NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 969 of 2013

- Bajaj Allianz General Insurance Company Limited Shiv Mohan Bhavan, Vidhan Sabha Road, Pandri, P.S. Pandri, Distt. Raipur, Chhattisgarh

---- Appellant

Versus

1. Mrs.Gonchi Bai, W/o Late Kamal Karma Aged About 34 years
2. Rakesh Karma S/o Late Kamal Karma Aged About 14 Years Minor
3. Ku. Geeta Karma D/o Late Kamal Karma Aged About 5 Years Minor
4. Ku. Anju Karma D/o Late Kamal Karma Aged About 4 Years Minor

   Respondents- 2 to 4 minors through their mother Mrs Gonchi Bai

   All r/o Khaspara, Darbha, Tahsil Darbha, district Bastar, CG (Claimants) (PS not mentioned in claim application)
5. Madhu @ Madhusudan @ Jadu S/o Gulabsingh, aged About 35 Years R/o Darbha, P.S. Darbha, Distt. Bastar Civil and Revenue District : Bastar, Chhattisgarh (Driver) (PS not mentioned in claim application)
6. Mrs. Premlata Gupta, W/o Shankar Gupta R/o Tongapapl, P.S. Parpa, Distt. Bastar Civil and Revenue District : Bastar, Chhattisgarh (Owner)

-----Respondents

For Appellant	:	Shri Raj Awasthi, Advocate
For Respondents- 1 to 4/claimants	:	Shri PK Tulsyan, Advocate
For Respondents- 5 and 6	:	None appears

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J

11.06.2020

1. Questioning fastening of liability upon the appellant/Insurance Company by learned Claims Tribunal vide its award dated 23.03.2013 passed by the Motor Accident Claims Tribunal, Bastar at Jagdalpur (CG) (for short 'Claims Tribunal') in Claim Case No.34 of 2011, this appeal has been preferred.

2. Facts relevant for disposal of this appeal are that on 25.11.2010 one Kamal Karma, was travelling on Tractor bearing No.CG 17 G-3204 and Trolley bearing No.CG17G-3205 (for short, 'offending vehicle') along with Jayman and Ramesh, as labour. On their way, Kamal Karma asked to stop offending vehicle for urinals and while boarding again on the vehicle after urinals, non-applicant 1/driver rashly and negligently drove the vehicle due to which Kamal Karma suffered grievous injuries on his head and chest. He was immediately taken to PHC Darbha, where he succumbed to the injuries.

3. Respondents- 1 to 4, who are wife and children of deceased Kamal Karma filed claim application before the Tribunal claiming Rs.7,90,000/- as compensation on the ground that due to death of late Kamal Karma, they are suffering financial loss.

4. Non-applicants 1 and 2, driver and owner of offending vehicle submitted their reply to the claim application and pleaded that there was no rash and negligent act on the part of its driver, as he was driving the vehicle very slowly and even if there is negligence on the part of driver, then, the liability to satisfy the amount of compensation would be on the Insurance Company, as on the date of accident, offending vehicle was insured with non-applicant 3/Bajaj Allianz General Insurance Company and driver was possessing valid and effective driving license with him.

5. The claim was opposed by non-applicant 3/Insurance Company on the ground that there was no valid and effective driving license and permit with driver. The deceased was travelling on engine of offending vehicle

and while travelling so, he fell down, offending vehicle at the time of accident was being used for other than agricultural purpose.

6. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties, held that death of Kamal Karma was on account of rash and negligent driving of offending vehicle by its driver/non-applicant-1 and awarded a total sum of Rs.4,06,500/- as compensation and also held the liability upon Insurance Company, appellant herein, to satisfy the amount of compensation.

7. Shri Raj Awasthi, learned counsel for the appellant/Insurance Company submits that the deceased was travelling on tractor when there is no seating capacity except the driver and learned Claims Tribunal has erroneously fastened the liability upon the Insurance Company. It is also pointed out that no premium has been paid by owner of offending vehicle/non-applicant 2 for any passenger. There is no contractual liability to the Insurance Company and this fact has been ignored by learned Claims Tribunal. He contended that FIR (Ex.A1) which is relied upon by the Claims Tribunal to prove the accident shows that it was lodged by Jayman, who is said to be co-employee, in which he has mentioned that deceased while travelling on the tractor, fell down due to rash and negligent driving of its driver and claimants have subsequently taken contrary plea to the facts mentioned in the FIR, only to make Insurance Company liable for payment of amount of compensation.

