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**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 839 of 2013**

*(Arising out of order dated 30.04.2013 passed by the First Additional Motor Accident Claims Tribunal, Rajnandgaon in Motor Accidental Claim Case No.35/2008)*

- The Oriental Insurance Co.Ltd., Through its Divisional Manager, Divisional Office, 1st Floor, Rama Trade Centre, Near Bus Stand, Bilaspur, Revenue & Civil Distt. Bilaspur (C.G.) PIN - 495001

**---- Appellant**

**Versus**

1. Haridas S/o Ranjeet Singh, Caste Halba, aged about 40 years, R/o Paurkheda (Thakurpara), P.O. Rengakathera, Tahsil & P.S.Mohla, Revenue & Civil Distt. Rajnandgaon (C.G.)
2. Pradeep Singh S/o Dhurandhar Singh, aged about 27 years, R/o Silap, P.S. Bargawan, Distt. Sidhi, Through- Prabhu Construction Co., Raipur, Revenue and Civil Distt. Raipur (C.G.)
3. Akash Tiwari S/o Prabhulal Tiwari, M/s Prabhu Construction Raipur, Shyam Petrol Pump, Ring Road, Raipur, R/o Choubey Colony, House No.1, Sahkari Path, P.S. Saraswati Nagar, Raipur, Civil & Revenue Distt. Raipur (C.G.)
4. Mentas Company (@ Maytas Co. Ltd.) Through M/s. I.L. & F.S. Engineering & Construction Co. Ltd. Regd. Office – D.N. 8-2/120/113/3/4/F Sonali Info Park, Cyber Tower, Road No.2, Banjara Hills, Hyderabad (A.P.), through its Director.

**---- Respondents**

**MAC No. 840 of 2013**

*(Arising out of order dated 30.04.2013 passed by the First Additional Motor Accident Claims Tribunal, Rajnandgaon in Motor Accidental Claim Case No.34/2008)*

- The Oriental Insurance Co.Ltd., Through its Divisional Manager, Divisional Office, 1st Floor, Rama Trade Centre, Near Bus Stand, Bilaspur, Revenue & Civil Distt. Bilaspur (C.G.) PIN - 495001

**---- Appellant**

**Versus**

1. Kaitram S/o Khajanchi, Caste Halba, R/o village Paurkheda (Thakurpara), P.O. Rengakathera, Tahsil and P.S. Mohla, Distt. Rajnandgaon (C.G.)
2. Pradeep Singh S/o Dhurandhar Singh, aged about 27 years, R/o Silap, P.S. Bargawan, Distt. Sidhi, Through- Prabhu Construction Co., Raipur, Revenue and Civil Distt. Raipur (C.G.)
3. Akash Tiwari S/o Prabhulal Tiwari, M/s Prabhu Construction Raipur, Shyam Petrol Pump, Ring Road, Raipur, R/o Choubey Colony, House No.1, Sahkari Path, P.S. Saraswati Nagar, Raipur, Civil & Revenue Distt. Raipur (C.G.)
4. Mentas Company (@ Maytas Co. Ltd.) Through M/s. I.L. & F.S. Engineering & Construction Co. Ltd. Regd. Office – D.N. 8-2/120/113/3/4/F Sonali Info Park, Cyber Tower, Road No.2, Banjara Hills, Hyderabad (A.P.), through its Director.

