NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No.104 of 2015

Ajay Kumar S/o Kailash Chandra Agrawal Aged About 37 Years R/o- Station Road, Naila, Police Station-Naila, Janjgir, Tahsil-Janjrit, Distt. Janjgir Champa C.G.

---- Appellant

Versus

1. Aktibai W/o Chamar Rai Yadav Aged About 50 Years R/o -Kerakachhar, Post-Gatwa, Chowki-Pantora, Tahsil-Baloda, Distt. Janjgir Champa C.G.
2. Santosh Kumar S/o Lakhan Lal Kahra, aged about 20 years, R/o- Bhathapara Janjrig, P.S. & Tahsil-Janjgir, District-Janjgir-Champa C.G.
3. United India Insurance Company Limited, R.B. Traders First Floor Stadum Road, T.P. Nagar, Korba, District- Korba C.G.

--- Respondents

For Appellant	:	Mr. Basant Dewangan, Advocate on behalf of Mr. Anup Majumdar, Advocate.
For Respondent No.1 & 2	:	None.
For Respondent No.3	:	Mr. H. B. Agrawal, Advocate with Mr. Pankaj Agrawal, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

28/10/2020

1. Appellant -Owner of Tractor bearing registration No.CG11/D/2468 & Trolley bearing registration No.CG11/D/2469, has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging the impugned award dated 29.09.2014 passed by learned Motor Accident Claims Tribunal, Janjgir-Champa, (CG) in Claim Case No.22/2013, whereby Tribunal allowed application filed under Section 166 of the Act of 1988 in part and awarded Rs.1,55,000/- as compensation in a death case.

2. Facts relevant for disposal of this appeal are that on 26.10.2012, Chamar Rai Yadav alongwith Laxman, Shyamlal, Radheshyam, Santosh went to work as labourer in crusher plant at Baijalpur. When they were returning from their work place on Tractor bearing registration No.CG11/D/2468 & Trolley bearing registration No.CG11/D/2469, (for short 'offending

vehicle') reached near village -Puraina, non-applicant No.1 -driver of offending vehicle drove his vehicle rashly and negligently, due to which, offending vehicle turned - turtle in plashy (डबरी), Chamar Rai Yadav came under offending vehicle and died on spot.

3. Claimant, who is widow of deceased, filed an application under Section 166 of the Act of 1988 before the Tribunal seeking compensation of Rs.12,40,000/- on the ground that on the date of accident, deceased was working as labourer as well as agriculturist and earning Rs.7,500/- per month.

4. Non-applicant Nos.1 & 2, owner & driver of offending vehicle, submitted reply to application, while denying almost all the facts pleaded therein, further pleaded that when non-applicant No.1 was returning to his village, on the way he saw one vehicle lying overturned and a person was lying under it. The Police personal, who were present on the spot has stopped his vehicle, took him to police station and falsely implicated in the accident. On the date of accident, non-applicant No.1 was possessing valid and effective driving license, offending vehicle was insured with non-applicant No.3/Insurance Company.

5. Non-applicant No.3/Insurance Company submitted its reply to application and denied the pleadings made therein. It was pleaded that at the time of accident, 8-10 labourers were travelling on offending vehicle ie trolley, which was not insured with Insurance Company and thus, risk of passengers travelling on offending trolley was not covered. On the date of accident, non-applicant No.1 was not possessing valid and effective driving license. As there was breach of policy condition, Insurance Company is not liable to indemnify the insured.

6. On appreciation of pleadings and evidence placed on record by respective parties, the Tribunal held that non-applicant No.1 drove offending vehicle rashly and negligently, caused accident in which Chamar Rai Yada died. Offending vehicle was plied in breach of conditions of Insurance Policy. Tribunal allowed application in part, awarded a sum of Rs.1,55,000/- as compensation along with interest @ 9% p.a, while exonerating Insurance Company, fastened liability upon non-applicants No.1 & 2/owner & driver of offending vehicle to pay the amount of compensation.

7. Learned counsel for the appellant submits that the Tribunal erred in exonerating Insurance Company from its liability, ignoring the fact that on the date of accident offending vehicle was insured, non-applicant No.1 was possessing valid and effective driving license. Policy issued by Insurance Company is also not in dispute. He further submits that once the policy is admitted under Section 147 of the Act of 1988, Insurance Company is liable to satisfy the claim of labourers engaged in vehicle. Referring to Ex.P-NA/3(C) Insurance Policy, he argues that as per Schedule, premium was charged and accepted for the employees under Workmen's Compensation Act. Insurance Company is liable to satisfy the amount of compensation under IMT 28. He further submits that the Tribunal erred in awarding conditional/default interest at the rate of 9% pa, if the amount of compensation is not deposited within a period of one month from the date of award.

