

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 986 of 2013**

- Alok Kumar Agrawal S/o Late Radheshyam Agrawal aged About 46 Years R/o Gaddipara, Bramha Road, Ambikapur, P.S. and Post- Ambikapur, Distt. Surguja C.G.

-----Appellant/ Respondent No. 2 (owner)
VERSUS

1. Kaushilya Devi, Wd/o Late Jaimangal, aged about 25 years
2. Ku. Durga, D/o Late Jaimangal, aged about 2 years, Minor through her natural guardian/mother namely Kaushilya Devi, Wd/o Late Jaimangal, aged about 25 years

both above R/o village Tara, Police Station and Post Premnagar, Civil and Revenue District Surguja C.G.

3. Shankar Prasad Sahu, S/o Raghuveer Prasad Sahu, aged about 35 years, R/o Village Nawa Bazar, Police Station Vishrampur, Civil and Revenue District Palamu, Jharkhand, at present, R/o House of Arjun Minj, Laxmipur, Ambikapur, Police Station, Post and Tahsil Ambikapur, Civil and Revenue District Surguja C.G.

-----Driver

4. Branch Manager, Reliance General Insurance, Group of Anil Dhirubhai Ambani Branch Office, Shop No.412/413, 4th Floor, Ravi Bhawan, Jaistambh Chowk, Raipur District Raipur C.G.

-----Insurer

-----Respondents

With

MAC No. 987 of 2013

- Alok Kumar Agrawal S/o Late Radheshyam Agrawal, aged about 46 years, R/o Gaddipara, Bramha Road, Ambikapur, Police Station and Post Ambikapur Civil and Revenue District Surguja C.G.

-----Appellant/ Respondent No. 2 (owner)
VERSUS

1. Mandeep Uraon S/o Vinay Uraon, aged about 21 years, R/o Village Jainagar, Police Station Chainpur, Post Jainagar, Civil and Revenue District Palamu, Jharkhand
2. Shankar Prasad Sahu, S/o Raghuveer Prasad Sahu, aged about 35 years, R/o Village Nawa Bazar, Police Station Vishrampur, Civil and Revenue District Palamu, Jharkhand, at present, R/o House of Arjun Minj, Laxmipur, Ambikapur, Police Station, Post and Tahsil Ambikapur, Civil and Revenue District Surguja C.G.

-----Driver

3. Branch Manager, Reliance General Insurance, Group of Anil Dhirubhai Ambani Branch Office, Shop No.412/413, 4th Floor, Ravi Bhawan, Jaistambh Chowk, Raipur District Raipur C.G.

-----Insurer

-----Respondents

With

MAC No. 988 of 2013

- Alok Kumar Agrawal S/o Late Radheshyam Agrawal Aged About 46 Years R/o Gaddipara, Bramha Road, Ambikapur, P.S. And Post- Ambikapur, Distt. Surguja C.G.
-----Appellant/ Respondent No. 2 (owner)

VERSUS

1. Yashoda Devi Wd/o Late Sanjay Choudhari aged about 25 years
2. Birbal Choudhari, S/o Late Sanjay Choudhari, aged about 2 years, Minor through natural guardian/mother namely Yashoda Devi, Wd/o Late Sanjay Choudhari, aged about 25 years
3. Ramdas Choudhari, S/o Late Laxman Choudhari, aged about 65 years
4. Rajiya Devi, W/o Ramdas Choudhari, aged about 60 years

All above R/o village Rabda (Kewal) post Harinamand, Police Station Chainpur, Civil and Revenue District Palamu, Jharkhand

5. Shankar Prasad Sahu, S/o Raghuveer Prasad Sahu, aged about 35 years, R/o Village Nawa Bazar, Police Station Vishrampur, Civil and Revenue District Palamu, Jharkhand, at present, R/o House of Arjun Minj, Laxmipur, Ambikapur, Police Station, Post and Tahsil Ambikapur, Civil and Revenue District Surguja C.G.

-----Driver

6. Branch Manager, Reliance General Insurance, Group of Anil Dhirubhai Ambani Branch Office, Shop No.412/413, 4th Floor, Ravi Bhawan, Jaistambh Chowk, Raipur District Raipur C.G.

