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HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 1173 of 2013

- The Oriental Insurance Company Limited, through Division Manager, Sai Nagar, Raipur, District Raipur C.G.

------Appellant/ Non-applicant 3

VERSUS

1. Chaitram S/o Punaram Halba, Caste- Halba, Caste-Halba, aged about 32 years, R/o Pourkheda, P.S. and Tahsil Mohla, District-Rajnandgaon C.G. **------Claimant**
2. Pradeep Singh S/o Dhurandhar Singh, aged about 22 years, R/o Silp P.S. Bargawa, District Sidhi through Prabhu Construction Company Raipur C.G. **--------Non-applicant 1**
3. Akash Tiwari S/o Prabhu Lal Tiwari, M/s. Prabhu Construction, Raipur, Shyam Petrol Pump, Ring Road, Raipur R/o Choubey Colony, Qtr. No. 1 Sahkari Path, Raipur, District Raipur C.G. **--------Non-applicant 2**
4. Mentas Company, Karengatola, Through Manager, R/o Karengatola, P.S. & Tahsil Mohla, District Rajnandgaon C.G. **--------Non-applicant 4**

-------**Respondents**

For Appellant	:	Mr. Pankaj Agrawal, Advocate.
For Respondent No. 4	:	Mr. Aman Yadav, Advocate

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

Per Parth Prateem Sahu, J.

10/07/2020

1. The Appellant-Insurance Company has challenged the impugned award dated 29-07-2013 passed in claim case No. 57/2008 by Additional Motor Accident Claims Tribunal, (FTC), Rajnandgaon, C.G. wherein the learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs. 42,000/- as compensation and fastened liability upon the Appellant-Insurance Company of the Truck.

2. Facts relevant for disposal of this appeal are that on 14-08-2007, Respondent 1-claimant along with other labours was traveling on truck bearing Registration No. CG 04G 4793 and going to his place of work of road construction. At about 09:00 in the morning, on the way, near village Mohla Gotatola, the truck met with an accident and overturned. In the said accident, Respondent 1 Chaitram suffered

fracture injury over his right shoulder and also suffered injury on his waist along with other parts of body. He was immediately taken to Primary Health Centre, Mohla from where he was referred to Government District Hospital, Rajnandgaon and thereafter to Ambedkar Hospital at Raipur. The accident was reported to concerned police station based on which crime was registered against Respondent 2/ Non-applicant 1 driver of the truck. Respondent 1-claimant filed an application under Section 166 of the Motor Vehicles Act, claiming Rs. 7,40,000/- as compensation on account of injuries suffered by him.

3. Respondent 2 and 3/ Non-applicant 1 and 2 submitted their joint reply to the claim application and admitted the pleadings of the claim application in paragraph 2 and further pleaded that on the date of accident, the Truck was insured with Appellant/Non-applicant 3-Insurance Company and liability to pay the amount of compensation would be on the Insurance Company.

4. The Appellant-Insurance Company submitted reply to the claim application and pleaded that on the date of accident, Truck was plied in breach of conditions of insurance policy. They have pleaded that on the date of accident about 20-22 passengers were traveling, there was no valid and effective driving licence with the driver of the Truck and the claimant/ Respondent 1 has not suffered any permanent disability.

5. Learned Claims Tribunal, on appreciation of pleadings and evidence placed on record by the respective parties held that the accident took place on account of rash and negligent driving of the Truck by Respondent 2/ Non-applicant 1 in which the claimant/ Respondent 1 suffered grievous injuries resulting permanent disability, there was no violation of conditions of insurance policy and awarded total sum of Rs. 42,000/- as compensation.

6. Learned counsel for the appellant-Insurance Company submits that the claimant has been shown to be traveling on Truck which is Goods Carrying Vehicle and no passenger/ labour can be permitted to travel on the vehicle, the learned Claims Tribunal has only taken into consideration the issue of licence and recorded a

finding that on the date of accident, the driver of the offending vehicle was possessing valid and effective driving licence. He submits that the learned Claims Tribunal in the body of award recorded while appreciating the evidence of witness that, about 17-18 persons were traveling on the platform of the Truck but has not considered the issue whether traveling on goods carrying vehicle are permissible or not under the law or whether this itself is not sufficient to prove the breach of conditions of insurance policy.

7. Per contra, learned counsel for Respondent 2 and 3 who is driver and owner of the Truck submits that the learned Claims Tribunal has discussed the issue with regard to the breach of conditions of insurance policy in detail in its paragraph 11 to 16 and categorically recorded a finding that there was no breach of conditions of insurance policy. He submits that the award passed by the learned Claims Tribunal fastening liability upon the Insurance Company is based on the evidence available on record which do not call for any interference.

