**NAFR**

## HIGH COURT OF CHHATTISGARH, BILASPUR

**MAC No.349 of 2015**

**Reserved on 01.09.2020**
**Pronounced on 03.09.2020**

- Shriram General Insurance Company Ltd. Maruti Height, 4th Floor, G.E. Road, Raipur Chhattisgarh, (Insurer of Truck No. C.G. 06-M-0231)

**---- Appellant**

**Versus**

1. Smt. Dayabati Nishad, W/o Late Ramkhilawan Nishad Aged About 55 Years R/o Village Mudhena, Post Office Belsonda, Police Station, Tahsil And District Mahasamund Chhattisgarh,
2. Brijraj Nishad S/o Late Ramkhilawan Nishad Aged About 35 Years R/o Village Mudhena, Post Office Belsonda, Police Station, Tahsil And District Mahasamund Chhattisgarh,
3. Ku. Tara Nishad D/o Late Ramkhilawan Nishad Aged About 25 Years R/o Village Mudhena, Post Office Belsonda, Police Station, Tahsil And District Mahasamund Chhattisgarh (Claimants)
4. Gopal Banjare S/o Bhagela Banjare Aged About 28 Years R/o Village Kanpa, Thana Tumgaon, Tahsil And District Mahasamund Chhattisgarh Driver of Truck No. C.G. 06-M-0231)
5. Najruddin Bhati S/o Late Nijamuddin Bhati R/o Ward No. 09 Bangla Para, Nagar Panchayat Tumgaon, Thana Tumgaon, Tahsil And District Mahasamund Chhattisgarh, (Owner of Truck No. C.G. 06-M-0231)

**---- Respondent**

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| For Appellant : | Shri Sachin Singh Rajput, Advocate. |
| For Respondents No. 1 to 3: | None appears, though served. |
| For Respondents No. 4 & 5: | Shri J.K.Gupta, Advocate. |

**Hon'ble Shri Justice Sanjay S. Agrawal**

**C.A.V.Order / Award**

1. Shriram General Insurance Company Limited has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, the Act of 1988) questioning the legality and propriety of the Award dated 21.07.2014 in Claim

Case No.66/2013, whereby the Tribunal, while allowing the claim in part, has awarded the total amount of compensation to the tune of Rs.3,85,000/- with 6% interest per annum from the date of filing of the claim petition till its actual payment.

2. Briefly stated the facts of the case are that on 27.01.2013, deceased Ramkhilawan Nishad was coming along with his friends from Mouza Surhi while travelling in the truck bearing Registration No. C.G.-06-M-0231. At the relevant time, the alleged offending vehicle was being driven by Gopal Banjare, respondent No.4 herein, in a rash and negligent manner, owing to which, the alleged accident occurred and the deceased has died, giving rise to the institution of the claim petition by the legal representatives of the deceased by submitting, inter alia, that the deceased, a 65 years old, was a supplier of stones and used to earn Rs.10,000/- per month.

3. The Non-applicants have contested the aforesaid claim. According to the appellant/insurance company, the vehicle in question was being driven by the driver, who was not holding the effective and valid driving license and it was pleaded further that the vehicle in question is a goods vehicle, however, the deceased and others were travelling on it in violation of the insurance policy, therefore, no liability could be fastened upon it.

4. After considering the evidence led by the parties, it has been held by the Tribunal that the alleged accident occurred on 27.01.2013 due to rash and negligent driving by the driver of the alleged offending vehicle. It held further, while entertaining issues No.2 – A and 2 – B, that the vehicle in question was being used in violation of the insurance policy and by considering the monthly income of the deceased to the tune of Rs.4,000/-, awarded the aforesaid amount of compensation against the Non-applicants.

5. According to the Shri Sachin Singh Rajput, learned counsel appearing for the appellant, despite holding, while entertaining issues No.2 – A and 2 – B, that the vehicle in question was being used in violation of the insurance policy, yet a direction for pay and recover has not been issued by the Tribunal.

6. On the other hand, Shri J.K.Gupta, learned counsel appearing for respondents No. 4 & 5 has supported the award impugned.

7. I have heard learned counsel for the parties and perused the entire record carefully.

8. On perusal of the record, it appears that the vehicle in question was a goods vehicle and the deceased and others were travelling on it. On considering the pleadings of the parties, the Tribunal has framed issues No.2 – A and 2 – B in order to ascertain the fact as to whether the vehicle in question was being used in violation of the insurance policy or not. It appears that after considering those issues, it was held that the vehicle in question was being used in violation of the insurance policy. In view of the said finding, the Tribunal ought to have exonerated the insurance company from its liability while applying the principles of pay and recover as held in ***National Insurance Co. Ltd.*** vs. ***Swaran Singh and others*** and ***Manager, National Insurance Company Limited*** vs. ***Saju P. Paul and Another*** reported in **(2004) 3 SCC 297** and **(2013) 2 SCC 41** respectively.

9. Considering the specific finding recorded by the Tribunal and in view of the principles laid down by the Supreme Court, it would be just and proper to exonerate the insurance company from its liability by applying the principles of pay and recover by directing the appellant/insurance company – Shriram General Insurance Company Limited to first pay the aforesaid amount of

compensation, i.e., Rs.3,85,000/- with 6% interest per annum from the date of filing of claim petition till its actual payment to the claimants and then to recover the same from Respondent No.4 Gopal Banjare and Respondent No.5 Najruddin Bhati, the driver and owner of the said offending vehicle respectively.

10. The appeal is accordingly allowed in part with the aforesaid observation and rest of the observations made by the Tribunal shall remain intact.

No order as to costs.

Sd/-

**(Sanjay S. Agrawal)**
**Judge**

Anjani