**---- Respondents**

**MAC No. 841 of 2013**

*(Arising out of order dated 30.04.2013 passed by the First Additional Motor Accident Claims Tribunal, Rajnandgaon in Motor Accidental Claim Case No.33/2008)*

- The Oriental Insurance Co.Ltd., Through its Divisional Manager, Divisional Office, 1st Floor, Rama Trade Centre, Near Bus Stand, Bilaspur, Revenue & Civil Distt. Bilaspur (C.G.) PIN - 495001

**---- Appellant**

**Versus**

1. Bhagatram, S/o Baraturam Bhooarya, aged about 43 years, R/o Paurkheda (Thakurpara), P.S. Mohla, Civil & Revenue Distt. Rajnandgaon (C.G.)
2. Shakun Bai W/o Bhagatram Bhooarya, aged about 40 years, R/o Paurkheda (Thakurpara), P.S. Mohla, Civil & Revenue Distt. Rajnandgaon (C.G.)
2. Pradeep Singh S/o Dhurandhar Singh, aged about 27 years, R/o Silap, P.S. Bargawan, Distt. Sidhi, Through- Prabhu Construction Co., Raipur, Revenue and Civil Distt. Raipur (C.G.)
3. Akash Tiwari S/o Prabhulal Tiwari, M/s Prabhu Construction Raipur, Shyam Petrol Pump, Ring Road, Raipur, R/o Choubey Colony, House No.1, Sahkari Path, P.S. Saraswati Nagar, Raipur, Civil & Revenue Distt. Raipur (C.G.)
4. Mentas Company (@ Maytas Co. Ltd.) Through M/s. I.L. & F.S. Engineering & Construction Co. Ltd. Regd. Office – D.N. 8-2/120/113/3/4/F Sonali Info Park, Cyber Tower, Road No.2, Banjara Hills, Hyderabad (A.P.), through its Director.

**---- Respondents**

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| For Appellant/Insurance Co. | : | Shri R.N. Pusty, Advocate |
| For Respondents/Claimants | : | Shri Rakesh Thakur, Advocate |
| For Respondents/Driver & Owner | : | Shri B. P. Singh, Advocate |
| For Respondent/Mentas Company | : | Shri Abhishek Sharma, 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**

**23.06.2020**

1. These appeals have been preferred by the Insurer of the offending vehicle, being aggrieved by the awards passed by the Additional Motor

Accident Claims Tribunal (FTC), Rajnandgaon *{for short, 'the Tribunal'}* in Motor Accident Claims Case Nos.35/2008, 34/2008 and 33/2008 respectively, mulcting the liability upon the Insurer / Appellant in respect of the injuries / death caused in an accident occurred on 14.08.2007. This is despite the fact that the Insurance Company was exonerated by a Division Bench of this Court in the previous round of litigation, when the matter was remanded only to fix the liability between the owner and hirer of the vehicle.

2. Nature of contentions raised in all the three appeals is similar and hence all the three cases are taken up and heard together. Parties and proceedings are referred to as given in MAC No. 839/2013, except where it is referred to separately, with reference to the context.

3. The cause of action for filing the Claim Petitions arose on 14.08.2007. Several persons (as many as 18), claimed to be the labourers engaged for the construction work of a road undertaken by the 4th Respondent/Company, were travelling on the 'platform' of the Truck bearing No. CG 04 G/4793. While so, when the vehicle reached the place of occurrence i.e., Mohla-Gotatola road at about 9.00 am, because of the alleged rash and negligent driving of the Truck by the 2nd Respondent herein, it overturned causing serious injuries to the travellers including death of one among them. This led to the separate Claim Petitions filed before the Tribunal, seeking for compensation in respect of the injuries in Claim Case Nos. 35/2008 and 34/2008 and in respect of the death involved in Claim Case No. 33/2008.

4. The claim was contested seriously from the part of the Insurer of the offending vehicle, particularly, that there was no coverage under the Policy in respect of the travellers in the Truck, who were virtually gratuitous passengers. There were other contentions as well, w.r.t. negligence and quantum. On conclusion of the trial, the Tribunal arrived at a finding that the accident was only because of the rash and negligent driving by the 2nd Respondent – Driver. A sum of Rs. 3,75,372/- was awarded towards the case of injury in Claim Case No.35/2008; a sum of Rs.20,000/- was awarded towards the case of injury in Claim Case No.34/2008 and a sum of Rs.3,51,000/- was awarded in respect of death involved in Claim Case No.33/2008. The Tribunal observed that the vehicle was having a valid Insurance Policy as on date and in the said circumstance, the Insurer of the offending vehicle was directed to pay the amount with interest @ 6% per annum.