8. Per contra, Shri PK Tulsyan, learned counsel for claimants/respondents- 1 to 4 submits that though deceased was

travelling on the tractor, but at the time of accident, he, after answering nature's call, was trying to board the offending vehicle and therefore, he cannot be treated as passenger of offending vehicle. He further submits that learned Claims Tribunal after taking into consideration the pleadings and evidence of claimants' witnesses, passed impugned award strictly in accordance with law which do not call for any interference.

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

10. Pleading made in the claim application would show that deceased Kamal Karma along with Jayman and Ramesh were travelling on the offending vehicle and deceased asked to stop the vehicle to attend nature's call and while he was returning to board the vehicle, non-applicant 1 drove the offending vehicle rashly and negligently, in which deceased suffered injuries and succumbed to those injuries.

11. Non-applicants 1 and 2, who are driver and owner of offending vehicle, in their written statement, also pleaded similar fact except rash and negligent act of non-applicant 1. Son of deceased Ramesh was examined as AW-2, who in his evidence has stated that he was coming along with Jayman on cycle behind the offending vehicle. He stated that <u>while his father was trying to board the offending vehicle after attending nature's call, its driver, non-applicant 1 suddenly run the vehicle due to which his father came under the big wheel of offending vehicle</u>. He also admitted in his evidence that his father was travelling by sitting on 1qmud-guard of offending vehicle. Copy of FIR that has been filed Ex.A1

lodged by Jayman with which Ramesh, son of deceased accompanied on bicycle.

12. From the aforementioned evidence available on record, one thing could not be disputed that deceased was travelling on the offending vehicle. Pleading made by Ramesh (AW2) in the claim application that accident took place while the deceased was trying to board the offending vehicle after answering nature call is contrary to the contents of FIR. Complainant Jayman mentioned that he and Ramesh were coming behind offending vehicle on bicycle. This fact has been mentioned in FIR which was lodged by Jayman and similar fact has been stated in his evidence by AW2 Ramesh that while they were coming behind the tractor on bicycle, the accident took place.

13. Be that as it may, what is undisputed is that deceased was travelling on offending vehicle and while boarding it after answering natur's call, he met with an accident. Now, the question is what was status of the deceased on the offending vehicle.

14. In view of pleadings, evidence of AW2 Ramesh and also taking into consideration contents of Ex.A1 (FIR), the status of deceased is only a 'passenger'. He has not been shown as 'pedestrian'. Even if it is taken that the accident took place while the deceased is trying to board the offending vehicle in the capacity of 'passenger', there is no premium paid by the 'Insured' for carrying any passenger on the tractor.

15. In view of above, we do not have any second thought but to hold that the deceased was boarding the offending vehicle as 'gratuitous

passenger' and finding recorded by learned Claims Tribunal that there is no violation of conditions of Insurance Policy is erroneous, which is not sustainable and it is hereby set aside.

16. The issue with regard to the accident with a person travelling on a trolley, attached to the tractor has been discussed in the matter of **Oriental Insurance Company Limited Vs Brij Mohan and others** reported in 2007 (3) TAC 20 SC. In this case the accident occurred with a labour travelling in a trolley, attached to the tractor. Paragraph 12 of the said judgment is reproduced here below:

> "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.Vlaxmi Narain Dhut,* 2007 (4) Scale 36:2007 (2) TAC 398, wherein it was held:
>
> "24. xxxxxxxx
>
> 25. xxxxxxxx
>
> It was further observed :
>
> 36. xxxxxxxx
>
> 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.
>
> 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 Reports 527), observed that, “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.”

17. Recently, in the matter of **Shivaraj Vs Rajendra and another** reported in 2018(10) SCC 432, Hon'ble Supreme Court has 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.”

18. Coming to the facts of the case and pleading in claim application, the deceased was riding on a tractor along with others, he get down on way to answer nature's call and while re-boarding the tractor, accident took place. Ex.D1 is the Insurance Policy ie Farmer’s Package Policy. Perusal of policy would show that there is no coverage of labourers. The status of deceased proved from pleading and evidence as a

passenger/labour travelling on tractor, where there was no seating space except Driver. Policy mentions seating capacity as one (Driver only).

19. In view of above discussion and the perusal of Policy Ex.D1, it is clear that the Policy is a farmer's package policy; no seating capacity of any labour and risk of any other person except driver was not covered. No premium was paid for any labour.

20. For the foregoing reasons, the finding recorded by learned Claims Tribunal with regard to issue No.(ii) is not sustainable and is hereby set aside.

21. It is held that there was breach of policy conditions, there was no coverage of risk of deceased. Resultantly, there will be no liability of Insurance Company to satisfy the award of compensation. Now it is liability of respondent- 6/Owner of the offending to satisfy the award.

22. Appeal is allowed and the award is modified to the extent as indicated above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

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