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HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 1087 of 2015

Manager, Future Generali India Insurance Company Limited, Shop No. 3, 2nd Floor, Maruti Business Park, Near Dhuppad Petrol Pump, Raipur, 492001, Police Station- Saraswati Nagar, Civil and Revenue District Raipur Chhattisgarh.

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Versus

1. Dhanesh Ram S/o Late Lohar Sai, Aged About 45 Years.

2. Smt. Ramvati W/o Dhanesh Ram, Aged About 40 Years, Both R/o Village- Chandagarh, Tahsil- Patthalgaon, Police Station- Patthalgaon, Civil and Revenue District- Jashpur Chhattisgarh **(Claimants).**

3. Basant Ghansi Allies Prasann Sai Sarthi S/o Premsai, Aged About 40 Years R/o Village- Chandagarh, Tahsil- Patthalgaon, Police Station- Patthalgaon, Civil and Revenue District- Jashpur Chhattisgarh **(Driver).**

4. Govind Prasad Agrawal S/o Visheshwar Agrawal, Aged About 45 Years R/o Village- Tamta, Police Station- Patthalgaon, Civil and Revenue District- Jashpur Chhattisgarh **(Owner).**

---- Respondents

For Appellant	: Mr. Rohitashva Singh, Advocate
For Respondents No. 1 & 2	: None
For Respondents No. 3 & 4	: Mr. Surfaraj Khan, Advocate with Ms. Deepali Dubey, Advocate

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Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

09.03.2020

1. This appeal has been filed by the appellant/Insurance Company under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the legality and validity of impugned award dated 19.03.2015 passed by learned Motor Accident Claims Tribunal, Jashpur (C.G.) (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.39 of 2012, whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.3,20,000/- as compensation in a death case and fastened the liability of payment of compensation on the Insurance Company to pay the amount of compensation.

2. Brief facts relevant for disposal of this appeal are that, on 25.05.2012 Ku. Shakun was travelling on a Tractor bearing registration No.CG-14/A/2657 and Trolley bearing registration No.CG-14/A/2658 (hereinafter referred to as 'offending vehicle') and was going to village Kansabel after loading bricks on the offending vehicle. The offending vehicle met with an accident, in which, Ku. Shakun fell down who was sitting over the Tractor engine and died on the spot.

3. The claimants who are parents of the deceased Ku. Shakun filed a claim application before the concerned Claims Tribunal claiming Rs.19,20,000/- as compensation.

4. Non-applicants No.1 and 2 who are driver and owner of offending vehicle submitted reply to claim application and denied all adverse pleadings made in claim application. It was pleaded that on the date of accident, all the labourers who are sitting on the offending vehicle have been asked to come out from the offending vehicle because of bad road condition near Pongary Rice Mill. The deceased while walking along with the side of the Tractor came under the wheels of trolley when it turned turtled due to bad road condition, in which, she died on the spot. It was further pleaded that the death of Ku. Shakun was her own negligence and the deceased was not earning any amount, but she accompanied to the other labourers on their asking for the purpose of visiting village Kansabel. It was also pleaded that on the date of accident, the offending vehicle was insured with non-applicant No.3/Insurance Company and the offending vehicle was being used for agricultural purpose, therefore, they are not liable to pay any amount of compensation.

5. Non-applicant No.3/Insurance Company submitted reply to claim application separately and pleaded that on the date of accident, the offending vehicle was not being used for agricultural purpose and there was violation of conditions of insurance policy. It was further pleaded that on the date of accident, driver of offending vehicle was not possessing valid and effective driving licence to drive the vehicle, therefore, Insurance Company is not liable for payment of any amount of compensation.

6. On appreciation of pleadings and evidence placed on record by respective parties, learned Claims Tribunal has framed as many as four issues for consideration and after conclusion of trial held that the Tractor was being driven rashly and negligently by non-applicant No.1, due to which, Ku. Shakun fell down and came under the wheels of Trolley and died on spot and thereby awarded a total sum of Rs.3,20,000/- as compensation in a death case.