-----Insurer

-----Respondents

With**MAC No. 989 of 2013**

- Alok Kumar Agrawal S/o Late Radheshyam Agrawal Aged About 46 Years R/o Gaddipara, Bramha Road, Ambikapur, P.S. And Post- Ambikapur, Distt. Surguja C.G.
-----Appellant/ Respondent No. 2 (owner)

VERSUS

1. Kameshwar Uraon, S/o Late Buchnu, aged about 60 years
2. Smt. Samudri Devi, W/o Kameshwar, aged about 55 years
3. Sakaldeep S/o Kameshwar, aged about 15 years, minor through natural guardian/father namely Kameshwar Uraon

All above R/o Village Jainagara, Post Harinamand, Police Station Chainpur, Civil and Revenue District Palamu, Jharkhand

4. Shankar Prasad Sahu, S/o Raghuveer Prasad Sahu, aged about 35 years, R/o Village Nawa Bazar, Police Station Vishrampur, Civil and Revenue District Palamu, Jharkhand, at present, R/o House of Arjun Minj, Laxmipur, Ambikapur, Police Station, Post and Tahsil Ambikapur, Civil and Revenue District Surguja C.G.

-----Driver

5. Branch Manager, Reliance General Insurance, Group of Anil Dhirubhai Ambani

Branch Office, Shop No.412/413, 4th Floor, Ravi Bhawan, Jaistambh Chowk,
Raipur District Raipur C.G. -----Insurer

-----Respondents

With

MAC No. 995 of 2013

- Alok Kumar Agrawal S/o Late Radheshyam Agrawal Aged About 46 Years R/o Gaddipara, Bramha Road, Ambikapur, P.S. And Post- Ambikapur, Distt. Surguja C.G. -----Appellant/ Respondent No. 2 (owner)

VERSUS

1. Baijnath Choudhari S/o Late Laxman Choudhari, aged about 22 years
2. Pooja Kumari D/o Late Laxman Choudhari, aged about 13 years, Minor through natural guardian/mother, Bansmati Devi, Wd/o Late Laxman Choudhari, aged about 45 years.
3. Smt. Bansmati Devi, Wd/o Late Laxman Choudhari, aged about 45 years

All above R/o Village Rabda (Kewal) Post Harinamand, Police Station Chaipur, Civil and Revenue District Palamu, Jharkhand

4. Shankar Prasad Sahu, S/o Raghuveer Prasad Sahu, aged about 35 years, R/o Village Nawa Bazar, Police Station Vishrampur, Civil and Revenue District Palamu, Jharkhand, at present, R/o House of Arjun Minj, Laxmipur, Ambikapur, Police Station, Post and Tahsil Ambikapur, Civil and Revenue District Surguja C.G.

-----Driver

5. Branch Manager, Reliance General Insurance, Group of Anil Dhirubhai Ambani Branch Office, Shop No.412/413, 4th Floor, Ravi Bhawan, Jaistambh Chowk, Raipur District Raipur C.G. -----Insurer

-----Respondents

With

MAC No. 996 of 2013

- Alok Kumar Agrawal S/o Late Radheshyam Agrawal Aged About 46 Years R/o Gaddipara, Bramha Road, Ambikapur, P.S. and Post- Ambikapur, Distt. Surguja C.G. -----Appellant/ Respondent No. 2 (owner)

VERSUS

1. Baijnath Choudhari S/o Late Laxman Choudhari, aged about 22 years
2. Pooja Kumari D/o Late Laxman Choudhari, aged about 13 years, Minor through natural guardian/mother, Bansmati Devi, Wd/o Late Laxman Choudhari, aged about 45 years.
3. Smt. Bansmati Devi, Wd/o Late Laxman Choudhari, aged about 45 years

All above R/o Village Rabda (Kewal) Post Harinamand, Police Station Chaipur, Civil and Revenue District Palamu, Jharkhand

4. Shankar Prasad Sahu, S/o Raghuveer Prasad Sahu, aged about 35 years, R/o Village Nawa Bazar, Police Station Vishrampur, Civil and Revenue District Palamu, Jharkhand, at present, R/o House of Arjun Minj, Laxmipur, Ambikapur,

Police Station, Post and Tahsil Ambikapur, Civil and Revenue District Surguja C.G.

