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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 671 of 2014

{*Arising out of Award dated 07.05.2013 passed by the Additional Motor Accident Claims Tribunal, Kondagaon, District Baster, in Motor Accident Claim Case No. 07/2012*}

- Sri Ram General Insurance Company Limited Office- 10003 E Ricco, Industrial Area, Sitapur, Jaipur Rajasthan.

---- Appellant

Versus

1. Phoolsingh Kurram S/o Dashu Ram Kurram Aged About 37 Years Caste – Gond
2. Smt. Dulari Bai W/o Phool Singh Aged About 35 Years Caste - Gond
   Both R/o Gram- Chheribedi, Thana- Banure, Distt. Narayanpur.
3. Santu Dehari S/o Nakuram Aged About 27 Years Caste – Halba R/o Gram- Chikhalputti, Thana And Tah. And Distt. Kondagaon
4. Smt. Sadhanadevi Chandel W/o Kuber Singh Chandel R/o Vikash Nagar, Kondagaon, Distt. Kondagaon.

---- Respondents

For Appellant	:	Shri Deepak Gupta, Advocate.
For Respondent No.3 & 4	:	Shri Shobhit Koshta, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge

Judgment on Board

Per P. R. Ramachandra Menon, Chief Justice

17.07.2020

1. Whether the claim in respect of a person who was travelling in a Tractor - Trolly is liable to be covered by the Insurer of the vehicle under a policy issued in terms of Section 147 of the Motor Vehicle Act, 1988, is the question mooted in this appeal preferred by the Insurer of the offending vehicle.

2. The sequence of events reveals that the deceased by name Sukdei Kurrum was travelling on 30.04.2011 in a Tractor-Trolly (bearing Registration No. C.G.-17-G-2943 / C.G.-17-G-2944) driven by the 3rd Respondent, owned by the 4th Respondent and insured by the Appellant. When the vehicle reached

the place of occurrence, because of the rash and negligent driving, the Tractor–Trolly overturned causing fatal injuries to the traveller, ultimately leading to her death, which was sought to be compensated by filing the claim petition preferred by her parents before the Tribunal. It was contended that the deceased was having a monthly income of Rs. 3,000/- and the compensation was sought to be fixed accordingly.

3. The claim was resisted from the part of the Respondents and in particular, by the Insurer, contending that the claim was not liable to be sustained as against insurer insofar as the deceased was travelling in the offending vehicle as a gratuitous passenger. It was also pointed out that the vehicle was not a passenger carrying vehicle and that the policy issued was for the 'agricultural purpose' and it was never intended to carry any passengers, nor had the Insurer collected any premium under this head, besides pointing out that Tractor-Trolly was having only one seat, exclusively meant for the Driver.

4. On completion of the trial, the Tribunal held that the accident was because of the negligence on the part of the driver. After considering the notional income and adopting the multiplier of 18, the loss of dependency was worked out as Rs. 3,24,000/-. A sum of Rs. 5,000/- each was awarded under three heads, such as loss of love and affection, funeral expenses and loss of estate and the total compensation was fixed as Rs. 3,39,000/-. This was directed to be satisfied with the interest at the rate of 6% as specified. Observing that there was a valid policy and no violation of policy condition was established, the liability came to be mulcted upon the shoulders of the Insurer – the Appellant herein, and hence the challenge.

5. We heard the learned counsel for the Appellant-Insurance Company as well as the learned counsel for the Respondents No. 3 & 4/Driver & Owner.

6. There is no dispute as to the nature and type of vehicle involved, which is "Tractor-Trolly". Admittedly, there is only one seat in the Tractor, which is exclusively for the driver. Nobody else is intended to be carried in the Tractor or Trolly, but for carrying the goods for the agriculture purpose (in the Trolly). Whether the risk of a person travelling in any goods vehicle could be covered under the policy issued in terms of Section 147 of the Motor Vehicles Act, 1988 had come up for consideration before the Apex Court in ***New India Assurance Co. Ltd. v. Asha Rani & Others****;* reported in (2003) 2 SCC 223. Overruling the decision rendered by the Apex Court in ***New India Assurance Company vs. Satpal Singh And Others*** reported in ***(2000) 1 SCC 237***, it was categorically held that no passenger is entitled to travel in a goods carriage except in the capacity as the owner/representative of the goods carried in the vehicle or as the employee of the insured.

7. The Apex Court has made it clear, as per the decision reported in ***National Insurance Co. Ltd. v. Cholleti Bharatamma and Others*** reported in ***(2008) 1 SCC 423***, that if at all the authorised person (owner/representative of the goods or employee of the insured) is travelling in the goods vehicle, he has to be in the 'cabin' of the vehicle, depending upon the number of seats provided and not on the platform or anywhere else; admittedly, in the instant case, the vehicle involved is a 'Tractor-Trolly' which does not have any cabin or seats for carrying any passenger, but for the one any only seat available for the driver of the vehicle. This being the position, the deceased, stated as a labourer and travelling in the Trolly at the relevant time, was not authorized to have undertaken any such travel and such an instance does not come within the purview of the policy issued by the Appellant, in view of the law declared by the Apex Court.

8. In the light of the law declared by the Apex Court, we hold that the Tribunal has gone wrong in fixing the liability upon the Appellant. However, in this

context, it will be worthwhile to ascertain whether any 'wider coverage' was provided by the Insurer, by accepting any additional premium, if such a course is permissible under the relevant provisions of law. A copy of the policy scheduled is available in the records. The schedule of premium is as follows:

“SCHEDULE OF PREMIUM

A. OWN DAMAGE		B. LIABILITY	
BASIC OD COVER	2,975.00	ADD : TRAILER TP	930.00
LESS : DETARIFF DISCOUNT ON BASIC OD	595.00	BASIC TP COVER	1,350.00
OD TOTAL	2,380.00	ADD : GR36A-PA FOR OWNER DRIVER	100.00
		ADD : LL TO PAID DRIVER	25.00
		TP TOTAL	2,405.00
		TOTAL PREMIUM	4,785.00
		ADD : SERVICE TAX	493.00
		TOTAL AMOUNT	5,278.00

From the above, it is clear that apart from the premium for own damage, basic 3rd party liability, premium in respect of the 3rd party risk arising out of the Trailer (Trolly), the premium for personal accident cover for the owner-cum-driver and the premium for legal liability to the paid driver, no other amount was collected to cover the risk of a person like the deceased in the instant case. This being the position, fixation of the liability upon the insurer-Appellant is quite wrong and unsustainable. It stands set aside. We hold that the liability under the award is to be satisfied by the Respondents No. 3 & 4 i.e. Driver and Owner of the Tractor – Trolly.

9. When the matter came up for admission before this Court on 17.06.2015, interim stay was granted, subject to depositing a sum of Rs. 2,00,000/- before the Tribunal and the Claimants were set at liberty to have the said amount released on security. If the said amount is still in the hands of the Tribunal, it is directed to be released to the Appellant. If for any reason the amount so deposited has been released to the claimants, it is open for the Appellant to proceed against the Respondents No. 3 & 4 i.e. Driver and

Owner respectively, for its realization by way of appropriate proceedings in accordance with law. The Claimants are at liberty to proceed against the Respondents No. 3 & 4 for satisfaction of the balance amount due under the Award.

The appeal stands allowed to the said extent.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Hem