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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1058 of 2014**

- State of Chhattisgarh through The Superintendent of Police, District Rajnandgaon C.G.

-----Appellant**VERSUS**

1. Smt. Pushpalata Ganjeer W/o late Shri Ravikant Ganjeer, aged about 30 years
2. Ku. Disha Ganjeer (minor), D/o late Shri Ravikant Ganjeer, aged about 6 years, represented through her Guardian mother namely Smt. Pushpalata Ganjeer
3. Ku.Rashita Gajeer (minor) D/o late Shri Ravikant Ganjeer, aged about 2 years, represented through her Guardian mother namely Smt. Pushpalata Ganjeer
4. Khorbahara Ram Ganjeer, S/o late Shri Laxman Singh Ganjeer
All are R/o Motipur Ward no. 5, Rajnandgaon, Chhattisgarh
5. Govind Vaisnav S/o Venkat Das Vaisnav, aged about 30 years, R/o Village Mohad, Police Station Basantpur, District Rajnandgaon C.G.

-----Driver

6. Kaushalendra Kurre S/o late Shri Lakhan Lal Kurre R/o Anupam Nagar, Ward No. 19, Tahsil and District Rajnandgaon, Chhattisgarh

-----Owner

7. Branch Manager, The National Insurance Company Limited, Branch Office, Kaamthi Line, Rajnandgaon, District Rajnandgaon C.G.

----Respondents**WITH****MAC No. 1059 of 2014**

- State of Chhattisgarh, through the Superintendent of Police, District Rajnandgaon, C.G.

---- Appellant**Versus**

1. Sudarshan Singh Sidar S/o Dhenu Singh, aged about 58 years
2. Smt. Jamuna Bai Sidar W/o Sudarshan Singh, aged about 53 years
Both are resident of Lalbaag, Police Line Rajnandgaon, District Rajnandgaon C.G.
Permanent R/o Village Nawadih, Police Station and Tahsil Kasdol, the then District Raipur, presently posted as District Baloda Bazar-Bhatapara, Chhattisgarh
3. Govind Vaisnav S/o Venkat Das Vaisnav, aged about 30 years R/o Village Mohad, Police Station Basantpur, District Rajnandgaon C.G.

-----Driver

4. Kaushalendra Kurre S/o late Shri Lakhan Lal Kurre, R/o Anupam nagar, Ward no. 19, Tahsil and District Rajnandgaon, Chhattisgarh

-----Owner

5. Branch Manager, the National Insurance Company Limited, Rajnandgaon, District Rajnandgaon C.G.

---- Respondents

MAC 1058/2014

For Appellant : Mr. Gagan Tiwari, Advocate
For Respondent 1 to 4 : Mr. A.L. Singroul, Advocate

MAC 1059/2014

For Appellant : Mr. Gagan Tiwari, Advocate
For Respondent 5 : Mr. B.N. Nande, Advocate

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

Order on Board

Per Parth Prateem Sahu, J.

20/10/2020

- Both these appeals are arising out of one and the same accident, hence, both these appeals are being disposed of by this common order.
- Challenge in MAC No. 1058/2014 is to the award dated 18.07.2014 passed by Motor Accident Claims Tribunal, Rajnandgaon in claim case no. 167/2011 whereby learned Claims Tribunal allowed the application filed under Section 166 of the Motor Vehicle Act, 1988 (for short "Act of 1988") in part and awarded Rs. 25,04,540/- as compensation in a fatal accident case and fastened liability upon the appellant-State to satisfy the amount of compensation. Challenge in MAC No. 1059/2014 is to the award dated 18.07.2014 passed by Motor Accident Claims Tribunal, Rajnandgaon in claim case no. 07/2012 whereby learned Claims Tribunal allowed the application filed under Section 166 of the Act of 1988 in part and awarded Rs. 18,91,864/- as compensation in a fatal accident case and fastened liability upon the appellant-State to satisfy the amount of compensation.

