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HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No.288 of 2013

1. Rajkumar S/o Meghnath Sahu Aged About 22 Years R/o village- Sakari, Post Korasi, P.S. Kharora, Distt. Raipur C.G. (Driver).
2. Santosh Kumar Sahu S/o Nandu Sahu Aged About 60 Years R/o Sakari, Post-Korasi Karasi, P.S. Kharora, Distt. Raipur C.G (Owner of trolley).

---- Appellants

Versus

1. Smt. Chameli Patel W/o Late Niranjan Patel Aged About 20 Years.
2. Smt. Pushpa Patel W/o Bisahu Patel Aged About 42 Years.
3. Bisahu Patel S/o Chhedu Ram Patel Aged About 26 Years.
4. Minor Sahil S/o Late Niranjan Patel Aged About 8 Months, Thru- Mother Smt. Chameli Bai.

   All resident of village- Sakari, Post Korasi, (Karasi) PS- Kharora, Distt. Raipur, Chhattisgarh.
5. Vishnu Prasad S/o Bhagwandin Verma Aged About 60 Years R/o Chorbhathi Charebhathi, Korasi Kosari, P.S. Kharora, Distt. Raipur C.G. (Owner of tractor).
6. Manager Royal Sundaram Allaiance Insu. Co. Ltd. Commercial Building Devendra Nagar Road, Raipur, Distt. Raipur C.G.

---- Respondents

MAC No. 1034 of 2013

Vishnu Prasad S/o Bhagwandin Verma R/o Chorbhatthi, P.S. Kharora, Distt. Raipur C.G. (Owner of tractor).

---- Appellant

Versus

1. Smt. Chameli Patel Wd/o Late Niranjan Patel.
2. Smt. Pushpa Patel W/o Bisahu Patel.
3. Bisahu Patel S/o Chhedu Ram Patel.
4. Minor Sahil S/o Late Niranjan Patel Aged About 8 Months, Thru- Mother Smt. Chameli Bai.

   All resident of village- Sakari, Post Korasi, (Karasi) PS- Kharora, Distt.

Raipur, Chhattisgarh.

5. Rajkumar S/o Meghnath Sahu R/o Sakri, Post- Korashi, P.S. Kharora, Distt. Raipur C.G (Driver).
6. Santosh Kumar Sahu S/o Nandu Sahu R/o Sakri, Post- Karashi, P.S. Kharora, Distt. Raipur C.G (Owner of trolley).
7. Manager Royal Sundaram Alliance Insurance Company Limited, Vanijya Bhawan, Devendra Nagar Road, Raipur, Distt. Raipur C.G.

---- Respondents

MAC No. 288 of 2013

For Appellants	: Shri S.P. Sahu, Advocate.
For Respondent No1 to 4	: Shri P K Kashyap, Advocate on behalf of Shri P K Patel, Advocate.
For Respondent No.5	: Shri G.V.K. Rao, Advocate.
For Respondent No.6	: Shri Rohitashva Singh, Advocate on behalf of Shri Mr. N.K. Thakur, Advocate

MAC No.1034 of 2013

For Appellants	: Shri G.V.K. Rao, Advocate.
For Respondent No1 to 4	: Shri P K Kashyap, Advocate on behalf of Shri P K Patel, Advocate
For Respondent No.5 & 6	: Shri S.P. Sahu, Advocate.
For Respondents No. 7	: Shri Rohitashva Singh, Advocate on behalf of Shri Mr. N.K. Thakur, Advocate

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

Per Parth Prateem Sahu, J
21.05.2020

1 Since above two appeals arise out of same accident, therefore, they are being disposed off by this common order.

2 Facts of the case, in brief, are that on 16.01.2011, deceased Niranjan Patel along with other persons, who were more than 15 in number, was traveling on Tractor & Trolley bearing registration No.CG04-DA-1505 & CG04-D-5141 respectively (for short 'the offending vehicle). They were returning from village Rasota to their village Sakri after celebrating birth

ceremony of maternal-grandchild of one Mantram Yadav. On account of rash and negligent driving of the driver, the tractor-trolley overturned, as a result persons namely Mantram Yadav, Nand Kumar Yadav, Om Prakash Yadav & Sohaga Bai suffered injuries. One Niranjan Patel who also suffered grievous injuries and was immediately taken to the Government Hospital, Palari for treatment where in course of treatment succumbed to the accidental injury suffered by him. Accident was reported to Police Station Palari based on which crime bearing No.14/2011 for the offence under Sections 279, 337 & 304 A of the IPC was registered against the driver of offending vehicle.

3 Claimants who are widow and children of deceased filed claim application under Section 166 of the Act of 1988 before the Tribunal claiming Rs.13,00,000/- as compensation on the grounds mentioned therein.