7. Learned counsel for appellant/Insurance Company submitted that the finding recorded by learned Claims Tribunal is contrary to the evidence available on record. The evidence placed on record by respective parties have not considered in its entirety and also the rulings of Hon'ble Supreme Court on the issues. It is also contended on behalf of the appellant/Insurance Company that there is specific pleading that deceased Ku. Shakun was sitting on Tractor and while travelling on it, she fell down and came under the wheels of Tractor Trolley. *Dehatinalshi* (Ex. A-4) and Final Report (Ex. A-1) also show that at time time of accident, deceased Ku. Shakun was travelling on Tractor engine and in the evidence of Dhanesh Ram (AW-1) and Heera Lal (AW-2), they have stated that deceased Ku. Shakun was travelling on Tractor engine, but the learned Claims Tribunal fastened the liability on the Insurance Company by recording that the deceased was a third party, which is contrary to law laid down by Hon'ble Supreme Court in the matters of **New India Assurance Co. Ltd. v. Asha Rani and others** reported in **(2003) 2 SCC 223** and **Oriental Insurance Co. Ltd. v. Devireddy Konda Reddy and Others** reported in **(2003) 2 SCC 339**.

8. Per contra, learned counsel for respondents No.3 and 4 submitted that the learned Claims Tribunal after taking note of entire material available on record i.e. documentary and oral evidence, rightly passed the impugned award and fastened the liability upon Insurance company, which do not call for any interference.

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

10. The claimants have examined Dhanesh Ram (AW-1) and Ku. Sarita (AW-2) to prove the accident. Dhanesh Ram (AW-1) had stated in his evidence that on the date of accident i.e. on 25.05.2012 at about 9.30 AM, Ku. Shakun was travelling on the Tractor engine, due to rash and negligent driving of Tractor by non-applicant No.1, she fell down towards back side of Tractor and came under the wheels of Trolley attached to the Tractor. This witness has been cross-examined by the counsel appearing for the non-applicants i.e. driver, owner and the Insurance Company. Even in the cross-examination, at paragraph-19, this witness has specifically stated that his daughter was travelling on the engine of the Tractor. No specific question has been put by learned counsel for non-applicants No.1 and 2 with respect to the fact that deceased Ku. Shakun was travelling on the Tractor or not.

11. Ku. Sarita (AW-2) in her evidence has stated that at the time of accident, deceased was travelling on the Tractor and from where she fell down and came under the wheels of the offending vehicle. Similar statement has been made by her who was also travelling on the offending vehicle at the time of accident.

12. Non-applicants No.1 and 2 i.e. the driver and owner of the offending vehicle did not enter into the witness box nor examine any other independent witness in support of their pleadings.

13. The claimants/respondents No.1 and 2 have been apparently failed to prove their pleadings in reply to claim application. They have also failed to prove that at the time of accident, the offending vehicle was being used for agricultural purpose.

14. In view of aforementioned facts pleaded in the claim application as well as the specific evidence placed on record by the respective parties, it is clear that at the time of accident, the deceased was travelling on the Tractor engine, she fell down from the Tractor engine and came under the wheels of the Tractor Trolley.

15. Now the question arises for consideration before this Court is that whether the learned Claims Tribunal was justified in fastening the liability on the Insurance Company for payment of amount of compensation awarded by it ?

16. Learned counsel for the appellant placed reliance in the matters of **Asha Rani** (supra) and **Devireddy Konda Reddy** (supra).

17. In the matter of **Asha Rani** (supra), the Hon'ble Supreme Court in paragraph 22 has held that the insurer would not be liable for payment of any amount of compensation when the deceased or injured is travelling in a goods vehicle. Paragraphs-26, 28 and 29 reads as follows :

> “26. In view of the changes in the relevant provisions in the 1988 Act vis-a-vis the 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 provision of the 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.

28. An owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers. If a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid. But if the ratio of this Court's decision in *New India Assurance Co. v. Satpal Singh [(2000) 1 SCC 237]* is taken to its logical conclusion, although for such passengers, the owner of a goods carriage need not take out an insurance policy, they would be deemed to have been covered under the policy wherefor even no premium is required to be paid.