3. For the convenience of this Court, MAC No. 1058/2014 is taken as lead case.
4. Facts relevant for disposal of these appeals are that deceased Ravikant Ganjeer was employed on the post of Constable with District Police Force. On 02.09.2011, he was on VIP duty and going from Reserve line Rajnandgaon to Khairagarh along with other Constable namely Naresh Sidar and Basant Sahu, A.S.I. on Tata Sumo bearing registration no. CG 08/5095 (hereinafter referred to as "offending vehicle"). Offending vehicle was driven by non-applicant 1/ respondent 5. On the way, when they reached in between Badhaitola-Salhebharri turn, offending vehicle dashed with a tree standing on road side and met with an accident due to rash and negligent driving of non-applicant 1. In the said accident, Ravikant Ganjeer, Naresh Sidar suffered grievous injuries due to which Naresh Sidar succumbed to those injuries on spot and Ravikant Ganjeer was taken to district hospital, Rajnandgaon where during the course of treatment, he died. Accident was reported to concerned police station based upon which crime bearing no. 238/2011 was registered against non-applicant 1.
5. Claimant/ Respondent 1 to 4, in MAC No. 1058/2014, have filed an application under Section 166 of the Act of 1988 seeking compensation of Rs. 62,00,000/- against untimely motor accidental death of late Ravikant Ganjeer, pleading therein that on the date of accident, deceased was aged about 35 years, working with District Police Force on the post of Constable and earning Rs. 15,000/- per month.
6. Claimants/ Respondent no. 1 and 2, in MAC No. 1059/2014, filed an application under Section 166 of the Act of 1988, seeking compensation of Rs. 65,84,000/- pleading therein that deceased Naresh Sidar was posted as Constable with District police force, earning Rs. 14,000/- per month. On the date of accident ie. 02.09.2011, both of them were on VIP

duty, going to Khairagarh from Reserved Centre, Rajnandgaon on offending vehicle along Basant Sahu, Assistant Sub-Inspector.

7. Non-applicant 1 and 2, driver and owner of the offending vehicle submitted reply to the claim application while denying the pleadings made therein, it was further pleaded that the vehicle was acquired by police for VIP duty, he has not received any fare and further that there was no negligence on the part of non-applicant 1, hence, they are not liable for payment of any amount of compensation.
8. Non-applicant 3/ Insurance Company submitted reply to the claim application denying the pleadings made in the claim application. It was further pleaded that on the date of accident, non-applicant 1 was not possessed with valid and effective driving licence. There was no valid permit and fitness of the vehicle. Vehicle was being plied in breach of policy conditions.
9. Non-applicant 4/ appellant submitted reply to the claim application pleading therein that the accident was a result of negligence on the part of non-applicant 1. On the date of accident, offending vehicle was insured with non-applicant 3-Insurance Company, liability to satisfy the amount of compensation, is upon non-applicant-Insurance Company.
10. Claims Tribunal, upon appreciation of pleadings and evidence brought on record by the respective parties arrived at a finding that late Ravikant Ganjeer and Naresh Sidar died in a motor accident due to rash and negligent driving of the offending vehicle by non-applicant 1. There was no breach of policy conditions, awarded Rs. 25,04,540/- in claim case no. 167/2011 (against the death of Ravikant Ganjir); Rs.18,91,864/- in claim case no. 07/2012 (against the death of Naresh Sidar) and fastened liability upon the appellant-State by holding that at the time of accident, offending vehicle was within the control of non-applicant 4, it was acquired

by Police Department. To arrive at a finding in holding that the appellant/non-applicant 4 to be liable for satisfying the amount of compensation, learned Claims Tribunal has relied upon the judgment passed by Hon'ble Supreme Court in the case of **National Insurance Co. Limited v. Deepa Devi** reported in (2008) 1 SCC 414.

11. Mr. Gagan Tiwari, learned counsel for the appellant-State submits that the Claims Tribunal erred in fixing liability upon appellant overlooking the fact that appellant is neither owner nor driver of offending vehicle is employee of State. Offending vehicle was owned by non-applicant 2, driven by non-applicant 1 and insured by non-applicant 3. He further submitted that the Insurance company failed to prove that the appellant has taken offending vehicle on hire from non-applicant 2 and further that non-applicant 1 driver of the offending vehicle was not possessing valid and effective driving licence. He submits that the instant proceedings are under the motor vehicles act, claim for compensation is filed under Section 166 of the Act and hence, the liability to satisfy the amount of compensation would be upon the owner or the Insurance Company and not upon the present appellant.
12. Mr. A.L. Singroul, learned counsel for respondent-claimants submits that, the Claims Tribunal based upon the evidence and material placed on record by the respective parties has rightly arrived at a conclusion that the liability to satisfy the amount of compensation is upon the appellant. Offending vehicle was in possession of the appellant and it was being used for VIP duty. He further pointed out that the Claims Tribunal has rightly taken note of the judgment passed by Hon'ble Supreme Court in the case of **Deepa Devi (supra)**.
13. Mr. B.N. Nande, learned counsel for the Insurance Company submits that the Claims Tribunal erred in arriving at a finding that there was no breach of policy conditions overlooking the fact that the vehicle was being hired

