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HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 1064 of 2015

Branch Manager, Chola Mandlam MS General Insurance Company Ltd. Branch Office, Shop No.345-347, Lalganga Shopping Mall, G.E. Road, Raipur, Chhattisgarh (Insurer)

---- Appellant

Versus

1. Smt. Koushalya Minj W/o Naresh Minj, aged 40 years
2. Naresh Minj S/o Late Khuranu Minj, aged 45 years
3. Kishun Minj S/o Naresh Minj, aged 17 years

   Respondent No.3 Minor through their natural guardian father respondent No.2 Naresh Minj, All R/o Village Laxmipur Behrapara, Ambikapur, P.S. and Tahsil Ambikapur, District Sarguja, Chhattisgarh (Claimants)
4. Deelip Kispotta S/o Lalit Uraov, aged 20 years, R/o Village Laxmipur Behrapara, Ambikapur, P.S. and Tahsil Ambikapur, District Sarguja, Chhattisgarh (Driver)
5. Radheshyam Gupta S/o late Sadhu Sao, aged 40 years, R/o Namnakala, Ambikapur, District Sarguja, Chhattisgarh (Owner)

---- Respondents

For Appellant : Shri Abhishek Sinha, Advocate

For Respondents : None

Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board

09.11.2020

1. Appellant/non-applicant No.3/Insurer has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 08.05.2015 passed by the Fifth Additional Motor Accident Claims Tribunal, Ambikapur, District Sarguja, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.64 of 2014 whereby learned

Claims Tribunal allowed the application filed under Section 166 of M.V. Act by the claimants/respondents No.1 to 3 in part, awarded Rs.3,44,000/- as compensation in a fatal accident case and fastened the liability to satisfy the amount of compensation upon the non-applicants jointly and severally.

2. Facts of the case in nutshell, are that, on 27.09.2013, Vishnu Minj was travelling on a Trolley bearing No.CG-15/AE/2482 attached with Tractor bearing No.CG-15/AE/2459 (hereinafter referred to as 'offending vehicle') as Labourer. On the way, non-applicant No.1 drove the offending vehicle rashly and negligently on Ring Road, near Darripara, on account of which, Vishnu Minj fell down from the offending vehicle and met with an accident. In the said accident, Vishnu Minj suffered grievous injuries over his head. He was taken to District Hospital, Ambikapur where during the course of treatment, he died.

3. Claimants/respondents No.1 to 3, who is parents and brother of deceased Vishnu Minj filed an application under Section 166 of the M.V. Act before learned Claims Tribunal seeking compensation of Rs.12,24,000/- on the grounds mentioned therein.

4. Non-applicants No.1 and 2/driver and owner of offending vehicle submitted reply to claim application and denied the pleadings made therein. They have also denied that

deceased was travelling on the offending vehicle as a Labourer. In additional pleadings, they have pleaded that deceased was trying to board the offending vehicle from its rear side under the influence of liquor and met with an accident. There was no negligence on the part of non-applicant No.1 and offending vehicle was insured with non-applicant No.3, hence, the liability to satisfy any amount of compensation would be upon non-applicant No.3.

5. Non-applicant No.3/Insurance Company submitted reply to claim application, while denying the pleadings made therein, pleaded that offending vehicle was being driven in breach of policy conditions. It was further pleaded that on the date of accident, one Lakhan S/o of Bhajju Oraon was driving the offending vehicle, who was not possessed with valid and effective driving licence. Offending vehicle was insured for agricultural purposes, no other person can sit or travel except the driver. On the date of accident, apart from the deceased, other persons were also travelling by name, Mukesh, Umesh and Dilip. Except for the driver of offending vehicle, there is no coverage of risk for any other person under the policy issued by the Insurance Company, hence, non-applicant No.3 was not liable to satisfy any amount of compensation.

