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HIGH COURT OF CHHATTISGARH BILASPUR

M. A. (C) No. 600 of 2014

Bajaj Allianz General Insurance Company Limited, through Branch Manager, Branch Office-Lalganga Shopping Complex, G.E. Road, Pandri, Raipur Tahsil and District Raipur (C.G.) (Insurer-Tractor No.C.G.-10-D-5218).

---- Appellant

Versus

1. Duwasa Bai, aged about 45 years, wife of late Rajkumar, resident of Village Aankdih (Koni), Masturi Road, Police Station Masturi, District Bilaspur (C.G.).
2. Sanjay Kumar Yadav, aged about 35 years, son of Sawat Yadav, resident of Village Aankdih (Koni), Masturi Road, Police Station Masturi, District Bilaspur (C.G.). (Driver-Tractor No.C.G.-10-D-5218).
3. Chhotelal Pandey, aged about 48 years, son of Bhavdutt Prasad Pandey, resident of Village Aankdih (Koni), Masturi Road, Police Station Masturi, District Bilaspur (C.G.). (Owner-Tractor No.C.G.-10-D-5218).

---- Respondents

For Appellant	: Shri Sachin Singh Rajput, Advocate
For Respondents No.1	: None
For Respondents 2 & 3	: Shri Ravindra Sharma, Advocate

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

Judgment on Board

Per Parth Prateem Sahu, Judge

01.10.2020

1. Appellant/non-applicant No.3/Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 05.02.2014 passed by the Third Additional

Member to the Court of First Additional Motor Accident Claims Tribunal, Bilaspur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.47 of 2013 whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.3,44,000/- as compensation in a death case and fastened the liability to satisfy the amount of compensation upon the Insurance Company.

2. Facts relevant for disposal of this appeal, are that, on 05.02.2012, Vijay Kumar Patel was working at Vidhani Stone Mines, while so, when he was coming on the way to Mines after taking water, non-applicant No.1 driving his Tractor bearing registration No.CG-10/D/5218 (hereinafter referred to as 'offending vehicle') rashly and negligently on the slope of the Mines, lost his control over the vehicle and fell down in Mines along with Vijay Kumar Patel. In the said accident, Vijay Kumar Patel suffered grievous injuries, he was taken to Hospital, where during the course of treatment, he died. The accident was reported to concerned Police Station, based upon which, crime was registered against non-applicant No.1/driver of offending vehicle.

3. The claimant, who are mother of deceased Vijay Kumar Patel filed an application under Section 166 of the M.V. Act before the learned Claims Tribunal claiming a sum of Rs.26,50,000/- as compensation mentioning therein that on

the date of accident, deceased Vijay Kumar Sahu was engaged as labourer in Stone Mines and earning Rs.150/- per day.

4. Non-applicants No.1 and 2, who are driver and owner of offending vehicle submitted reply to claim application and denied the fact of accident. They have denied the employment of deceased as labourer at Vidhani Stone Mines and accident caused by non-applicant No.1 while driving the vehicle rashly and negligently. Further pleaded that false report has been lodged against non-applicant No.1, on the date of accident, offending vehicle was insured with non-applicant No.3 for a period from 30.03.2011 to 29.03.2012; driver of offending vehicle was possessing valid and effective driving licence; the offending vehicle was being used in accordance with terms and conditions of insurance policy, therefore, the liability, if any, to pay the amount of compensation would be upon the Insurance Company.

5. Non-applicant No.3/Insurance Company submitted reply to claim application and while denying the pleading made in the claim application pleaded that deceased was not doing any work, driving of offending vehicle by non-applicant No.1 rashly and negligently was denied. It was pleaded that false report has been lodged against non-applicant No.1. It was further pleaded that deceased was not a pedestrian, but he was driving the vehicle and met with an accident; he was not

possessing valid and effective driving licence and thereby there was breach of conditions of insurance policy. The vehicle was insured for the use for agriculture purpose, but it was being used for other than agriculture work.