by the police department whereas the offending vehicle was insured as private vehicle and the Insurance policy is issued under the Private Car Policy -B (Package). He submits that copy of insurance policy placed on record as Ext. D-4 clearly mentions about the limitations as to use wherein it is specifically mentioned that the policy covers use of the vehicle for any purpose other than hire or reward along with other conditions. He further referred to document Ext. D-1C which is issued by the office of Reserved Inspector, District Rajnandgaon dated 04.12.2013, wherein it is specifically mentioned that the vehicle involved in claim cases was being taken on rent/ hire by the department. In view of the specific information available vide ext. D-1C that the vehicle was being used for hire and reward, there was clear breach of policy conditions, hence, the Insurance Company is not liable to satisfy the amount of compensation. Insurance Company has not challenged this finding because the Claims Tribunal has fastened liability upon the appellant-State who was using the offending vehicle on hire.

14. No one appeared for the Respondent/ owner and driver of the offending vehicle.
15. The short point involved in these appeals is that who will be liable to satisfy the amount of compensation, whether the appellant-State, owner and driver or the Insurance Company?
16. To appreciate the submission made by the learned counsel for the appellant, perusal of the document would show that the offending vehicle was a private vehicle, policy was issued as private car package policy, it was being taken on rent/ hire by the appellant-State. As per the information given by the Inspector to the SDO Police, Khairagarh along with the other vehicles which are being hired for their official use, offending vehicle was also hired. It is also not in dispute that at the time of accident, offending vehicle was running on official duty. Deceased

persons were traveling on the offending vehicle in discharge of their official duty. NAW-2, Mukesh Thakur, SDOP, in his evidence has very specifically stated that the offending vehicle was being used by the police department after taking it on hire.

17. In view of the specific evidence and material available on record, particularly that, the offending vehicle was insured as private car but was being used for hire and reward, hence, the finding recorded by the Claims Tribunal that there was no breach of policy conditions cannot be said to be correct finding but nonetheless it is not under challenge.

18. So far as the liability to satisfy the amount of compensation is concerned. It is to be seen that whether the liability to satisfy the amount of compensation can be fastened upon the appellant in the facts and circumstances of the case. Claims Tribunal while holding the appellant to be liable to satisfy the amount of compensation has taken note of the judgment passed by the Supreme Court in case of **Deepa Devi (supra)**. In the said case, vehicle involved was requisitioned by the Sub Divisional Magistrate for Assembly Elections. Hon'ble Supreme Court in the aforementioned case has considered that the owner of the vehicle cannot refuse to abide by the order or direction of requisition of the vehicle by the Deputy Commissioner for Assembly Election purpose. Relevant portion of the ruling of Supreme Court is extracted below for convenience.

“10. Parliament either under the 1939 Act or the 1988 Act did not take into consideration a situation of this nature. No doubt, Respondents 3 and 4 continued to be the registered owners of the vehicle despite the fact that the same was requisitioned by the District Magistrate in exercise of the power conferred upon him under the Representation of the People Act. A vehicle is requisitioned by a statutory authority, pursuant to the provisions contained in a statute. The owner of the vehicle cannot refuse to abide by the order of requisition of the vehicle by the Deputy Commissioner. While the vehicle remains under requisition, the owner does not exercise any control thereover. The driver may still be the

employee of the owner of the vehicle but he has to drive it as per the direction of the officer of the State, who is put in charge thereof. Save and except for legal ownership, for all intent and purport, the registered owner of the vehicle loses entire control thereover. He has no say as to whether the vehicle should be driven at a given point of time or not. He cannot ask the driver not to drive a vehicle on a bad road. He or the driver could not possibly say that the vehicle would not be driven in the night. The purpose of requisition is to use the vehicle. For the period the vehicle remains under the control of the State and/or its officers, the owner is only entitled to payment of compensation therefor in terms of the Act but he cannot not (*sic*) exercise any control thereupon. In a situation of this nature, this Court must proceed on the presumption that Parliament while enacting the 1988 Act did not envisage such a situation. If in a given situation, the statutory definitions contained in the 1988 Act cannot be given effect to in letter and spirit, the same should be understood from the common sense point of view.”

19. In the case at hand, the facts are little different from what was considered by the Supreme Court in the case of **Deepa Devi (supra)**. Fact in that case is requisition of the vehicle by the authority for election purpose to which the owner of the vehicle cannot refuse or object but to hand over his vehicle to the order issued by the competent authority. Whereas in the case at hand it is not a case of requisition of the vehicle for particular duty to be performed but it is a case of hire of the vehicle from a particular agency for the official use. Here, on the basis of the demand raised by one of the government departments, persons or agencies dealing in the business of transportation service provides the vehicle for use under the agreed rate. In the case at hand, as per the facts placed on record, police department has taken the vehicle on hire through a traveling agency who was being paid by the department at the agreed rate and traveling agency, thereafter, will transfer the amount received by it to owner of vehicle as per their agreed term.
20. In view of the aforementioned factual aspects of the case at hand, we are of the view that the case of **Deepa Devi (supra)** will not be applicable to

the facts of the case. Though the vehicle was under control of the department at the time of accident but the owner of the offending vehicle is non-applicant 2 and it is his duty to give his vehicle for hire and reward after obtaining appropriate permission from the competent department with regard to use of the vehicle and to take adequate policy for the same. If the vehicle is being used for hire and reward it means the use of vehicle is commercial in nature. Admittedly, the vehicle was insured as a private car, there was no permit but the evidence clearly shows that the vehicle is being used for hire and reward without proper registration, insurance and permit.

21. In these facts and circumstances of the case, this Court cannot direct the Insurance Company to satisfy the amount of compensation but then the entire liability to satisfy the compensation amount cannot be fastened upon the appellant also because the appellant had taken the vehicle on hire and was not a mandatory requisition for any specific purpose under any statute. In the aforementioned facts and circumstances of the case, the liability to satisfy the amount of compensation is upon non-applicant 2/ owner of the offending vehicle because he, with his own will, gave the vehicle for hire and reward contrary to the 'use' of the vehicle shown in registration certificate and use mentioned in Insurance policy. At the same time, the interest of claimants is also required to be protected.
22. It is an admitted case of the appellant itself that the appellant being a Government Department has taken on hire as many as nine vehicles vide ext. D-2C for their use. Ext. D3 is the guidelines/ circular issued by the State Government for taking the vehicle on hire wherein it is specifically mentioned that the vehicle to be hired, should be mandatorily registered as Taxi with the Transport Department. Clause 1 of the said Circular Ext. D3 is extracted below for ready reference.

“1— वाहन टैक्सी के रूप में परिवहन विभाग के नियमानुसार पंजीकृत होना अनिवार्य है एवं वाहन के समस्त कागजात परिवहन विभाग के नियमानुसार होना आवश्यक होगा। वाहन का रोड टैक्स/ बीमा/ सेवा एवं अन्य सभी प्रकार के शुल्क आदि का भुगतान वाहन मालिक द्वारा किया जायेगा। वाहन का परमिट फिटनेस रोड टैक्स व बीमा अद्यतन होना चाहिए।”

23. From perusal of the aforementioned clause, it is apparently clear that there are specific conditions mentioned as to which of the vehicles can be taken on hire from the Traveling Agencies. The appellant/ department has not minutely verified the documents of the offending vehicle while taking the vehicle on hire and has sent its employees in the vehicle to discharge their official duty. The employees of police department cannot object to the instructions given to them by higher authority.
24. In this case, we are dealing with an application for grant of compensation under the provisions of Motor Vehicles Act and not under any other Civil Law. Under the Act of 1988, liability to satisfy the amount of compensation, is upon Driver and Owner of the offending vehicle. If owner purchased the insurance policy for covering risk of certain person(s), paid premium for indemnifying the risk of the owner, then the Insurance Company is liable for payment of compensation, subject to the use of vehicle under the terms and conditions of insurance policy. Under the Act of 1988, driver, owner and Insurance Company are held to be liable for payment of compensation, ofcourse, subject to the facts of the case and nature of Insurance Policy.
25. In the case at hand, registered owner was doing the business as transporter and earning money. Vehicle was not registered as commercial vehicle but private vehicle, hence, it is liability of owner to satisfy the amount of compensation. Owner plied the vehicle in breach of policy conditions. Appellant has hired the vehicle contrary to the guidelines

issued for getting the vehicle on hire and the deceased police persons under compulsion of discharge of their official duty, travelled in offending vehicle. In view of aforesaid facts, to safeguard the interests of claimant, we are of the view that appellant-State has an obligation to first pay the compensation and thereafter to get it recovered from owner of offending vehicle.

26. In the aforementioned facts of the case, finding recorded by the Claims Tribunal for issue no. 3, holding appellant/ non-applicant 4 liable to satisfy the amount of compensation is set aside. Liability to satisfy the amount of compensation shall be upon Respondent 6/ non-applicant 2 (registered owner of the offending vehicle). We direct the appellant to first pay the entire amount of compensation and thereafter to recover the amount so deposited by it from owner of the offending vehicle in accordance with law.
27. Appeal is allowed and the impugned award is modified to the extent indicated herein-above.

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

Sd/-
(Parth Prateem Sahu)
Judge