8. Per contra, learned counsel for respondent No.3/Insurance Company submits that the Tribunal has rightly arrived at a finding that there was breach of conditions of Insurance Policy as offending vehicle is a goods vehicle and Policy was also issued for GCV Public Carrier ie "goods

carriage vehicle", at the time of accident, more than 10 persons/labourers were travelling. It is not in dispute that deceased was travelling in offending vehicle as 'gratuitous passenger'. He further submits that as per law laid down by the Hon'ble Supreme Court in case of **New India Assurance Company Limited vs. Asha Rani and Ors[1],** no person can be permitted to travel in a 'goods vehicle', under Section 147 of the Act of 1988 there is no liability of Insurance Company to cover the risk of 'gratuitous passenger' travelling on a 'goods vehicle'. He further submits that premium charged under IMT 28 is only for driver and not for the labourers. Lastly he submits that award passed by the Tribunal is just and proper, fastening of liability upon non-applicants No.1 & 2/owner & driver is based on the facts, evidence available on record and the law applicable to the case, which does not call for any interference.

9. I have heard learned counsel for the respective parties and perused the record of claim case.

10. So far as first submission made by learned counsel for the appellant that offending vehicle was insured with respondent No.3/Insurance Company, liability is to pay compensation is upon Insurance Company is concerned, it is not disputed by learned counsel for the appellant that deceased was travelling on offending vehicle. Policy Ex.P- NA/3 issued for offending vehicle mentions about payment of additional LL to paid driver IMT 28 Rs.50. Ex. P-NA/1 & 2 registration certificates of tractor & trolley mentioning seating capacity in tractor of only one and in trolley shown to be blank.

11. In view of above, it is clear that seating capacity of tractor is only one ie of 'driver' only, and there is no seating capacity in trolley. Policy issued for

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1 (2003) 2 SCC 223

offending vehicle is for goods carrying vehicle. The Hon'ble Supreme Court in case of **Asha Rani and Ors** (supra) while considering the persons travelling on goods vehicle and met with accident held as under :-

> "26. In view of the changes in the relevant provisions in 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 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 Company v. Satpal Singh** reported in **(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 (supra)."

12. The Hon'ble Supreme Court in case of **Oriental Insurance Company Limited vs Brij Mohan & Ors**[2] has again considered the risk of persons traveling in goods vehicle. Recently, in case of **Shivraj vs. Rajendra & Anr**[3] the Hon'ble Supreme Court while considering the coverage of risk of 'gratuitous passenger' traveling in tractor held thus :-

2 (2007) 7 SCC 56

3 (2018) 10 SCC 432

> "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."

13. In the aforementioned case laws, the Hon'ble Supreme Court in categorical terms held that no person can travel in a 'goods vehicle'.

14. In view of aforementioned facts and circumstances of this case and also in the light of the above law laid down by the Supreme Court, I do not find any error in finding recorded by the Tribunal and exoneration of Insurance company from its liability on the ground that there was breach of conditions of Insurance Policy. Hence, first submission made by learned counsel for the appellant that offending vehicle was insured with Insurance Company. Insurance Company is liable to satisfy the amount of compensation is not sustainable and it is hereby repelled.

15. So far as second submission of learned counsel for the appellant that additional premium was charged under IMT 28 is concerned, Insurance Policy Ex P.NA-3 very clearly mentions LL to paid driver, it does not mention LL to paid driver, conductor, cleaner or labourer, mentioning of driver is very specific. Insurance Policy is a contract between Insurance Company and the insured, policy cannot cover the risk beyond the contract as mentioned in the policy, hence, it cannot be inferred that along-with the driver, risk of labourers were also covered. In view of

above, second submission is also not sustainable and it is hereby repelled.

16. Coming to next submission with regard to award conditional/default interest at the rate of 9% p.a. is concerned, under the provisions of Section 171 of the Act of 1988, award of only simple interest is provided and there is no provision under the Act to award conditional/default interest for any reason. Hence, in my considered opinion, the Tribunal erred in awarding conditional/default interest at the rate of 9% pa if the amount of compensation is not paid within the period of one month from the date of award and therefore, it is hereby set aside. The impugned award will only carry interest at the rate of 6% pa as awarded by the Tribunal in Para 15 (2) of impugned award.

17. For the foregoing reasons, appeal is allowed in part and impugned award stands modified to the extent as indicated herein-above.

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-