NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No.920 of 2015

Hdfc Ergo General Insurance Co. Ltd. Through Manager, Near Sai Mandir, Sai Nagar, Devendra Nagar, Police Station Devendra Nagar, Civil And Revenue District- Raipur, Chhattisgarh

---- Appellant

Versus

1. Bhagat S/o Kuwar Das Satnami Aged About 36 Years R/o Village Pausri Post Office Kamta, Police Station Raipur Civil And Revenue District- Raipur, Chhattisgarh
2. Hradaya S/o Prahlad Sahu R/o Village And Post Raveli, P.S. Bemetara, District- Durg, At Present R/o Dashrath S/o Shobha Chandrakar, Village And Post Simga, P.S. Simga, District- Raipur, C.G., Now Civil And Revenue District- Baloda Bazar, District : Balodabazar-Bhathapara, Chhattisgarh
3. Dashrath S/o Shobha Chandrakar Village And Post Simga, P.S. Simga, District- Raipur C.G. Now Civil And Revenue District- Baloda Bazar, District : Balodabazar-Bhathapara, Chhattisgarh **---- Respondents**

For Appellant:	Shri Rohitashva Singh, Advocate.
For Respondent No.1:	Shri Amiyakant Tiwari, Advocate.
For Respondent No.2:	Shri Avinash Mishra appears on behalf of Shri Anand Shukla, Advocate.
For Respondent No.3:	None, though served.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J
Award/Order On Board

14.02.2020

1. This Miscellaneous Appeal has been preferred by the Insurance Company under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') questioning the legality and propriety of the award dated 31.07.2014 passed by the 5th Additional Motor Accident Claims Tribunal, Raipur (for short 'the Claims Tribunal') in Claim Case No.210/2012 by which, the learned Claims Tribunal, while allowing the claim in part, awarded a total amount of compensation to the tune of Rs.42,947/- along with interest at the rate of 9% per annum from the date of filing of the claim Petition till its realization, while fastening the liability upon the Insurance Company. The parties to this Appeal

shall be referred hereinafter as per their description in the trial Court.

2. Briefly stated, the facts of the case are that on 17.03.2009 at about 9.30 a.m, Applicant-Bhagwat and others were travelling in the offending vehicle (Metador) bearing its Registration No.CG 04 G 8618 and at the relevant time, it met with an accident owing to a rash and negligent driving of its driver namely Hraday, Non-Applicant No.1. As a result of it, the Applicant sustained serious injuries, while one Khilawan has died. The said vehicle was owned by Non-Applicant No.2-Dashrath and was insured with Non-Applicant No.3-HDFC General Insurance Company Limited.

3. On account of the aforesaid accident, the Claimant has filed a claim Petition under Section 166 of the Act of 1988 claiming a total amount of compensation to the tune of Rs.3,28,000/- under various heads by submitting *inter alia* that he was working as a driver in the said offending vehicle and used to earn Rs.40,000/- per annum.

4. The Non-Applicants have contested the aforesaid claim. According to the defence set up by Non-Applicant No.3/Insurance Company, the Applicant and others were travelling in the alleged vehicle as gratuitous passengers, however, it was insured as a 'Goods Carrying Commercial Vehicle' and taken a plea further that since it was being used without any valid permit by a driver, who was not holding the effective and valid driving license, therefore, no liability could be fastened upon it.

5. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 17.03.2009 resulting into the sad demise of one Khilawan, while the Applicant got injured seriously. It held further that the vehicle in question was being driven with a valid permit and the driver of it was holding the valid and effective driving license and by

considering the evidence of insurer's, witness namely Prachish Saxena (NAW-2), observed further that the deceased was not travelling as a gratuitous passenger and the vehicle in question was thus not being driven in violation of the terms and conditions of the Insurance Company. In consequence, the Claims Tribunal, while fastening the liability upon the Insurance Company, awarded the amount of compensation as mentioned hereinabove.

6. Being aggrieved, Non-Applicant No.3, Insurer has preferred this Appeal. Shri Rohitashva Singh, learned Counsel appearing for the Appellant, while inviting attention to the documentary evidence, like Ex.D-1, the driving license of the driver, submits that the Claims Tribunal has committed an illegality in holding that the driver of the alleged offending vehicle was holding a valid and effective driving license. According to him, he was authorized to drive the 'Light Motor Vehicle' only, whereas, the vehicle in question was a transport vehicle and therefore, he was not authorized to drive the same at the relevant point of time. It is contended further that the vehicle in question was admittedly a goods vehicle and the Applicant and others were travelling in the same as gratuitous passengers in violation of the insurance policy, however, despite of that, the Tribunal has erred in fastening the liability upon the Insurance Company.

7. On the other hand, learned Counsel for the Respondents have supported the award impugned.

8. The main contention of the Appellant herein is that since the vehicle in question was being driven by a person, who was not holding a valid and effective driving license and as the Applicant and others were travelling as gratuitous passengers, therefore, no liability could be fastened upon it. In order to establish the said fact, the burden was heavily upon the Insurance

Company. In order to ascertain the fact as to whether the driver of the offending vehicle (Goods Vehicle) possessed a valid driving license or not, for which, I examined the alleged driving license marked as Ex.D-1. A perusal of the same would, however, reveal the fact that he was authorized to drive the 'Light Motor Vehicle'. The vehicle in question was a metador, which is a 'Light Motor Vehicle' as unladen weight of it is 2800 kgs as evidenced by the Certificate of Registration (Ex.D-4), issued by the Regional Transport Authority, Raipur. The vehicle in question is thus, a 'Light Motor Vehicle' as defined under Section 2 (21) of the Act of 1988. In such circumstances, it cannot be held that the driver of the vehicle in question was not authorized to drive the same. The finding of the Tribunal in this aspect, thus, deserves to be and is hereby affirmed and the contention of Shri Singh is accordingly rejected.

9. As far as the further contention of Shri Singh that the Applicant was travelling in the alleged goods vehicle as a passenger is also noted to be rejected in view of the evidence led by the Insurance Company, as a bare perusal of the evidence of its witness namely Prachish Saxena (NAW-2) particularly, paragraph-4 of his testimony, where it is deposed by him specifically that the risk of the Applicant was covered under the policy (Ex.D-2). In such circumstances, the Claims Tribunal has rightly arrived at a conclusion that the Applicant was not travelling as a gratuitous passenger in the alleged vehicle while fastening the liability upon the Insurance Company.

10. In view of the foregoing discussions, I do not find any substance in this Appeal. Accordingly, the Appeal being devoid of merits is hereby dismissed. There shall be no order as to costs.

Sd/-

(Sanjay S. Agrawal)
Judge

Priya