NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1090 of 2014

- Branch Manager, HDFC ERGO General Insurance Co. Ltd. 6th Floor, Leela Business Park, Andheri Kurla Road, Mumbai, 400059

  Thru- Branch Office- HDFC ERGO General Insu.Co.Ltd., 3rd Floor, Chawla Complex, Devendra Nagar Road, Raipur, P.S. Devendra Nagar, Civil and Revenue Distt. Raipur, Chhattisgarh

---- Appellant /Insurer

Versus

1. Sitaram, S/o Kunna Lal, Aged About 50 Years
2. Sukwariya W/o Sitaram Pav Aged About 47 Years
3. Kaushalya S/o Late Bhuwan Singh Aged About 25 Years

   All R/o Tilokhan, Tah. Manendragarh, P.S. Kelhari, Civil and Revenue District : Koriya (Baikunthpur), Chhattisgarh (Claimants)
4. Naresh @ Bheem S/o Jageshwar Singh Pav Aged About 25 Years R/o vill Tilokhan, Tah. Manendragarh, P.S. Kelhari, Civil and Revenue Distt. Koriya (Baikunthpur), Chhattisgarh (Driver)
5. Mohd. Shamim S/o Mohd. Jamil R/o vill-Chhatai, Distt. Anuppur, P.S. Anuppur, Civil and Revenue Distt. Anuppur Madhya Pradesh (Owner)

----Respondents

AND

MAC No. 1093 of 2014

- Branch Manager, H D F C E R G O General Insurance Company Limited 6th Floor, Leela Business Park, Andheri Kurla Road, Mumbai 400059, Through Branch Office- H D F C E R G O General Insurance Company Limited, 3rd Floor, Chawla Complex, Devendra Nagar Road, Raipur, Police Station Devendra Nagar, Civil And Revenue Dist. Raipur, Chhattisgarh ....Insurer

---- Appellant

Versus

1. Jahru Lal, S/o Bahra, Aged About 50 Years R/o Vill. Tilokhan, Tahsil Manendragarh, P.S. Kelhari, Civil And Revenue Dist. Koriya, Chhattisgarh (Claimant)
2. Deleted Vipatti Bai
3. Naresh Urf Bheem S/o Jageshwar Singh Pav Aged About 25 Years R/o Vill. Tilokhan, Tahsil Manendragarh, P.S. Kelhari, Civil And Revenue Dist. Koriya, Chhattisgarh ....Driver (Driver)
4. Mohd. Shamim S/o Mohd. Jamil R/o vill-Chhatai, Distt. Anuppur, P.S. Anuppur, Civil and Revenue Distt. Anuppur Madhya Pradesh (Owner)

----Respondents

For Appellant/Insurance Company	:	Shri NK Thakur, Advocate
For Respondent-1 (Claimant)	:	Shri Anil Gulati, Advocate
For other Respondents	:	None appears

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
07.10.2020

1. Both these appeals filed by the Insurance Company are arising out of one and the same motor accident involving vehicle Pick-up bearing No.MP18H-2438 (for short, 'offending vehicle'), challenging the liability upon the Company on the ground that deceased persons were travelling on "Goods vehicle". Hence, both these appeals are disposed off by this common order.

2. Facts relevant for disposal of these appeals are that on 20.04.2010 Bhuvan Singh, Pramila and other persons were travelling on the offending vehicle and going to Manvari from Village Tilokhan. On the way at about 11.30 pm near crossing bridge at Charvahi Pasan Ghat, due to rash and negligent driving of NA1/driver, offending vehicle met with an accident and over turned.

3. In the aforementioned accident Bhuvan Singh, and Pramila died. The accident was reported to concerned police station based upon which crime No.23 of 2010 was registered against NA-1, driver of offending vehicle.

4. MAC-1090 of 2014 is arising out of Claim Case No.40 of 2013, filed by legal representatives of late Bhuvan Singh, who are parents and widow of deceased Bhuvan Singh.

5. MAC-1093 of 2014 is arising out of Clam Case No.138 of 2014, filed by legal representatives of Pramila, who are parents of deceased.

6. Both the above claim cases were decided on 10.09.2014 by the First Additional Motor Accident Claims Tribunal, Manendragarh, District Korea.

7. The Claims Tribunal allowed the claim applications in part and awarded Rs.4,34,000/- to the legal representatives of Bhuvan Singh and Rs.2,29,400/- to the legal representatives of Pramila,fastened liability upon NA-3/Insurance Company/appellant to satisfy the amount of compensation.

8. Shri NK Thakur, learned counsel for the appellant submits that undisputedly, vehicle in which deceased persons along with others were travelling was a goods vehicle. The policy issued for the offending vehicle for a period from 17.04.2010 to 16.04.28011, was under the head "Goods Carrying Vehicle Package Policy", which is also not in dispute. The Insurance Policy of offending vehicle is marked as Ex.D1 and vehicle carrying capacity is mentioned as "1". No premium was charged for any occupants/labourers etc. The Insurance Company cannot be held liable to satisfy the amount of compensation in absence of any coverage of risk for the gratuitous passengers travelling on offending vehicle.

9. Referring to the provisions of Section 147 of the Act of 1988, learned counsel submits that there is no statutory liability of the Insurance Company for covering the risk of any other persons than the employee of owner of the goods vehicle. He further pointed out that learned Claims Tribunal erroneously held that the deceased persons were travelling along with others, in security of their goods. They were carrying two bags each of Mahuva, only on the basis of pleading made by the owner and driver in reply to the claim application. Owner and driver of the offending vehicle not entered into witness box to prove the fact that the deceased persons were travelling along with their goods, and filing seizure memo of offending vehicle to be seized along with goods from the spot. Referring to Ex.D2, FIR, he submitted that on the date of accident, not only the deceased persons but about 16 to 17 persons were also travelling on the offending vehicle and going to other village for watching Nacha (dance show). The time of accident is 11.30 pm in the night which itself shows that the plea taken by the owner and driver is a concocted and cooked-up story.

10. No one appeared for respondents- 3 and 4, driver and owner of the offending vehicle.

11. Shri Anil Gulati, learned counsel for respondent-1/Claimant in MAC 1093 of 2014 supports the impugned award passed by the learned Claims Tribunal and submits that learned Claims Tribunal, based on the evidence and material available on record has passed the impugned award which does not call for any interference.

12. We have heard learned counsel for the respective parties and also perused records of both the Claim cases.

13. Perusal of FIR Ex.P2 would show that the date of accident is 20.04.2010 at 11.30PM. The offending vehicle has been shown as Pick-up vehicle bearing No. MP-18-H-2438 and respondent-4 has been shown to be the accused, against whom crime was registered. Perusal of Final Report placed on record as Ex.P1 would show that at the time of accident, about 16-17 persons were travelling on the offending vehicle. Undisputedly, the Insurance Policy available on record clearly shows that offending vehicle is a Goods vehicle and the policy issued is for goods carrying vehicle package policy. There is no pleading or material placed on record by the claimants that deceased persons were travelling along with their goods in security of their goods like Mahuva. In affidavit filed under Order 18 Rule 4 of the CPC ie the statement-in-Chief, there is no such mention that deceased was carrying Mahuva along with him but has come upon suggestion given in the cross-examination by the learned counsel for NA1 & 2 driver and owner.

14. Apart from the above, Policy is issued under Section 147 of the Act, 1988, wherein the risk of gratuitous passenger travelling in goods vehicle is not covered. The issue of travelling on a Goods vehicle has been considered by Hon'ble Supreme Court in cases of **New India Assurance Company Limited Vs Asha Rani** reported in (2003) 2 223 & **National Insurance Company Limited Vs Baljeet Kaur** reported in (2004) 2 SCC 1 and held thus:

“22. Thus, it may be noticed that so far as employees of the owner of the motor vehicle are concerned, an insurance policy was not required to be taken in relation to their liability other than arising in terms of the provisions of the Workmen's Compensation Act, 1923. On the other hand, proviso (ii) appended to Section 95 of 1939 Act, enjoined a statutory liability upon the owner of the vehicle to take out an insurance policy to cover the liability in respect of a person who was travelling in a vehicle pursuant to a contract of employment. The Legislature has consciously not inserted the said provision in 1988 Act.