6. On appreciation of the pleadings, evidence and material placed on record by the respective parties, Claims Tribunal held that non-applicant No.1/driver of offending vehicle while driving the offending vehicle rashly and negligently lost his control and dashed Vijay Kumar Patel and caused accident; Vijay Kumar Patel died on account of grievous injuries suffered by him in motor accident; breach of conditions of insurance policy has not been found to be proved and awarded a sum of Rs.3,44,000/- as compensation.

7. Shri Sachin Singh Rajput, learned counsel for the appellant/Insurance Company submits that offending vehicle was insured under the Farmer's Package Policy, but on the date of accident, it was being used for hire and reward. Non-applicant No.2/owner of the offending vehicle has rented his vehicle to one Dheluram Sahu vide agreement dated 12.01.2012 (Ex.D/10), which was given on rent of Rs.10,000/- per month with all the liability of maintenance of vehicle. On the date of accident, offending vehicle was being used for other purpose than agriculture, for which, it is insured and registered. He points out that on the date of

accident, offending vehicle was being used for transporting stones from Stone Mines to Crusher and the accident took place in Stone Mines. In support of his submission, he referred to insurance policy (Ex.D/11), statement recorded by Police under Section 161 of the Cr.P.C. of Sanju Sharma as Ex.D/18 and Prakash Vidhani as Ex.D/19 and argued that statement of Sanju Sharma shows that deceased was working as *Munshi* in the Stone Mines, owned by Mukesh Vidhani and 8-10 Tractors are engaged for transporting stones from Mines. He stated that on 05.02.2012, at about 3.30 pm, Tractor bearing No.CG-10/D/5218, driven by Sanjay Yadav was going to Mines for loading stones. Prakash Vidhani made similar statement, which makes it clear that offending vehicle was engaged for transporting stones from Mines to Crusher. Learned counsel also referred to the evidence of Chhotelal Pandey (NAW-1 & 2 (1)) i.e. owner of offending vehicle and argued that evidence of owner given before learned Claims Tribunal cannot be accepted because he has stated that for the purpose of leveling his agricultural field, there was requirement of earth/soil, for which, Tractor went to Stone Mines for bringing earth/soil, in the Stone Mines, earth/soil will be available for the use of agricultural field. He argued that evidence of owner of offending vehicle from its face is false. He also referred to evidence of Sanjay Kumar Yadav/driver of offending vehicle and argued that driver of offending vehicle has also stated that the Tractor went to bring earth/soil from the nearby agricultural field, but the statement/evidence of driver and owner of offending vehicle is contradictory. It is contended that owner of offending vehicle stated that offending vehicle went to Mines for bringing mud whereas the driver stated that for bringing mud, he went to nearby agricultural field of Mines. He points out that evidence made by non-applicants No.1 and 2/driver and owner of offending vehicle is an afterthought as there is no such pleading made by them in their reply to claim application. Oral evidence of fact before the Tribunal cannot be accepted unless and until it forms the part of pleadings. In support of his submission with regard to use of vehicle, he places reliance in case of **National Insurance Co. Ltd. v. V. Chinnamma and Others** reported in **(2004) 8 SCC 697** and **Royal Sundaram Alliance Insurance Company Ltd. v. Jhool Bai and Others** reported in **AIR 2008 Chhattisgarh 8**. He points out that no document has been placed on record to show that owner of offending vehicle was possessing agricultural land and some work as stated by him was going on.

8. Per contra, Shri Ravindra Sharma, learned counsel for respondents No.2 and 3/driver and owner of offending vehicle submits that agreement for renting the offending vehicle (Ex.D/10) is only a photocopy, which cannot be