29 We may consider the matter from another angle. Section 149 (2) of the 1988 Act enables the insurers to raise defences against the claim of the claimants. In terms of clause (c) of sub-section (2) of Section 149 of the Act one of the defences which is available to the insurer is that the vehicle in question has been used for a purpose not allowed by the permit under which the vehicle was used. Such a statutory defence available to the insurer would be obliterated in view of the decision of this Court in Satpal Singh case.”

18. The Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. v. Baljit Kaur and Others** reported in **(2004) 2 SCC 1** has held that the person travelling over the goods vehicle and not a place where sitting capacity is provided then the Insurance Company cannot be held liable for payment of any amount of compensation.

19. In view of aforementioned law laid down by Hon'ble Supreme Court, it is crystal clear that the Insurance Company can not be held liable for payment of any amount of compensation when the deceased or injured himself/herself was travelling in a goods vehicle. In the instant case, the deceased was travelling on a Tractor engine where there is no space for sitting of any other person except the driver.

20. The case laws relied upon by the learned Claims Tribunal i.e. **New India Assurance Co. Ltd. v. Rula and Others** reported in **(2000) 3 SCC 195** and **Oriental Insurance Co. Ltd. v. Meena Variyal and Others** reported in **(2007) 5 SCC 428** are on different facts and cannot be made applicable to the facts of the case at hand.

21. Now the question which arises for consideration is whether direction for pay and recover can be issued or not to protect the interest of the claimants.

22. The Hon'ble Supreme Court in the matter of **Manuara Khatun and Others v. Rajesh Kumar Singh and Others** reported in **(2017) 4 SCC 796** taking note of the earlier judgments passed by Hon'ble Supreme Court on the issue of pay and recover when it is found that there is violation of conditions of insurance policy has held thus :

> "21. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Co. Ltd. (Respondent 3) - they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Co. Ltd. Respondent 3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo) Respondent 1 in execution proceedings arising in this very case as per the law laid down in Para 26 of *National Insurance Co. Ltd. v. Saju P. Paul* (2013) 2 SCC 41.
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> 22. Accordingly, the appeals succeed and are allowed. Impugned order is modified to the extent that Respondent 3 United India Insurance Co. Ltd. is accordingly directed to pay the awarded sum to the appellants (claimants). Thereafter, Respondent 3 United India Insurance Co. Ltd. would be entitled to recover the entire paid awarded sum from the owner (insured) of the offending Vehicle (Tata Sumo) Respondent 1 in these very proceedings by filing execution application against the insured."

23. Admittedly, in the case at hand, the deceased was travelling on Tractor engine; the Tractor was being used for carrying bricks; there was violation of conditions of insurance policy, but then, the question arises for consideration is that what will be the appropriate mode for achieving the purpose of the M.V. Act, under which, claimants/respondents No. 1 and 2 have filed the claim application.

24. The M.V. Act under which the claim application was filed is a beneficial piece of legislation, therefore, the claimants who have lost their family member cannot be left to reap the fruits of the award passed in their favour for long period. In the peculiar facts and circumstances of the case and considering the fact that while hearing the interim application for stay, this Court vide its order dated 18/02/2016, directed the appellant/Insurance Company to deposit 50% of the amount of compensation awarded by learned Claims Tribunal. In the opinion of this Court, it will be in the larger interest of justice, to direct the appellant/Insurance Company to deposit the balance amount of 50% amount of compensation awarded by learned Claims Tribunal along with interest as awarded by learned Claims Tribunal till its realization in favour of the claimants at first, though the appellant/Insurance Company is not having any liability to satisfy the impugned award under law.

25. In view of above, the appeal is allowed in part and finding recorded by learned Claims Tribunal that the appellant/Insurance Company is jointly and severally liable for payment of amount of compensation is set aside. It is further held that the appellant/Insurance Company is exonerated from its liability of payment of amount of compensation. Though under law, the appellant/Insurance Company is not having the liability to satisfy the award, but in the facts and circumstances of case, it is directed that the appellant/Insurance Company will satisfy the amount of compensation awarded by learned Claims Tribunal along with interest at the first instance and thereafter, recover the said amount of compensation paid by it from non-applicants No. 1 and 2/driver and owner of offending vehicle in the same proceedings by filing execution application against insured as directed by Hon'ble Supreme Court in the matter of **Manuara Khatun** (Supra).

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh