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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 27 of 2014

- Naveen Kumar Jain S/o Shri Heerachand Jain, aged about 27 years, R/o Bhanupratappur, Tahsil Bhanupratappur, Civil and Revenue District North Bastar, Kanker (CG)

---- Appellant

Versus

1. Siyalal, s/o Shri Balchand Gond, aged about 27 years, R/o Vill. Turangey, P.S & Tahsil Bhanupratappur, District North Bastar, Kanker (CG)
2. Bajaj Alliance General Insurance Co. Ltd., Shivmohan Bhawan, Vidhansabha Road, Pandari, Raipur, Civil and Revenue District Raipur (CG)

---- Respondents

For Appellant	:	Mr. Rakesh Thakur, Advocate
For Respondent No.1	:	Mr. Parag Kotecha, Advocate
For Respondent No.2	:	Mr. Abhishek Sinha, Advocate

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Per Parth Prateem Sahu, J

21.08.2020

1. Appellant-owner has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging the award dated 22.6.2013 passed by the learned Additional Motor Accident Claims Tribunal, Bhanupratappur District North Bastar Kanker (for short 'the Claims Tribunal') in Claim Case No.29/2008 thereby allowed claim application in part, awarded total compensation of Rs.2,75,321/- to claimant in an injury case and fastened liability to pay the entire amount of compensation on the owner-appellant herein.

2. Facts relevant for disposal of this appeal, in brief, are that

appellant is registered owner of Taxi Jeep bearing registration No. CG19-T-0448 (for short 'the offending vehicle') which was insured with non-applicant No.2 for commercial purposes. On 8.3.2008 in between 7.30 & 8.00 p.m. on a national highway near Balodgahan, District Durg (CG) the offending vehicle collided with a Truck which was coming from opposite direction, as a result, Siyalal, who was travelling in the offending vehicle, suffered grievous injuries. Claimant was taken to Primary Health Centre, Dhamtari and looking to seriousness of injuries of claimant, he was referred to Christian Hospital, Dhamtari where he was admitted and got treatment of his injuries. Report of accident was lodged in Police Station Gurur, District Durg based on which crime bearing no.70/08 for the offence under Section 279, 337, 304A of IPC has been registered against the driver of unknown truck.

3. Claimant/respondent filed an application under Section 163A of the Act of 1988 seeking total compensation of Rs.4,00,000/- pleading therein that on the date of accident, he was working as a 'Collie-Labour' and earning Rs.100/- per day. However, on account of fracture injury suffered by claimant in his right thigh in the accident in question, she has become totally incapable to do the work which he was doing prior to accident.

4. Non-applicant No.1/appellant, owner of offending vehicle, submitted his reply to the application mentioning that the offending vehicle is a Jeep having permit to carry passengers and while returning from Raipur along with passengers, one

unknown truck caused accident near Balodgahan as a result the claimant suffered injuries. On the date of accident, the offending vehicle was insured with non-applicant No.2 Insurance Company and it was not plied on road in breach of any of conditions of insurance policy..

5. Non-applicant No.2- Insurance Company submitted its reply to claim application denying the factum of alleged accident and injuries suffered by claimant. Involvement of offending vehicle in accident in question was also denied. It was also pleaded that at the time of accident, passengers more than seating capacity of offending vehicle was travelling in it; the offending vehicle was plied on road without valid permit and fitness certificate; the driver of offending vehicle was not possessed with valid and effective driving license. Hence, the insurance company is not liable to indemnify the insured as on the date of accident, the offending vehicle was plied on road in breach of essential conditions of insurance policy.

6. Upon appreciation of pleadings and evidence brought on record by both sides in support of their respective case, the Claims Tribunal while holding the application filed under Section 163A of the Act of 1988 to be maintainable, arrived at a conclusion that the claimant suffered permanent partial disablement to the extent of 45% in accident in question, consequently, allowed claim application in part and awarded total sum of Rs.2,75,321/- as compensation. The Claims Tribunal exonerated the insurance company from its liability

and held the owner of offending vehicle liable to make payment of the entire amount of compensation on the ground that offending vehicle was plied in breach of condition of policy.

7. Mr. Rakesh Thakur, learned counsel appearing on behalf of appellant-owner of offending vehicle, would submit that the offending vehicle was registered with the Registering Authority concerned as a commercial vehicle 'Taxi'. The insurance policy issued to the offending vehicle also indicates that offending vehicle is a commercial vehicle. The competent authority has issued permit for plying the offending vehicle as taxi within the limits of District Kanker, which was valid from 1.2.2008 to 30.4.2008. The accident took place on 8.3.2008 i.e. within the period in which permit issued in favour of offending vehicle was in force. Merely because the accident took place within the territorial limits of District Durg, it cannot be said that the offending vehicle was plied on road without a valid permit. In these circumstances, the Claims Tribunal ought not to have exonerated the Insurance Company by holding that the offending vehicle was plied in breach of conditions of policy i.e. without permit. In alternate, he submits that the amount of compensation awarded by the Claims Tribunal is on higher side and liable to be reduced suitably. In support of aforementioned submissions, learned counsel places his reliance on the decision of Hon'ble Supreme Court in the case of Bajaj Allianz Vs. Powel Julice reported in 2013 (2) CGLJ 395.

8. Mr. Parag Kotecha, learned counsel for respondent No.1-

claimant has supported the impugned award.

9. Mr. Abhishek Sinha, learned counsel representing respondent No.3 Insurance Company submits that there is no dispute with regard to registration and insurance of offending vehicle as a commercial/transport vehicle. There is also no dispute with regard to issuance of a permit in favour of offending vehicle by a Competent Authority for plying it on road as a 'taxi'. As per terms of the permit, the offending vehicle could be plied within the limits of District Kanker. On the date of accident, the offending vehicle was found plying beyond the permissible limit i.e. in District Durg, wherein the accident had occurred. In view of this violation of the permit, there was breach of the condition of insurance policy under the heading 'Limitation as to use' and as such, the insurance company was rightly exonerated from the liability to indemnify the insured. He submits that Hon'ble Supreme Court in the cases of **National Insurance Company Ltd. Vs. Challa Bharatamma** reported in **(2004) 8 SCC 517** and ***Amrit Paul* Singh and another vs. Tata AIG General Insurance Co. Ltd. and others** reported in **(2018) 7 SCC 558** while considering the issue with regard to permit, has held that *use of vehicle in a public place without a permit is fundamental statutory infraction*. He submits that the Claims Tribunal has passed the impugned award in accordance with law which does not call for any interference.

10. We have heard learned counsel for the parties and perused the record of claim case.

11. The main ground on which the impugned award has been assailed is that the Claims Tribunal erred in exonerating the insurance company on the ground that the offending vehicle was plied in breach of permit issued, which also amounts to breach of condition of insurance policy.

12. It is submission of learned counsel for appellant that it is not the case that no permit has been issued in favour of the offending vehicle by a Competent Authority. In case at hand, a valid permit was issued in favour of offending vehicle for plying it as a passengers carrying vehicle within the limits of District Kanker. Hence, the insurance company cannot take a defence that the offending vehicle was plied without permit.

13. To appreciate the above submission, we have perused the conditions mentioned in insurance policy (Ex.D-1). This policy contains following clause under the heading 'Limitation as to use';

> "The policy covers use only under a permit within the meaning of the Motor Vehicles Act, 1988 or such a carriage falling under sub-section 3 of Section 66 of the Motor Vehicles Act, 1988. The Policy does not cover use for : Organized racing, Pace Making, Reliability Trials, Speed Testing, use whilst drawing a trailer except the towing (other than for reward) of any one disabled mechanically propelled vehicle. "

14. Perusal of above quoted clause reveals that if a vehicle is not plied under a permit within its meaning under the Act of 1988, the insurance company cannot be held liable to indemnify insured. As per condition of permit issued, the offending vehicle could only be plied within the limits of District Kanker. There is

no denial of fact that accident in question had occurred beyond the permissible limit i.e. in an area falling within District Durg. For plying the vehicle within territory of District Durg there was no permit. Since the offending vehicle was plied outside the limits in violation of the permit, it will definitely amount to fundamental breach of a specified condition of the policy. Hence, the above submission made on behalf of the appellant does not appeal to us and it is hereby repelled.

15. In view of the above and in the light of decisions of Hon'ble Supreme Court in **Challa Bharatamma's case (supra)** and **Amrit Paul's case (supra),** we are of the considered view that the Claims Tribunal has not committed any illegality or infirmity in exonerating the insurance company from its liability to indemnify the claimant, warranting interference in exercise of appellate jurisdiction.

16. As regards the submission that the compensation awarded by the Claims Tribunal is liable to be reduced. We have gone through the impugned award and noticed that the compensation assessed by the Claims Tribunal is based on proper appreciation of evidence placed on record by both sides, computation as per Second Schedule, therefore, it cannot be said to be in any circumstance on higher side.

17. For the foregoing reasons, the appeal being *sans merit* is liable to be dismissed and is hereby dismissed.

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

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-