NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 259 of 2014

- Branch Manager National Insurance Company Limited, Divisional Office Durga Sadar Plot No. 40 Balraibhara Tantoli Nagpur Maharastra through Branch Manager National Insurance Compnay Limited Vyapar Vihar Branch Bilaspur :Authorized Signatory National Insurance Company Limited Divisional Office, B-1 Taha Complex, First Floor, Priyadarshani Nagar, Vyapar Vihar Road Bilaspur C.G.

------Appellant

VERSUS

1. Punni Lal S/o Mehtara
2. Sahodari Bai W/o Punni Lal Both R/o Village Dahrangpur P.S. and Tahsil Takhatpur District Bilaspur C.G. present address Village Guma Tahsil Bilha District Bilaspur C.G. **---------Claimants**
3. Gyan Sing Yadaw S/o Shyam Lal Yadaw Sai Baba Colony J.N. Road Medikhana Kamthi Maharastra **–---Owner**
4. Dayaneswar Nevare S/o Sonbala Nevare Driver Truck bearing no. M.H.31/W-3110, through Gyan Sing Yadaw S/o Shyam Lal Yadaw Sai Baba Colony J.N. Road, Medikhana Kamthi Maharastra. **–---Driver**

----Respondents

For Appellant	:	Mr. B.N. Nande, Advocate.
For Respondent No. 1 & 2	:	Ms. Debina Maity, Advocate on behalf of Mr. Syed Majid Ali, Advocate

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

Judgment on Board

Per Parth Prateem Sahu, J.

27/08/2020

1. Challenge in this appeal is to the award dated 19-09-2013 passed in claim case no. 243/2010 by First Additional Motor Accident Claims Tribunal, Bilaspur whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs. 1,50,000/- as compensation in a death case of a child aged about 08 years.

2. Facts relevant for disposal of this appeal are that on 01-04-2009 when Ku. Choti aged 08 years was traveling with Respondent 1 and 2/

applicant 1 and 2 on a truck bearing registration no. MH 31 W 3110 (hereinafter referred to as “offending vehicle”). It met with an accident and turned turtle. In the said accident Ku. Choti died on spot. Respondent 1 and 2/ claimants filed an application seeking compensation of Rs. 4,20,000/- against the death of their daughter Ku. Choti (Sushmita).

3. Non-applicant 1 and 2/ Respondent 3 and 4 who are owner and driver of the offending vehicle did not appear and was proceeded *ex parte*.

4. Appellant/ Non-applicant 3-Insurance Company submitted reply to the claim application pleading therein that the offending vehicle is a goods carriage vehicle, insured as goods carriage vehicle but on the date of accident, it was carrying passengers. The deceased girl child was traveling on the offending vehicle with her parent as passenger. No risk of passenger is covered under the policy. There was breach of conditions of insurance policy and the Insurance Company is not liable to satisfy the amount of compensation.

5. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties held that on 01-04-2009 offending truck met with an accident due to rash and negligent driving of Respondent 4/ Non-applicant 2 driver. In the said accident, daughter of the claimants died. Breach of conditions of insurance policy was not proved and awarded Rs. 1,50,000/- as compensation.

6. Mr. B.N. Nande learned counsel for appellant-insurance company submits that the learned Claims Tribunal erroneously arrived at a finding that the Insurance Company failed to prove the breach of policy conditions. He further submits that the Claims Tribunal erroneously recorded a finding that the risk of passenger traveling along with the minor girl child is covered. He submits that the deceased was traveling on platform of goods vehicle was a gratuitous passenger, no risk of the

passenger is covered under the policy, hence, the Insurance Company cannot be held liable to satisfy the amount of compensation. The liability to satisfy the amount of compensation, in the facts and circumstance of the case, would be on driver and owner of the offending vehicle. He submits that the award fastening the liability upon the Insurance Company be set aside and the Insurance Company to be exonerated from the liability.

7. Ms. Debina Maity learned counsel for Respondent 2 submits the learned Claims Tribunal taken into consideration the insurance of the offending vehicle with the Insurance Company as fastened the liability to satisfy the amount of compensation upon it which cannot be said to be an erroneous finding. She further submits that the Respondents-Claimants have filed a cross-objection seeking enhancement of the amount of compensation.

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

9. The pleadings made in the application filed under Section 166 of the Motor Vehicle Act, 1988, the claimants have specifically pleaded that they went to work at brick kiln manufacturing unit where deceased girl child (Ku. Choti) was also accompanied with them. When they were traveling on offending truck, it met with an accident and turned turtle and in the said accident, Ku. Choti died. The pleadings, evidence clearly show that when the deceased was traveling on truck along with her parent, in the motor accident, she died. Punnilal who is father of deceased girl child was examined as AW-1, who in his evidence submitted an affidavit under Order 18 Rule 4 of CPC has clearly stated that they were going to brick kiln unit on truck and at that relevant time, the accident happened. The claimants in support of their claim application has filed the records of the criminal case which was recorded in Marathi language. To understand the contents of the documents of criminal case, one Asha Patrikar was