23. The applicability of decision of this Court in Mallawwa (Smt.) & Ors. v. Oriental Insurance Company Ltd. & Ors. [(1999) 1 SCC 403] in this case must be considered keeping that aspect in view. Section 2(35) of 1988 Act does not include passengers in goods carriage whereas Section 2(25) of 1939 Act did as even passengers could be carried in a goods vehicle. The difference in the definitions of the "goods vehicle" in 1939 Act and "goods carriage" in 1988 Act is significant. By reason of the change in the definitions of the terminology, the Legislature intended that a goods vehicle could not carry any passenger, as the words "in addition to passengers" occurring in the definition of goods vehicle in 1939 Act were omitted. Furthermore, it categorically states that 'goods carriage' would mean a motor vehicle constructed or adapted for use "solely for the carriage of goods". Carrying of passengers in a 'goods carriage', thus, is not contemplated under 1988 Act.

26. In view of the changes in the relevant provisions in 1988 Act vis--vis 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. 'a third party'. Keeping in view the provisions of 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.”

In **Baljeet Kaur** case, it is held thus:

"20. It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people."

15. The Hon'ble Supreme Court further considering its judgments of Asha Rani (supra), in case of **National Insurance Company Limited Vs Chollety Bharatamma** reported in (2008) 1 SCC 423 has further held that injury to anyperson used under Section 147(1)(b) would only mean third person and not a passenger gratuitous or other. Further in this case, the Supreme Court, while dealing with the plea, the injured to be owner of the goods, carrying in vehicle has held thus:

"11. The effect of the 1994 Amendment came up for consideration in *National Insurance Co. Ltd. v. Baljit Kaur, (2004) 2 SCC 1* wherein this Court following third party and not a passenger travelling on a goods carriage whether gratuitous or otherwise. The question came up for consideration again in *National Insurance Co. Ltd. v. Bommithi Subbhayamma, (2005) 12 SCC 243* wherein upon taking into consideration a large number of decisions, the said view was reiterated.

12. Yet again in *New India Assurance Co. Ltd. v. Vedwati, (2007) 9 SCC 486*, this Court held: (SCC p. 490, para 6)

'*9.* … The difference in the language of 'goods vehicle' as appearing in the old Act and 'goods carriage' in the Act is of significance. A bare reading of the provisions makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger. This is clear from the expression 'in addition to passengers' as contained in the definition of 'goods vehicle' in the old Act. The position becomes further clear because the expression used 'goods carriage' is solely for the carriage of 'goods'. Carrying of passengers in a goods carriage is not contemplated in the act. There is no provision similar to Clause (ii) of the proviso appended to Section 95 of the old Act prescribing requirement of insurance policy. Even Section 147 of the Act mandates compulsory coverage against death of or bodily injury to any passenger of 'public service vehicle'. The proviso makes it further clear that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle would be limited to liability under the Workmen's Compensation Act, 1923 (in short 'the WC Act').

10. The inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor."

19. It is now well settled that the owner of the goods means only the person who travels in the cabin of the vehicle."

16. In the case at hand, there is no such case made out by the claimants or the driver and owner of the offending vehicle that the deceased persons were travelling in cabin of the offending vehicle. In fact, in the case at hand the Insurance Policy shows covering the risk of only one person and further documents of the criminal case Ex.P2 mentions about the travelling of 16-17 persons on the Pick-up vehicle at the time of accident which is a goods carriage vehicle. More so, the driver and owner have not entered into the witness box to prove their pleadings. The claimants have not pleaded that deceased persons were travelling on vehicle in security of goods. Hence, the pleadings made by the driver and owner of offending vehicle that the deceased persons were travelling in the vehicle in security of their goods is also not sustainable.

17. For the foregoing reasons, we are of the considered opinion that learned Claims Tribunal erred in fastening liability upon the Insurance Company for death of persons who were travelling on Goods vehicle. The finding recorded by learned Claims Tribunal with regard to breach of policy condition is contrary to law and judgement passed by the Hon’ble Supreme Court in cases of **Aasha Rani, Baljit Kaur and Chollety Bharatamma** (supra).

18. The impugned award so far it relates to fastening liability upon the Insurance Company is set aside.

19. Now the liability to pay amount of compensation awarded by Claims Tribunal to the claimants is to be satisfied by NA-1 and NA-2, driver and owner of offending vehicle.

20. Appeal is allowed in part and the impugned award is modified to the extent as indicated above.

21. The appellant/ Insurance Company will be entitled to recover the amount deposited by it before learned Claims Tribunal in pursuance to the impugned award from the driver and owner of offending vehicle upon deposit of the entire amount of compensation before the Tribunal by NA1 and NA2.

Sd/-	Sd/-
(PR Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	**Judge**

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