-----Driver

5. Branch Manager, Reliance General Insurance, Group of Anil Dhirubhai Ambani Branch Office, Shop No.412/413, 4th Floor, Ravi Bhawan, Jaistambh Chowk, Raipur District Raipur C.G.

-----Insurer

-----Respondents

For Appellant-Owner : Mr. Manoj Pranjpe, Advocate
For Respondent 4-Insurance Co. : Mr. Rohitasva Singh, 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.

12/06/2020

1. All these appeals are arising out of the same accident and similar grounds have been raised in all these appeals, therefore all the six appeals are being disposed of by this common order.
2. The appellant-owner of the bus bearing Registration No. CG10G0214 has filed these appeals challenging the award passed by the learned Claims Tribunal in claim cases No. 16/2011, 17/2011, 18/2011, 19/2011, 20/2011 and 182/2011 by learned 1st Additional Motor Accident Claims Tribunal, Ambikapur, Surguja *vide* common award dated 16-08-2013.
3. Facts giving rise to these appeals are that on 08-11-2010 when deceased Jaimangal, Kripa Uraon, Sanjay Choudhari, Naresh Choudhari, Raju Choudhari, and injured Mandeep Uraon were traveling as passengers on bus bearing Registration No. CG10G0214 (hereinafter referred to as "offending bus"), the offending bus met with an accident and overturned at about 09:00 a.m. In the aforementioned accident, Kripa Uraon, Sanjay Choudhari, Naresh Choudhari, Raju Choudhari and Jaimangal died. Driver of the offending bus suffered injuries. The accident was reported to concerned Police Station based upon which crime bearing No. 321/2010 for offence under Sections 279, 337, 304A of IPC was registered against Respondent 3/ non-applicant 1 Shankar Prasad Sahu, driver of

the offending bus.

4. The claimants in Claim Case No. 16/2011 are parents and siblings of the deceased Kripa Uraon, claimants in Claim Case No. 17/2011 are widow, child and parents of the deceased Sanjay Choudhari, claimants in Claim Case No. 18/2011 are siblings and mother of deceased Naresh Kumar Choudhari, claimants in Claim Case No. 19/2011 are siblings and mother of the deceased Raju Choudhari, claimants in Claim Case No. 20/2011 are widow and child of the deceased Jaimangal and claimants in Claim Case No. 182/2011 Mandeep Uraon himself who suffered injuries in the accident. The Claim Applications filed by the respective claimants were decided by the learned Claims Tribunal, awarded compensation separately by impugned award in their favour i.e. in Claim Case No. 16/2011, Rs. 2,55,000/-; in Claim Case No. 17/2100, Rs. 4,57,000/-; in Claim Case No. 18/2011, Rs. 2,55,000/-; in Claim Case No. 19/2011, Rs. 2,55,000/-; in Claim Case No. 20/2011, Rs. 4,33,000/- and in Claim Case No. 182/2011, Rs. 27,800/- as compensation. Learned Claims Tribunal held that on the date of accident, the ill-fated bus was running with a Registration No. other than what was issued for that bus (by putting number plate of CG10-0214), the bus which was insured with Respondent-4/ Non-applicant-3 Insurance Company was a bus bearing Registration No. CG10-0214, bearing engine No.913830 and chassis No. 831679, but the number plate CG10-0214 has been fixed with another motor vehicle having different engine and chassis number. Learned Claims Tribunal exonerated the Insurance Company on the ground that the offending bus which met with accident was not insured with Respondent-4/ Non-applicant-3 and fastened the liability upon the appellant-owner of the offending bus. In these appeals, the appellant has challenged the finding recorded by the claims Tribunal with respect to rash and negligent driving of Respondent 3/ non-applicant 1, exonerating the Insurance Company and fastening liability upon appellant, apart from challenging the quantum of award.
5. The learned counsel for the appellant has pressed these appeals on the ground of fastening liability of payment of amount of compensation upon the appellant.

He submits that the learned Claims Tribunal erred in holding that the offending bus was not insured with Respondent 4/ Non-applicant 3 as there is no clinching evidence with respect to the dispute of chassis number brought on record by the Insurance Company. He also pointed out that the Claims Tribunal has also not considered the evidence of NAW-1 namely Abhishek Singh, Legal Manager of Insurance Company, who in his evidence had admitted that the investigation report has not been placed on record, as by going through the entire evidence of NAW-1, there is no clear and specific statement about the engine number and chassis number of the vehicle causing accident. He submits that the vehicle involved in accident was bearing number as CG10 G 0214 for which the appellant took insurance policy marked as Ext. D-5, in claim case no. 986/2013. He further submits that the statements of Kudrat Khan and Khalil Mishtry Ext. D-2 and D-4 respectively were not supplied to him and those persons have not been examined as witness before the learned Claims Tribunal, therefore, Ext. D-2 and D-4 could not be taken against the appellant.

6. Per contra, learned counsel for Respondent 4-Insurance Company submits that the learned Claims Tribunal taking into consideration the pleadings and documentary as well as oral evidence placed on record by the respective parties has correctly held that on the date of accident, offending bus was running with number plate of other vehicle, in support of his submission read over the paragraphs 38 to 42. He also argued that the Insurance Company examined the Legal Manager of Insurance Company in support of his claim and in his evidence, the said witness marked Exhibits on five documents including the judgment passed by the competent court in a claim case registered for the same accident before District Consumer Forum and also copy of the judgment of dismissal of appeal by the State forum. He submits that there is absolutely no ground for the appellant to show that the impugned award passed by the learned Claims Tribunal is erroneous.
7. We have heard learned counsel for the respective parties and also perused the record with utmost circumspection.

8. As the sole question raised by the learned counsel for the appellant is with regard to the erroneously fastening of liability upon the appellant ignoring the insurance policy issued by the Insurance Company placed on record. We are referring the record of only one Claim Case bearing No. 20/2011, unless referred for other one specifically for that purpose. To appreciate the submissions made by the learned counsel for the appellant, we have looked into the statement of NAW-1 Abhishek Singh, Legal Manager of Insurance Company. This witness in his evidence stated that the insurance policy Ext. D-5 was issued for bus number CG10G0214 having its engine number as 913830 and chassis number as 831679. He further stated that the bus which met with accident was not the bus with the aforementioned engine and chassis number but was having different engine number as 826814 and chassis number as 609910. He also stated that the number plate of another bus having different chassis number has been used by the appellant-owner of the bus for other vehicle consisting of different chassis number. The Insurance Company placed on record the copy of Ext. D-2 which is a certificate issued by a motor mechanic after investigation of bus which was standing in Police Station, Lakhanpur and in this certificate, it is mentioned that the engine number and chassis number of the bus standing in the Police Station bearing Registration No. as CG10 G 0214 were 826814 and 609910. Exhibit D-3 is a judgment/ order passed by the Chhattisgarh State Consumer Disputes Redressal Commission, wherein it has been mentioned that the bus which met with the accident was having engine number as 926814 and chassis number as 609910 and on that basis the learned State Commission has held that the damaged vehicle was not one which was insured and merely the number plate of insured bus was used for the purpose of plying other vehicle. This evidence of dismissal of own damage claim case before District Consumer Forum and its appeal as well, placed on record was confronted to learned counsel for the appellant, but he could not reply/ answer the query. The police after completing the investigation has filed report before the Court of jurisdictional Magistrate in which the engine and chassis number of the bus are mentioned and Consumer Disputes Redressal Forum and the State Commission have taken note of this

document and dismissed the Vehicle Damage Claim filed by the appellant. The final report is placed on record as Ext. P-5, in this exhibit there is clear mentioning of engine and chassis number as 826814 and 609910 respectively. No argument is raised before us as to how in final report Ext. P-5, above description/details of Bus which met with an accident is mentioned.

9. From the aforementioned specific evidence available on record that the Bus which met with the accident is having different engine and chassis number than what is mentioned in the insurance policy, we do not find any error in the finding recorded by the learned Claims Tribunal to the extent that the offending vehicle which met with an accident was not insured with Respondent 4/ Non-applicant 3, the judgment relied upon by the learned counsel for the appellant is on different facts which could not be helpful to the appellant in the facts and circumstances of the present case.

10. The appeals being devoid of any merit which are liable to be and are hereby dismissed accordingly. No order as to costs.

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

Sd/-
(Parth Prateem Sahu)
Judge