accepted in evidence. He points out that to prove the agreement (Ex.D/10), Dheluram Sahu was not examined by the Insurance Company, who is one of the parties to the document. He argued that as the agreement (Ex.D/10) was unregistered and cannot be accepted as evidence. The agreement was already cancelled by owner of offending vehicle. No further document is required to be executed between the parties, owner of offending vehicle in his evidence very clearly stated that within few days of execution of agreement (Ex.D/10), it was cancelled for non-compliance of conditions by Dheluram Sahu. He referred to the evidence of Sonuram Yadav (AW-2) to argue that Vijay Kumar Patel was not driving the offending vehicle as stated and offending vehicle is owned by Chhotelal Pandey i.e. non-applicant No.2. Vehicle was not given on hire. It is contended that merely running of offending vehicle over the Mines area will itself not lead inference that offending vehicle was being used for transporting stones. He referred last line of paragraph-11 of evidence of Sonuram Yadav (AW-2). It is further contended that there was no breach of conditions of insurance policy. As per documents available on record, there is mention of the fact that deceased was driving the offending vehicle and at some place, it is also mentioned that deceased was sitting on the offending vehicle. He argued that both the facts are contradictory to each other and both cannot stand together. It shows that false case has been made against non-applicants No.1 and 2/driver and owner of offending vehicle. On the date of accident, non-applicant No.1/driver of offending vehicle was possessing valid and effective driving licence to drive 'Light Motor Vehicle' and Tractor & Trolley comes within the category of 'Light Motor Vehicle'. For driving 'Light Motor Vehicle', there is no requirement to have separate endorsement and authorization of 'Transport Vehicle', if it is a 'Goods Carriage Vehicle' or 'Passenger Carrying Vehicle'. For this submission, he places reliance on the judgment passed by Hon'ble Supreme Court in case of **Mukund Dewangan v. Oriental Insurance Company Limited** reported in **(2017) 14 SCC 663**. He also places reliable in case of **Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan and Others** reported in **(1987) 2 SCC 654** and argued that there was no breach of conditions of insurance policy and the impugned award does not suffer from any illegality or infirmity calling interference.

9. We have heard learned counsel for the respective parties and perused the record carefully.

10. The first and primary question raised by learned counsel for the appellant/Insurance Company with regard to 'use of offending vehicle' other than the purpose, for which, it is registered and insured, it is not in dispute that offending

vehicle was insured under 'Farmer's Package Policy'. Pleadings of claim application clearly mentioned that non-applicant No.1 while driving the offending vehicle coming down to the slope towards Mines, it became unbalanced, on account of which, dahsed Vijay Kumar Patel turned turtle and fell down in Mines. Insurance Company in its reply to claim application has very specifically pleaded that offending vehicle was being used for other than the agricultural purpose and it was being used for hire and reward.

11. Perusal of evidence of Sonuram Yadav (AW-2) examined on behalf of the claimant shows that he is also working at Vidhani Stone Mines where deceased Vijay Kumar Patel was working. In his cross-examination at paragraph-9, he very categorically stated that he was working in Vidhani Stone Mines for last 4-5 years and his work was to load stones in vehicles. He further stated that on the date of accident, offending vehicle came to Mines for loading stones and offending vehicle was going after loading stones at Mines. In paragraph-11, he stated that stones were being taken for crushing at Crusher. Evidence of Chhotelal Pandey/owner of offending vehicle (NAW-1 & 2 (1) mentions that his vehicle went to Stone Mines for transporting earth/soil for his agricultural field. This evidence of owner of offending vehicle cannot be accepted because there cannot be any earth/soil in stone Mines and further any mud or

earth appearing at the place of Mines cannot be used for agricultural field. The fact of 'use of vehicle' as stated by driver and owner of offending vehicle is not forming part of the pleadings. In their reply to claim application, there is no pleading of the fact that Tractor went to Mine for bringing earth/soil, it *prima facie* appears to be an afterthought. The facts which are not pleaded in application/reply cannot be accepted in evidence.

12. Taking into consideration overall material available on record, particularly, reply filed by non-applicants No.1 and 2/driver and owner of offending vehicle before learned Claims Tribunal, wherein no such pleading with regard to 'use of vehicle' for transportation of earth/soil for leveling of agricultural field of non-applicant No.2 as well as evidence of Sonuram Yadav (AW-2) stating that offending vehicle came to Mines for loading stones and after loading stones, it was returning and met with an accident, we are of the considered view that offending vehicle was being used other than the purpose, for which, it is registered and insured.

13. The Hon'ble Supreme Court in case of **V. Chinnamma** (supra) has stated with regard to 'use of vehicle' and held thus :

> “16. A tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2(14) of

the Motor Vehicles Act. The tractor was meant to be used for agricultural purposes. The trailer attached to the tractor, thus, necessarily is required to be used for agricultural purposes, unless registered otherwise. It may be, as has been contended by Mrs. K. Sharda Devi, that carriage of vegetables being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes but the same by itself would not be construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities. The deceased was a businessman. He used to deal in vegetables. After he purchased the vegetables, he was to transport the same to market for the purpose of sale thereof and not for any agricultural purpose. The tractor and trailer, therefore, were not being used for agricultural purposes. However, even if it be assumed that the trailer would answer the description of "goods carriage" as contained in Section 2(14) of the Motor Vehicles Act, the case would be covered by the decisions of this Court in ***New India Assurance Co. Ltd. v. Asha Rani, (2003) 2 SCC 223*** and other decisions following the same, as the accident had taken place on 24.11.1991,

> i.e., much prior to coming into force of 1994 amendment."

14. The other aspect of the case as raised by learned counsel for the appellant/Insurance Company that offending vehicle was given on hire vide agreement dated 12.01.2012 (Ex.D/10), entered between owner of offending vehicle and one Dheluram Sahu. This document was marked exhibited, but no challenge has been made by driver and owner of offending vehicle before learned Claims Tribunal with regard to its admission in evidence. The agreement (Ex.D/10) would show that certified copy of the document has been obtained from Copying Section of District and Sessions Court, Bilaspur.

15. Apart from above, non-applicant No.2/owner of offending vehicle in his evidence has admitted the execution of agreement and the contents of document, but has stated that said agreement was cancelled. From the evidence of Chhotelal Pandey (NAW-1 & 2 (1)), it would show that execution of agreement (Ex.D/10) for hiring of offending vehicle can be treated as proved for the purpose of proceedings under Section 166 of the M.V. Act. Non-applicant No.2/owner of offending vehicle has not placed any document on record for cancellation of agreement entered between them nor the agreement placed on record finds any

note or signature of the parties that the said agreement stands cancelled.

16. The submission of Shri Sharma, learned counsel representing the respondents No.2 and 3/driver and owner of offending vehicle that document Ex.D/10 is not registered, hence, no consequential document is required to be executed for cancelling the same/revocation of the said agreement. On pin-pointed question put to learned counsel for respondents No.2 and 3 that whether this document comes within the purview of Section 17 of the Registration Act, he answered in 'negative'. The case law relied upon by the learned counsel for respondents No.2 and 3 in case of **Kokilaben Chandravadan** (supra) is on different facts and it does not cover the issue of 'use of offending vehicle'.

17. In view of aforementioned facts and evidence available on record, we are of the considered view that on the date of accident, offending vehicle was plied for other than the agricultural purpose, which amounts to breach of conditions of insurance policy. Learned Claims Tribunal while deciding the issue with regard to breach of conditions of insurance policy i.e. Issue No.2 has erred in recording a finding that the appellant/Insurance Company failed to prove 'use of vehicle was for commercial purpose'. The said finding being perverse to the material available on record, not sustainable and it is hereby set aside.

18. We hold that there was breach of conditions of insurance policy and no liability can be fastened upon appellant/Insurance Company to satisfy the amount of compensation. Appellant/Insurance Company is exonerated from its liability to pay the amount of compensation and now, the liability to pay the amount of compensation would be upon respondents No.2 and 3/non-applicants No.1 and 2 i.e. driver and owner of offending vehicle.

19. Any amount deposited by the Insurance Company and lying with the deposit of Claims Tribunal shall be refunded to the appellant/Insurance Company. If the amount of compensation so deposited by it is disbursed, then the appellant/Insurance Company shall recover the same from non-applicants No.1 and 2/respondents No.2 and 3 upon depositing the entire amount of compensation by them before learned Claims Tribunal. Claimant shall recover the balance amount of compensation from respondents No.2 and 3/non-applicants No.1 and 2.

20. In the result, appeal is allowed and impugned award is modified to the extent indicated herein-above.

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

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh