy, but for Annexure D/4 Policy Schedule, which by itself shows that it was a duplicate copy issued on 12.07.2011 in respect of the period from 30.01.2011 to 29.01.2012. The parties are at liberty to supplement the pleadings and adduce further evidence, if any, to resolve the issue. Accordingly, the award passed by the Tribunal is set aside and matter is remitted for fresh consideration. The proceedings as above shall be finalized and a fresh award shall be passed as expeditiously as possible, at any rate within 3 months from the date of receipt of a copy of this judgment.

The appeal stands allowed in part, to the above extent.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Chandra