examined to prove the contents of the document and translation. When once there is specific plea in the claim application that the deceased was traveling on the offending vehicle along with 7 to 8 other passengers itself shows that they were traveling in breach of conditions of insurance policy as held by the Supreme Court in the case of ***New India Assurance Co. Ltd. v. Asha Rani*** reported in **(2003) 2 SCC 223 and *National Insurance Company limited v. Baljit Kaur*** reported in **(2004) 2 SCC 1.** Learned Claims Tribunal erred in holding that the risk of the deceased was covered because her grand mother was traveling as labour and along with her, the deceased was also traveling. No passenger/ labourer can travel in the goods vehicle except if the person traveling in the good vehicle is owner of the goods or is an authorised representative then he has to travel in the cabin of the vehicle. No such evidence has been placed on record that the deceased was traveling in the cabin of the vehicle along with grand mother with their goods. The policy was proved by NAW-3(1), Senior Assistant of Insurance Company and marked Ext. D-2. This witness stated that Ext. D-2 is a comprehensive policy. It is further admitted that the Insurance Company has accepted the premium for three labourers of Rs. 75/- and Rs. 75/- for one non-fare paying passenger.

10. Perusal of Insurance Policy Ext. D-1 would show that the premium has been paid under the basic third party cover WC to employee 3, Rs. 75/- and N.F.P.P. 1 i.e. non-fare paying passenger. The deceased even otherwise cannot be treated as a labourer and, therefore, the risk of the deceased minor child is not covered under the policy. The Hon'ble Supreme Court in the case of ***National Insurance Co. Ltd. v. Cholleti Bharatamma*** reported in **(2008) 1 SCC 423** has held thus.

> "11. The effect of the 1994 Amendment came up for consideration in *National Insurance Co. Ltd. v. Baljit Kaur, (2004) 2 SCC 1* wherein this Court following third party and not a passenger travelling

> on a goods carriage whether gratuitous or otherwise. The question came up for consideration again in *National Insurance Co. Ltd. v. Bommithi Subbhayamma, (2005) 12 SCC 243* wherein upon taking into consideration a large number of decisions, the said view was reiterated.
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> 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."

11. The finding of the Claims Tribunal that the risk of the deceased is also covered under the policy is not sustainable and is hereby set aside. Now, the liability to satisfy the amount of compensation will be of Respondent 3 and 4/ Non-applicant 1 and 2 owner and driver of the offending vehicle.

12. Respondent 1 and 2 claimants have filed cross-objection seeking enhancement of the amount of award mentioning therein that the

deceased on the date of accident was aged about 8 years but the Claims Tribunal has awarded only Rs. 1,50,000/- considering the age of the deceased as only 3 years. Learned counsel for the Respondent 1 and 2-claimants has not placed any material before this Court or before the Claims Tribunal to prove the age of the deceased Ku. Choti but has placed on record the copy of documents of criminal case along with the copy of the post-mortem report Ext. P-3. Post-mortem report of Ku. Choti upon perusal would show that age recorded in it as female 8 years. In absence of any specific evidence with regard to the age of the deceased Ku. Choti, age mentioned in the post-mortem report can be taken into consideration for calculating the amount of compensation.

13. AW-1-Punnilal in his evidence admitted that Ku. Choti (Sushmita) was 8 years old who was also traveling on truck and there is no other evidence available on record with regard to the age of the deceased. For the foregoing reasons, the age recorded by the Claims Tribunal of the deceased Ku. Choti as 3 years is also not sustainable and it is hereby set aside. We hold that the age of the deceased Ku. Choti as per post-mortem report to be 8 years instead of 3 years.

14. Learned Claims Tribunal has awarded Rs. 1,50,000/- in lump-sum as compensation to the claimants. Looking to the age of deceased to be 08 years, we are of the view that the award of amount of compensation by the Claims Tribunal as Rs. 1,50,000/- is in-conformity with the judgment passed by the Hon'ble Supreme Court in the case of ***Puttamma and others v. K.L. Narayana Reddy and another*** reported in **(2013) 15 SCC 45.**

15. In view of the above, we do not find any merit in the cross-appeal filed by the claimants which is liable to be and is hereby dismissed. The appeal filed by the Insurance Company is allowed, now the liability to satisfy the amount of compensation shall be upon Respondent 3 and 4/ Non-

applicant 1 and 2-owner and driver of the offending vehicle. Respondent 1 and 2-claimants will be entitled to recover the amount of compensation from Respondent 3 and 4/ Non-applicant 1 and 2- owner and driver of the offending vehicle.

16. Any amount deposited by the appellant-Insurance Company in pursuance to the award of Claims Tribunal with the Tribunal and not disbursed to the claimants, the appellant-Insurance Company shall be entitled to receive back the said amount. If the amount deposited is disbursed then the Insurance Company shall recover the same from the Respondent 3 and 4/ Non-applicant 1 and 2.

17. Appeal is allowed.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Pawan