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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 714 of 2012

{Arising out of order dated 12.04.2012 passed by learned Additional Motor Accident Claims Tribunal, Link-Dongargarh, District Rajnandgaon, Chhattisgarh in Motor Accident Claim Case No.29 of 2010}

The Branch Manager, the New India Assurance Company Limited, Parakh Bhavan, Station Road, Durg Chhattisgarh

---- Appellant

Versus

1. Surendra Patel S/o Late Sundar Singh Patel Aged About 40 Years
2. Ku. Dharmin D/o Surendra Patel Aged About 20 Years
3. Ku. Pooja D/o Surendra Patel Aged About 11 Years Minor through Guardian Father Surendra Patell S/o Sunder Singh Patel

   All R/o Gram Devkatta, Thana And Tahsil Dongargarh Chhattisgarh
4. Ravindra Kumar Verma S/o Shyam Singh Aged About 30 Years, Caste Lodhi, R/o Gram Kolendra, Thana And Tehsil Dongargarh, District Rajnandgaon Chhattisgarh
5. Heera Ram Verma S/o Dhanuk Verma Aged About 35 Years, Caste Lodhi, R/o Gram Kolendra, Thana And Tehsil Dongargarh, District Rajnandgaon Chhattisgarh

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate.
For Respondents No.1 to 3	:	None.
For Respondent No.4 and 5	:	Shri K.K. Dewangan, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge

Judgment on Board

Per P. R. Ramachandra Menon, Chief Justice

15.07.2020

1. Correctness and sustainability of the award passed by the Tribunal mulcting the liability upon the insurer of a Tractor-Trolley in respect of the death of a passenger carried in the Trolley, is put to challenge in this appeal filed at the instance of the insurer.

2. The deceased by name, Manglin Bai, was travelling along with some other persons in the Tractor-Trolley (bearing registration No.CG07/N/0780 and CG07/N/0781) allegedly for work. When the vehicle reached the place of occurrence, because of rash and negligent driving by the 4th Respondent, the vehicle overturned, causing fatal injuries, leading to the death of Manglin Bai, which was sought to be compensated by filing a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988 by the legal heirs i.e. the husband and the children. It was contended that the deceased was a labourer, having an income of Rs.150/- per day and amounts were claimed under different heads.

3. The claim was resisted merely on the part of the Appellant-insurer pointing out that there was no coverage under the policy. It was stated that the policy was issued covering the offending vehicle/Tractor Trolley only for 'agricultural purpose' and further that, there was violation of the statutory/policy conditions.

4. On completion of the trial, the Tribunal arrived at a finding that the accident was solely because of the negligence on the part of the driver of the offending vehicle/Tractor-Trolley. The Tribunal reckoned a sum of Rs.3,000/- as the notional monthly income and applying the multiplier of 15, fixed the loss of dependency as Rs.3,60,000/-. Awarding various amounts under other different heads, the total compensation was fixed as Rs.3,73,500/-, which was directed to the satisfied with interest at the rate of 6% per annum. The liability came to be fastened upon the Appellant-insurer on the strength of the policy issued, which according to the Appellant is not correct and hence, the challenge.

5. During the pendency of the proceedings, the 1st Respondent expired and

I.A. No.06 of 2020 has been filed for deleting the name of Surendra Patel-1st Respondent mentioning him to be dead. It is stated that all the legal heirs are already in the party array (children of the deceased i.e. Respondents No.1 and 2). Service is complete, but nobody has entered appearance on their behalf.

6. We have heard Shri Dashrath Gupta, the learned counsel for the Appellant as well as Shri K.K. Dewangan, the learned counsel appearing for the 4th and 5th Respondents i.e. the driver and owner respectively.

7. The learned counsel for the Appellant points out that, there was no coverage under the policy issued in respect of the offending vehicle/Tractor-Trolley. In fact, the policy was issued only to cover the own damage and the third party risks; clearly mentioning that the vehicle was to be used only for 'agricultural purposes'. It is also pointed out by learned counsel for the Appellant that, no passenger was to be carried in the Tractor or the Trolley and no seats were there in the vehicle to carry any passengers. The Tractor was having only one seat, which was intended exclusively for the driver and nobody else. No additional premium was collected in respect of any passenger and these factual aspects were substantiated before the Tribunal. But the Tribunal went wrong in not looking into the 'Certificate of Registration'/authentic documents issued by the Authority (RTO Office). The Tribunal was simply carried away by a 'mistaken entry' in the policy that the number of passengers excluding the driver was filled up as “six”. Insofar as the offending vehicle/Tractor-Trolley is manufactured with intention for not carrying any passenger and since no seat was provided other than for the driver and further since no additional premium was collected for carrying any passenger, there was no coverage under the policy in respect of any

passenger; by virtue of which, no liability could have been fixed upon the Appellant/insurer.

8. The learned counsel representing the 4th and 5th Respondents (driver and owner respectively) submits that, the number of passengers has been shown as 'six' (excluding the driver) in the policy issued and hence, the Appellant cannot dispute the coverage. There is no dispute with regard to the type and nature of the offending vehicle, the factum of registratio of case by the police against the driver and also the sequence of events. It is virtually conceded that the driver had permitted the deceased and such other persons to travel in the offending vehicle which turned turtle on 22.07.2010, causing fatal injuries to the deceased leading to her death.

9. To a pointed question raised by this Court, whether the vehicle was having any additional seats to carry any passenger other than the driver or any additional premium was collected from the owner to carry any passenger, the learned counsel for Respondents No.4 and 5 fairly conceded the same in the 'negative'. Even otherwise, the documents are available with this Court which clearly shows that as per the RC Book issued from the office of the RTO, there was only 'one seat', which was exclusively for the driver. No seat was available to carry any passenger and the policy was issued for using the vehicle only for the 'agricultural purposes' and not for carrying any passengers.

10. “Tractor” has been defined in Section 2(44) of the Motor Vehicles Act, which is not manufactured or intended to carry any load (other than equipment used for the purpose of propulsion), and it becomes a 'goods carriage' when the Trolley is connected to the Tractor as in the instant case.

11. As per the law declared by the Apex Court in **New India Assurance Company Limited v. Asha Rani and Others** reported in **(2003) 2 SCC 223**, no passenger can be carried in a goods carriage other than the owner or his representative of the goods carried or the employee of the insured. Even if such a person is to be carried within the framework of the statute, he is to be carried only in the 'cabin' of the vehicle, based on the seating capacity as permitted. This is the law declared by the Apex Court in **National Insurance Company Limited v. Cholleti Bharatamma and Others** reported in **(2008) 1 SCC 423**.

12. In the instant case, the offending vehicle is a Tractor-Trolley, which does not have any cabin and only one seat is provided which is exclusively for the driver and nobody else. The liability of the Insurance Company in such circumstance had come up for consideration before the Apex Court and as per judgment in **National Insurance Company Limited v. V. Chinnamma and Others** reported in **(2004) 8 SCC 697** it has been held that there cannot be any coverage and liability upon the insurer. The position has been reiterated by the Apex Court in many a judgment rendered thereafter. The law declared by the Apex Court has been followed and a judgment has been rendered in similar lines by a Division Bench of this Court as well, in **Baijnath and Others v. Chandrika Prasad Sahu and Others** reported in **(2008) 1 CGLJ 307 (DB)**.

13. In the above circumstance, we hold that the Tribunal has gone wrong in fixing the liability upon the shoulders of the Appellant/insurer. The liability ought to have been fixed on the Respondents No.4 and 5, the driver and owner respectively.

14. The appeal has been filed by the Appellant after effecting the statutory deposit in terms of the 1st proviso to Section 173(1) of the Motor Vehicles

Act, 1988. When the matter came up for consideration before this Court for admission on 07.01.2014, interim stay was granted, subject to satisfaction of 50% of the award amount in addition to the statutory deposit already made. As per the very same order, the claimants were set at liberty to withdraw the amount deposited on furnishing the security. It is stated by the learned counsel for the Appellant that the condition has already been satisfied and the Appellant is enjoying the benefit of stay in respect of the balance amount.

15. In view of the turn of events and the declaration that there is no coverage under the policy to satisfy the risk by the Appellant under the policy, the Insurance Company stands exonerated. The amount deposited by the Appellant, if still available at the hands of the Tribunal, shall be caused to be returned to the Appellant. If for any reason, the amount has already been released to the claimants, we make it clear that the Appellant would be at liberty to have it recovered from the 4th and 5th Respondents i.e. the driver and owner respectively. It is further made clear that the balance amount payable under the award can be recovered by the claimants (Respondents No.2 and 3) from the driver and owner of the offending vehicle.

The appeal stands allowed to the said extent.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

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