6. Learned Claims Tribunal on appreciation of the pleadings, evidence and material placed on record by the respective

parties held that deceased Vishnu Minj suffered grievous injury on account of his falling from the offending vehicle due to rash and negligent driving of offending vehicle by non-applicant No.1, breach of policy conditions was not found to be proved, awarded Rs.3,44,000/- as compensation and fastened the liability to satisfy the amount of compensation jointly and severally upon non-applicants i.e. driver, owner and insurer of offending vehicle.

7. Shri Abhishek Sinha, learned counsel for the appellant/ Insurance Company submits that learned Claims Tribunal though framed specific issue with regard to whether offending vehicle was driven in breach of policy conditions or not, but while deciding the issue No.3 and 4 after recording that deceased was travelling on Tractor, only considered the issue of breach of policy conditions on the ground of valid and effective driving licence. Learned Claims Tribunal has not considered whether any person can travel in a 'Goods Vehicle' as Labourer or not whether there was any seating capacity for other persons and has decided the issue with regard to breach of policy conditions against the appellant. It is further contended that offending vehicle was registered for 'agricultural purpose' as certificate of registration specifically mentions that tax was exempted. It is contended that learned Claims Tribunal erred in not considering the issue raised by the Insurance Company in its reply that no person

can travel in a 'Goods Vehicle' more so, in Tractor Trolley where there is no seating capacity and coverage of risk of any of the person other than the paid driver and erroneously fastened the liability upon the Insurance Company. He places reliance on the verdict passed by Hon'ble Supreme Court in case of **New India Assurance Co. Ltd. v. Asha Rani and others** reported in **(2003) 2 SCC 223** and **Oriental Insurance Co. Ltd. v. Brij Mohan and others** reported in **(2007) 7 SCC 56** to buttress his submission.

8. No one appeared on behalf of the respondents.

9. I have heard learned counsel for the appellant/Insurance Company and perused the record of claim case.

10. The claimants themselves have pleaded that deceased was travelling on the offending vehicle as Labourer. Documents of criminal case placed on record i.e. Final Report (Ex.P/1) and First Information Report (Ex.P/2) would show that deceased met with an accident while travelling on the offending vehicle. Learned Claims Tribunal while deciding issue No.1 has considered the evidence of Smt. Kaushalya Minj (AW-1), Mukesh Kumar (AW-2) along with Final Report (Ex.P/1), First Information Report (Ex.P/2) and given a finding that accident was on account of rash and negligent act of non-applicant No.1 due to which the deceased fell down from the Trolley and suffered injuries over his person. Learned Claims Tribunal erred in not considering the specific

plea taken by the Insurance Company that no person except the driver can travel on Tractor and on Trolley. Further, there was no coverage of risk of any other person except the driver and recorded a finding that breach of policy condition is not found to be proved. The said finding recorded by learned Claims Tribunal in the facts of the case are perverse to the material available on record. Section 147 of the M.V. Act specially envisages the requirements of policies and limits of liability.

11. The Hon'ble Supreme Court while considering the claim against the death of a person travelling in a 'Goods Carriage Vehicle' in case of **Asha Rani** (supra) and held thus :

> “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.
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> 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.
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> 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's case*."

12. In case of **Brij Mohan** (supra), Hon'ble Supreme Court has considered the claim of an injured travelling on a Tractor and held thus :

> "10. Furthermore, the respondent was not the owner of the tractor. He was also not the driver thereof. He was merely a passenger travelling on the trolley attached

to the tractor. His claim petition, therefore, could not have been allowed in view of the decision of this Court in *New India Assurance Co. Ltd. v. Asha Rani, (2003) 2 SCC 223* wherein the earlier decision of this Court in *New India Assurance Co. v. Satpal Singh, (2000) 1 SCC 237* was overruled. In Asha Rani (supra) it was, inter alia, held : (SCC p.235, paras 25-27)

> “25. Section 147 of the 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a 'goods carriage'.
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> 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 provisions 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.
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> 27. Furthermore, sub-clause (i) of clause (b) of sub-section (1) of Section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place."

[See also *National Insurance Co. Ltd. v. Bommithi Subbhayamma, (2005) 12 SCC 243* and *United India Insurance Co. Ltd. v. Tilak Singh, (2006) 4 SCC 404*.