5. Met with the situation, the award was sought to be challenged by the Appellant by filing 'three' separate appeals as MAC Nos.551/2009, 537/2009 and 720/2009. After appreciating the rival contentions, particularly as to the disputed coverage, a Division Bench of this Court rendered a clear finding that there were 18 persons travelling in the vehicle; that there was no seating capacity in vehicle for travelling 18 persons; that the Insurance Company had not insured the labourers or any gratuitous passengers and since there was clear breach of Insurance Policy, the Insurance Company should not have been held liable to pay compensation. The Bench also noted that, as per the

case put up by the 3rd Respondent – Owner of the vehicle, the injured and deceased were travelling in the Truck as per the direction of the 4th Respondent-Company (the hirer of the vehicle); which however was denied by the 4th Respondent, asserting that the vehicle was not being plied on their direction. In the said circumstance, this Court held that, it was the duty of the Tribunal to have ascertained the inter-se responsibility between the owner and the hirer of the vehicle, to ascertain who was responsible to pay the compensation. It was accordingly, that the Award passed by the Tribunal, fixing the liability upon the Appellant - Insurance Company, was set aside and the matter was remitted to the Tribunal to fix the responsibility to pay compensation between the 3rd Respondent-Owner / Akash Tiwari and the 4th Respondent-Company / Hirer of the vehicle.

6. After the remand, it is stated that the parties had adduced further evidence before the Tribunal, in view of the liberty granted in paragraph 11 of the Remand Judgment, based on which fresh Awards were passed on 30.04.2013, whereby the liability was fastened on the shoulders of the Appellant / Insurance Company. This is put to challenge in these appeals, specifically contending that the Tribunal has exceeded its power and jurisdiction and has virtually acted contrary to the declaration and direction given by the Division Bench of this Court in the earlier round of litigation (whereby the Insurer was exonerated from any liability).

7. Mr. R. N. Pusty, the learned counsel for the Appellant / Insurance Company submitted that the course pursued by the Tribunal is liable to be deprecated, it being contrary to the norms of judicial discipline. The scope of remand was <u>only very limited</u>, which has not been properly read or understood by the Tribunal. It is also pointed out that, when the present appeals came up for consideration before a learned Judge of this Court on 18.09.2013, the scope of remand, as contained paragraph 10 of the remand judgment dated 24.08.2011, was brought to the notice. It was then observed that, the Appellant was at liberty to file Review Petition before the Tribunal and that the Tribunal would be at liberty to review its own order. It was held that, in case it has not been considered at the time of passing of the Award and if such order is reviewed, then the Appellant would not be required to continue the above appeals, and in case the order is not reviewed by the Tribunal, the matters were ordered to be listed after completion of the service notice to the Respondents. The learned counsel submits that, though a Review Petition was filed, it was not entertained by the Tribunal, inspite of the liberty given and the direction of this Court, simply observing that the Tribunal does not have the power of review. It is also pointed out that in the earlier round of litigation, by virtue of the course and proceedings, the Appellant / Insurer was compelled to effect deposit of the amounts covered by the Awards.

8. Mr. Rakesh Thakur, the learned counsel appearing for the Respondents/Claimants submits that, while remanding the matter, this

Court had specifically observed in 'paragraph 11' of the judgment, that the parties shall be allowed to amend their pleadings, adduce further evidences in support of their pleadings and may file further documents and get the documents verified etc. It was accordingly that, further proceedings were pursued and it was on the basis of the said evidence that the Tribunal has passed the Awards and mulcted the liability upon the shoulders of the Appellant/Insurer, which hence does not stand contrary to the verdict passed by this Court in the earlier round of litigation and hence no interference is warranted. We find it difficult to agree and are inclined to hold that the Awards are not correct or sustainable, for the reasons given below.