4 Application filed by claimants was resisted by non-applicants No.1 & 3 stating that the vehicle was not driven rashly and negligently and accident took place on account of mechanical fault of the vehicle. While denying the unadmitted facts it was also pleaded that on the date of accident, driver of offending vehicle was possessing valid and effective driving license. It was admitted that persons including deceased were traveling on tractor trolley.

5 Respondent No.4/Insurance Company while denying the unadmitted facts of claim application pleaded that claim of compensation is exaggerated. As offending vehicle was being plied in breach of condition of insurance policy, Insurance Company is not liable to indemnify insured.

6 On appreciation of pleadings and evidence placed on record by the respective parties, the learned Tribunal arrived at a conclusion that

accident took place on account of rash and negligent driving of non-applicant No.1 (driver of offending vehicle) due to which offending vehicle overturned in which Niranjan Patel died. On the basis of above finding, the Tribunal held that there was violation of condition of Insurance Policy, while exonerating the Insurance Company from its liability awarded total sum of Rs.4,44,000/- as compensation to claimants and fastened liability upon non-applicants No.1, 2 & 3 who are driver and owners of tractor & trolley.

7 Challenge in above two appeals is to the award dated 24/01/2013 passed by learned Second Additional Motor Accident Claims Tribunal, Baloda Bazar, Distt. Raipur, (C.G.) (hereinafter referred to as 'the Tribunal') in Claim Case No.17/2011 whereby the Tribunal allowed claim application in part, awarded total compensation of Rs.4,44,000/- with interest @ 6% p.a. and fastened liability upon owner of tractor in MAC No.1034/2013 & owner of trolley in MAC No.288/2013 and exonerated the Insurance Company from its liability.

8 In both appeals, learned counsel for the appellants submits that the Tribunal committed error in fastening liability upon owners of tractor and trolley to satisfy the award. He also submits that one more case has been filed as Claim Case No.73/2013, which was decided separately and in that case the Tribunal held that there was no violation of condition of insurance policy and fastened liability upon Insurance company, therefore, in this case also Insurance Company is to be held liable for satisfying the award.

9 Learned counsel for the respondent/Insurance company submits that offending vehicle is a goods carrying vehicle registered for the use of agricultural purpose and Insurance Policy has been issued on the head of

miscellaneous and special type of work but at the time of accident, more than 15 persons were traveling on offending vehicle as per the pleadings of claimant themselves, though there is no seating capacity except driver. There is violation of conditions of insurance policy as the passengers were traveling on goods vehicle. In view of the aforementioned submission, he submits that the Tribunal has not committed any error in exonerating the Insurance Company from its liability.

10 We have heard learned counsels for the parties and also perused the record.

11 Pleadings of the claimants in application is very specific that the deceased was traveling on tractor trolley. There was no seating capacity and there is no space for carrying any passenger either on tractor or trolley. The persons traveling on goods vehicle including deceased were gratuitous passengers.

12 We have perused the registration certificate of offending vehicle which is part of the record wherein seating capacity has been shown to be only one i.e. driver, and thus there was violation of condition of insurance policy.

13 This issue of person's traveling on goods vehicle was considered and deiced by the Supreme Court in the matter of **National Insurance Co. Ltd vs Baljit Kaur and Ors**[1] wherein the Hon'ble Supreme Court held thus :-

> "17. By reason of the 1994 Amendment what was added is "including the owner of the goods or his authorised representative carried in the vehicle". The liability of the owner of the vehicle to

1 (2004) 2 SCC 1

insure it compulsorily, thus, by reason of the aforementioned amendment included only the owner of the goods or his authorised representative carried in the vehicle besides the third parties. The intention of the Parliament, therefore, could not have been that the words 'any person' occurring in Section 147 would cover all persons who were traveling in a goods carriage in any capacity whatsoever. If such was the intention, there was no necessity of the Parliament to carry out an amendment inasmuch as expression 'any person' contained in sub-clause (i) of clause (b) of sub-section (1) of Section 147 would have included the owner of the goods or his authorised representative besides the passengers who are gratuitous or otherwise.

19. In **Asha Ranirs[2],** it has been noticed that sub-clause (i) of clause (b) of sub-section (1) of Section 147 of the 1988 Act speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. Furthermore, an owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers traveling in the vehicle. The premium in view of the 1994 amendment would only cover a third party as also the owner of the goods or his authorised representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise.

20. It is therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner

2 (2003) 2 SCC 223

> of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people."

14 In view of the aforementioned facts and circumstances of this case and also in the light of the law laid down by the Supreme Court, we do not find any error in the findings recorded by the Tribunal that there was violation of condition of insurance company and exonerating the insurance company from its liability.

15 The appellant cannot be allowed to take benefit of the erroneous finding which is contrary to law and the illegality, if any, committed by the Tribunal while holding in another case arising out of the same accident that there was no violation of conditions of insurance policy cannot be perpetuated.

16 For the foregoing reasons, we do no find any merit in these appeals, both appeals are liable to be and are hereby dismissed.

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

Jamal