8. We have heard learned counsel for the respective parties and also perused the record.

9. Perusal of claim application would show that the claimant in the claim application very specifically pleaded that on the date of accident, Respondent 1 was traveling on the Truck as labour and going for his work place, this pleading was not denied by Respondent 2 and 3 before the learned Claims Tribunal but they have admitted this fact and tried to explain as to how the accident took place. The Insurance Company in support of its plea had produced copy of the insurance policy marked as Ext. D2 which is mentioned in paragraph 4 of deposition of Chetan Prasad Soni who was examined as NAW2 on behalf of the Insurance Company, document Ext. D2 is not available on record and therefore we have directed the learned counsel for the Insurance Company to place on record the copy of insurance policy. Learned counsel for the appellant has placed before us the copy of insurance policy of Truck insured for a period from 11.10.2006 to mid night of 10.10.2007. Perusal of the policy would show that the owner of the aforementioned Truck has paid premium towards own damage of Rs. 9413.25/-,

towards basic liability Rs. 3,580/-, towards legal liability employee/ driver Rs. 125/-. No premium was paid for any labour even for traveling in the cabin of the vehicle whereas the fact of the case shows that Respondent 1/ claimant was traveling on platform of the Truck, thereby, the claimant was gratuitous passenger on Goods Carrying Vehicle. The issue with regard to carrying passenger in a goods carrying vehicle has been settled by the Hon'ble Supreme Court in case of ***New India Assurance Co. Ltd. v. Asha Rani*** reported in **(2003) 2 SCC 223** has held as under:

> "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."

The Hon'ble Supreme Court further considering its judgment of **Asha Rani (supra),** in case of ***National Insurance Co.Ltd. v. Chollety Bharatamma*** reported in **(2008) 1 SCC 423** has further held that injury to any person 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:

> "12. Yet again in *New India Assurance Co. Ltd. v. Vedwati, (2007) 9 SCC 486*, this Court held: (SCC p. 490, para 6)
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> '*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').
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> *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."
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> 19. It is now well settled that the owner of the goods means only the person who travels in the cabin of the vehicle."

10. In view of the aforementioned law laid down by the Hon'ble Supreme Court, we do not have any second thought to hold that, there was breach of conditions of insurance policy and the learned Claims Tribunal erred in not considering the fact that the injured/claimant traveling along with 17-18 passengers on the platform of the Truck, while deciding the issue of violation of conditions of insurance policy. Finding recorded by the Claims Tribunal with regard to issue number 3 is not sustainable and it is hereby set aside. The Appellant-Insurance Company is exonerated from its liability. Now, Respondent 2 and 3/ Non-applicant 1 and 2 will be liable to satisfy the amount of compensation to be paid to Respondent 1-Claimant. It is further directed that upon depositing the entire amount of compensation along with interest by Respondent 2 and 3 driver and owner of the Truck before the Claims Tribunal, the Appellant-Insurance Company will be at liberty to recover the amount deposited towards the award passed by the learned Claims Tribunal.

11. In view of the above, the appeal is allowed in part and the impugned award passed by the learned Claims Tribunal is modified to the extent as indicated hereinabove. Insurance Company is exonerated from the liability to satisfy the amount of compensation and Respondent 2 and 3 are held liable to pay the amount of compensation in terms of award passed by the Claims Tribunal.

12. On going through the record of the learned Claims Tribunal, we find that though the documents like insurance policy and other documents which were marked by

witness NAW-2 as Ext. D2 to D4, in his evidence and also referred in the award, but those documents are not available in the original record of the Claims Tribunal. Once any document is marked as Exhibit before any Court or Tribunal as documentary evidence, in support of their case by any of the party to the proceedings then it is duty of the Court or Tribunal to see that those documents are immediately made part of the record of the case/ suit. We are constraint to say that the Claims Tribunal has not taken care of to look into whether the documents/ marked exhibits have been made part of the record immediately or not and if they have been placed on record then whey it has not been properly shown in the list prepared by the Reader of the Court with regard to the documents placed by the respective parties in support of their case. It is directed that the Claims Tribunal may enquire as to how the documents Ext. D2 to D4 are missing from the original record of Claim Case No. 57/2008 decided on 29-07-2013 and to submit the report before this Court.

13. We have also found missing documents from the original record which were marked exhibits in one another case came up for hearing before this Court arising out of the Workmen's Compensation Act i.e. in MAC No. 615/2013. In that case, only one page of the document was available on record but other pages forming part of the document was not available in the record. The documents and missing pages were stated by witness and referred by Commissioner in its award. Missing of documents placed as evidence from record is a serious issue.

14. A copy of this order be sent to the learned Claims Tribunal for necessary action and compliance.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	Judge

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