9. In response to a specific query raised by this Court during the course of hearing through video conferencing, it was fairly conceded by the learned counsel for the Claimants that, the injured and the deceased, alongwith the others were travelling on the 'platform' of the Truck. However, it is contended that they were travelling in their capacity as workers engaged in connection with the construction of the road for the 4th Respondent-Company. The first question to be considered is whether any passenger is permitted to travel in the goods vehicle. The statutory extent of coverage in respect of the vehicle under Section 147 of the Motor Vehicles Act, 1988 (for short, 'the MV Act') covers the risk in respect of the persons and properties of the third parties besides the risk of the specific categories of employees of the Insured (to the extent as specified) and also the Owner or representative of the goods carried

in the vehicle. Scope of the above provision was subjected to threadbare analysis and it was held by the Apex Court in ***New India Assurance Co. Ltd. v. Asha Rani and Others***[1]***,*** that nobody is entitled to travel in a goods carriage, except an owner or representative accompanying the goods or the employee of the specific category and that there is no liability for the Insurer to cover the liability of the gratuitous passengers carried in the goods carriage. A catena of decisions followed in this line and the position of law stands settled as on date.

10. Now, the question is how far of the plea of the Claimants that the injured / deceased who were travelling in the vehicle being the labourers in connection with the construction of the road could be entertained. As mentioned already, all the employees of the Insured are not coming within the purview of Section 147 of the MV Act, except the specific category of employees mentioned therein. The 3rd Respondent owner of the vehicle has placed in the written statement that the vehicle was given on hire, as required by the 4th Respondent - Company and that the labourers were travelling in the vehicle as per the direction given by the said Company. The said plea has been denied by the 4th Respondent-Company. Anyhow, one thing is certain, as pleaded by the parties and as brought on record, that several persons were travelling in the Truck at the relevant time and that the injured / deceased were travelling on the 'platform' of the Truck. The liability of the Insurance Company to satisfy the risk in respect of such

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[1] (2003) 2 SCC 223

persons, even if they are employees of the insured (who are travelling on the platform of the vehicle) had come up for consideration before the Apex Court and as per judgment rendered in ***National Insurance Co. Ltd. v. Cholleti Bharatamma and Others[2],*** it has been categorically held that, coverage would be extended only if the authorised person / employee was travelling in the 'Cabin' of the vehicle, where seats are provided to carry such occupants. Admittedly, since the injured / deceased were not travelling in the 'Cabin' of the goods vehicle, but were travelling on the 'platform', it is not a case which can be covered under the Policy and hence no liability could be mulcted upon the Insurer.

11. Coming to the earlier round of litigation, the scope and purpose of remand are discernible from the Annexure-A/2 judgment dated 24.08.2011. It is true that, in 'paragraph 11', the Court has permitted the parties to amend the pleadings, adduce evidence and to produce documents *etc.*. But this has to be read and understood in the light of the findings / declaration and the specific purpose for which the matter was remanded. This is discernible from paragraphs 8 and 10 of the judgment, which are reproduced below for convenience of reference.

> "8. It has come in the evidence that the deceased Sadhuram and injured Kaitram & Haridas were travelling in the vehicle on the instructions of Maytas Company. As to whether it was on the direction of the company or the driver of the vehicle had permitted them to sit in the vehicle, was to be decided by the Tribunal. There were 18 persons travelling in the vehicle, whereas there was no seating capacity in the vehicle to travel 18 persons.

[2] (2008) 1 SCC 423

> The appellant Insurance Company also not insured the labourers or any gratuitous passengers, sitting in the vehicle but the Claims Tribunal has fastened the burden to pay compensation upon the insurance company. Since there were clear breach of the insurance policy, the insurance company should not have been held liable to pay the compensation. However, the owner of the truck has stated in his written statement that the deceased, injured and other passengers were travelling in the vehicle on the direction of the Maytas Company but in the written statement the Maytas Company has denied this fact and they have also denied that the vehicle was being plied on their direction. Therefore, it was the duty of the Claims Tribunal to ascertain the inter se responsibility between Shri Akash Tiwari and Maytas Company as to who is responsible to pay the compensation. It is apparent that no one has produced any evidence in the above regard. Therefore, in our opinion it is a fit case to remit back to the Claims Tribunal to fix the responsibility to pay the amount of compensation after conduction a proper enquiry.
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> 9. XXX XXX XXX
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> 10. For the reasons stated hereinabove, we allow all the three appeals in part, set-side the impugned award dated 25.11.2008 and remit back the matter to the Tribunal for decision afresh in view of the observations made hereinabove. On the issue No. 2, in all the three awards, in respect of as to whether there was breach of the insurance policy, the findings of the Tribunal are set aside and it is held that there was clear breach of the conditions of the insurance policy. The findings regarding liability fastened upon the insurance company are also set aside. The Claims Tribunal shall fix the responsibility to pay compensation between Shri Akash Tiwari and Maytas Company. No order as to costs.

From the above, it is crystal clear that the rival contentions were subjected to meticulous analysis by a Bench of this Court and a clear finding was rendered that, no liability could have been mulcted upon the Insurance Company and that the duty of the Tribunal was only to ascertain the inter-se responsibility between the 3rd Respondent -

Akash Tiwari / registered owner of the vehicle and the 4th Respondent - Company, who allegedly had hired the vehicle. Here reliance is also sought to be placed on the verdict passed by the Apex Court in ***Sanjeev Kumar Samrat v. National Insurance Company Limited and Others***[3] by the learned counsel for the Appellant / Insurance Company, to the effect that employee of the Hirer is not covered under the Policy and hence no liability can be fixed upon the Appellant.

12. In 'paragraph 10' of Annexure-A/2 judgment, this Court, while remanding the matter, had directed the Tribunal to take a fresh decision in view of the observations made above and it was accordingly, that the finding of the Tribunal as to 'whether there was breach of the Insurance Policy' was set aside and it was held that there was clear breach of the conditions, simultaneously setting aside the findings with regard to the liability fastened upon the Insurance Company. The specific direction while remanding the matter was that the Tribunal shall fix the liability to pay compensation between the 3rd Respondent - Akash Tiwari and the 4th Respondent - Maytas Company Limited (which name subsequently came to be changed by virtue of the amendment as ordered on 24.06.2015 in IA No.3).

13. In the above circumstance, we do not require any second thought to hold that the Tribunal has exceeded the jurisdiction, virtually deciding the *lis,* contrary to the mandate of Annexure-A/2 judgment passed by the Division Bench of this Court with regard to fixation of the liability.

[3] (2014) 14 SCC 243

Accordingly, the Awards, to the extent of fixing the liability upon the Appellant / Insurer stand set aside in all the three cases. In view of the finding that the accident was only because of the negligence on the part of the 2nd Respondent - Driver and since the 3rd Respondent - Akash Tiwari was the registered owner of the vehicle at the relevant time, it shall be liability of the said Respondents to satisfy the Award amount, as ordered by the Tribunal.

14. In view of the submission made by the learned counsel for the Appellant that the amounts covered by the Awards have already been deposited by the Appellant in the earlier round of litigation, it is ordered that if the amounts are still lying at the hands of the Tribunal, it shall be released/returned to the Appellant and the Claimants would be free to proceed against the Owner and Driver of the offending vehicle for realisation of the due amount. If for any reason, the amounts deposited have already been released to the Claimants, it shall not be recovered from them and it will be open for the Appellant to proceed against the Owner and Driver of the Truck to have it recovered by way of appropriate steps including by moving the machinery under the Revenue Authorities.

15. The appeals stand allowed. No costs.

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

Sd/-
**(Parth Prateem Sahu)**
**Judge**

Chandra