12. Interpretation of the contracts of insurance in terms of Section 147 and 149 of the Motor Vehicles Act came up for consideration recently before a Division Bench of this Court in *National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700*, wherein it was held : (SCC p.714, paras 23-24)

> "23[24]. As noted above, there is no contractual relation between the third

party and the insurer. Because of the statutory intervention in terms of Section 149, the same becomes operative in essence and Section 149 provides complete insulation.

24[25]. In the background of the statutory provisions, one thing is crystal clear i.e. the statute is beneficial one qua the third party. But that benefit cannot be extended to the owner of the offending vehicle. The logic of fake licence has to be considered differently in respect of third party and in respect of own damage claims."

It was further observed : (SCC pp. 718-19, paras 33-35)

"33[36]. It is also well settled that to arrive at the intention of the legislation depending on the objects for which the enactment is made, the Court can resort to historical, contextual and purposive interpretation leaving textual interpretation aside.

34[37]. Francis Bennion in his book *Statutory Interpretation* described 'purposive interpretation' as under:

'A purposive construction of an enactment is one which gives effect to the legislative purpose by-

(a) following the literal meaning of the enactment where that meaning

> is in accordance with the legislative purpose, or
>
> (b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose.'
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> 35[38]. More often than not, literal interpretation of a statute or a provision of a statute results in absurdity. Therefore, while interpreting statutory provisions, the courts should keep in mind the objectives or purpose for which statute has been enacted. Justice Frankfurter of US Supreme Court in an article titled as '*Some Reflections on the Reading of Statutes'* (47 Columbia Law Review 527), observed that,
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> 'legislation has an aim, it seeks to obviate some mischief, to supply an adequacy, to effect a change of policy, to formulate a plan of Government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statutes, as read in the light of other external manifestations of purpose.'"
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> (See also *Oriental Insurance Company Ltd. v. Meena Variyal, 2007 (5) SCC 428.*"

13. The Hon'ble Supreme Court in case of **Shivaraj v. Rajendra and another** reported in **(2018) 10 SCC 432** has considered

the issue of claim of s person travelling on Tractor-Trolley and held thus :

> "10. The High Court, however, found in favour of respondent No.2 (insurer) that the appellant travelled in the tractor as a passenger which was in breach of the policy condition, for the tractor was insured for agriculture purposes and not for carrying goods. The evidence on record unambiguously pointed out that neither was any trailer insured nor was any trailer attached to the tractor. Thus, it would follow that the appellant travelled in the tractor as a passenger, even though the tractor could accommodate only one person namely the driver. As a result, the Insurance Company (respondent No.2) was not liable for the loss or injuries suffered by the appellant or to indemnify the owner of the tractor. That conclusion reached by the High Court, in our opinion, is unexceptionable in the fact situation of the present case."

14. Upon going through the insurance policy (Ex.D/5), it would show that premium was charged for PA to Owner, Driver and LL to Paid Driver. No premium was charged by Insurance Company for covering the risk of Labourer. In view of undisputed fact that deceased at the time of accident was travelling on the offending vehicle and fell down from the offending vehicle due to rash and negligent driving of non-applicant No.1, I am of the considered view that learned

Claims Tribunal erred in recording a finding that Insurance Company has failed to prove the breach of policy conditions. The said finding is perverse and contrary to law laid down by Hon'ble Supreme Court in aforementioned cases and is hereby set aside. Now, the liability to satisfy the amount of compensation awarded by learned Claims Tribunal shall be upon non-applicants No.1 and 2/respondents No.4 and 5 i.e. driver and owner of offending vehicle. Insurance Company is exonerated from its liability to satisfy the amount of compensation. Insurance Company is at liberty to recover the amount so deposited by it from owner and driver of the offending vehicle only after depositing the entire amount of compensation by non-applicants No.1 and 2/respondents No.4 and 5 i.e. driver and owner of offending vehicle.

15. In the result, the appeal is allowed. Impugned award stands modified to the extent indicated herein-above.

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh