NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 471 of 2014

- Oriental Insurance Company Ltd. Thru- Divisional Manager, Kachheri Chowk, Madina Manzil, Raipur, G.E. Road, Distt. Raipur C.G., Chhattisgarh

---- Appellant

Versus

1. Daya Ram, S/o Surit Ram Aged About 23 Years R/o Lohadipur, Chowki- Bhawarpur, P.S. Basna, Distt. Mahasamund C.G., Chhattisgarh
2. Ganga Ram Sen S/o Heera Lal Aged About 23 Years R/o Murhidihi, P.S. Basna, Distt. Mahasamund C.G., District : Mahasamund, Chhattisgarh
3. Nirmal Prakash Agrawal S/o Shiv Prakash Agrawal Aged About 25 Years R/o Village And Post- Bhawarpur, P.S. And Tah. Basna, Distt. Mahasamund C.G.`, District : Mahasamund, Chhattisgarh

----Respondents

For Appellant/Insurance Company	:	Shri Raj Awasthi, Advocate
For Respondent-1	:	Shri R Pradhan, Advocate
For Respondent- 2	:	None appears
For Respondent- 3	:	Shri Pawan Kesharwani, Advocate

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

Per Parth Prateem Sahu, J.
15.07.2020

1. Appellant/Insurance Company filed this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the legality and propriety of the impugned award dated 27.01.2014 passed by the Motor Accident Claims Tribunal, Mahasamund (for short, 'Claims Tribunal') in Claim Case-83 of 2010, whereby learned Claims Tribunal allowed the claim application in part and awarded a sum of Rs.2,00,000/- as compensation in an injury case.

2. Facts relevant for disposal of this appeal are that, on 20.03.2009 when claimant was travelling on a Matador bearing No.CG 04-J 4223 (for

short, 'offending vehicle') as Hamal (loader), at that relevant time, due to rash and negligent driving of the offending vehicle by respondent-2/Driver of offending vehicle, it met with an accident with a stationary Pick-up van bearing No.CG 04- J 3836 (for short, 'Pick-up van'). In the aforementioned accident, respondent-1/claimant suffered grievous injuries over his person. The injured claimant was immediately taken to the Government Hospital, Basna, from where he was referred to Mekahara/BR Ambedkar Hospital, Raipur. During the course of treatment, his leg was operated and it got shortened, causing permanent disability to the respondent-1/claimant.

3. Respondent-1/claimant filed claim application under Section 166 of Motor Vehicles Act, 1988 seeking compensation of Rs.7,63,000/- mentioning therein that due to the permanent disability suffered by him, he is unable to do his work and suffering loss of income and compensation on the head of Medical expenses, and others.

4. Respondent-2/NA1, driver of offending vehicle did not appear before the learned Claims Tribunal even after service of notice and he was proceeded *ex-parte.*

5. Respondent-3/NA-2/Owner of offending vehicle submitted reply to the claim application pleading therein that on the date of accident, offending vehicle was insured with appellant/NA3/Insurance Company and the liability, if any, would be upon the Insurance Company.

6. The appellant/Insurance Company submitted reply to the claim application pleading therein that there is contributory negligence between

the two vehicles involved in the accident. There was breach of conditions of Insurance Policy, as on the date of accident, driver of offending vehicle was not possessing valid and effective driving license and further there was no valid permit and fitness of the offending vehicle. It was also pleaded that the claim application is not maintainable because the driver, owner and Insurance Company of other motor vehicle involved in the accident ie Pick-up van have not been arrayed as non-applicants.

7. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties, held that the accident is on account of rash and negligent driving of offending vehicle by NA1, it collided with the stationary Pick-up van. Respondent-1/claimant suffered grievous injuries resulting in permanent disability while he was travelling as Hamal(Loader) in the offending vehicle. Learned Claims Tribunal recorded a finding that it was not proved that on the date of accident, offending vehicle was being driven by its driver without there being any valid and effective driving license and without valid permit and fitness, and awarded a total sum of Rs.2,00,000/- as compensation to respondent-1/claimant, fastening liability jointly and severally upon the Non-applicants to satisfy the amount of compensation.

8. Shri Raj Awasthi, learned counsel for the appellant/Insurance Company submits that learned Claims Tribunal committed error in recording a finding that the Insurance Company failed to prove that license possessed by the driver of offending vehicle to be not valid and effective. So also, failed to prove that on the date of accident, offending vehicle was being plied without any valid fitness and permit and fastened

the liability upon the Insurance Company. It is also argued that, admittedly, as per pleadings made in the claim application, injured claimant was travelling in the offending vehicle as Hamal (Loader); offending vehicle was a goods vehicle and therefore, appellant/insurance Company will not be liable to pay any amount of compensation for the persons against whom, no premium is charged. It is also contended that the appellant was travelling on the platform of offending vehicle, which is contrary to law. In view of above, he submits that the appeal be allowed and impugned award to be modified by exonerating the Insurance Company from payment of amount of compensation.

9. Shri R Pradhan, learned counsel for respondent-1/claimant submits that learned Claims Tribunal based upon the pleadings, material and evidenced placed on record by respective parties have rightly arrived at a finding that respondent-1/claimant suffered injuries leading to permanent disability and awarded a sum of Rs.2,00,000/-. He also contended that impugned award passed by learned claims tribunal is in accordance with law which does not call for any interference.

10. Shri Pawan Kesharwani, learned counsel for respondent-3/owner of offending vehicle submitted that learned Claims Tribunal, in absence of any evidence placed on record by the Insurance Company to prove the plea that driver of offending vehicle was not possessing valid and effective driving license and there was no effective fitness and permit on the date of accident, rightly passed impugned award fastening liability of payment of amount of compensation upon the appellant / Insurance Company.

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

12. Perusal of pleadings of the claim application itself shows that it is the case of respondent-1/claimant himself that he was travelling on the offending vehicle as Hamal / loader / labour, that met with an accident with a stationary Pick-up. Offending vehicle is registered as a goods vehicle on the date of accident, as apparent from the copy of Insurance Policy available on record. Copy of the Insurance Policy was not marked as exhibit but it is available on record which bears premium for Basic OD cover, Basic TP cover, PA for owner driver, LL to employees and apart from it no extra premium was paid for any labour. Employee will mean any person engaged for the vehicle insured like Driver and Cleaner of goods vehicle.

13. Honble Sureme Court in the matter of **New India Assurance Company Limited Vs Asha Rani** reported in 2003 (2) 223 has held that Insurance Company will not have any liability under the Motor Vehicle Act 1988 for insuring the passenger / gratuitous passenger travelling in goods vehicle and held thus:

> "22. Thus, it may be noticed that so far as employees of the owner of the motor vehicle are concerned, an insurance policy was not required to be taken in relation to their liability other than arising in terms of the provisions of the Workmen's Compensation Act, 1923. On the other hand, proviso (ii) appended to Section 95 of 1939 Act, enjoined a statutory liability upon the owner of the vehicle to take out an insurance policy to cover the liability in respect of a person who was travelling in a vehicle pursuant to a contract of employment. The Legislature has consciously not inserted the said provision in 1988 Act.

> 23. The applicability of decision of this Court in Mallawwa (Smt.) & Ors. v. Oriental Insurance Company Ltd. & Ors. [(1999) 1 SCC 403] in this case must be considered keeping that aspect in view. Section 2(35) of 1988 Act does not include passengers in goods carriage whereas Section 2(25) of 1939 Act did as even passengers could be carried in a goods vehicle. The difference in the definitions of the "goods vehicle" in 1939 Act and "goods carriage" in 1988 Act is significant. By reason of the change in the definitions of the terminology, the Legislature intended that a goods vehicle could not carry any passenger, as the words "in addition to passengers" occurring in the definition of goods vehicle in 1939 Act were omitted. Furthermore, it categorically states that 'goods carriage' would mean a motor vehicle constructed or adapted for use "solely for the carriage of goods". Carrying of passengers in a 'goods carriage', thus, is not contemplated under 1988 Act.
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> 26. In view of the changes in the relevant provisions in 1988 Act vis--vis 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. 'a third party'. Keeping in view the provisions of 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor."

14. Subsequently, Hon'ble Supreme Court in its judgement in the matter of **National Insurance Company Ltd Vs Challeti Bharathamma and others** reported in AIR 2008 (1) SCC 423 reiterated the law as laid down by Honble Supreme Court in the case of **Asharani** (supra) and further held that even if the owner as representative of goods has to travel along with in the goods vehicle then he had to sit in the cabin. Here, it is no such case of claimant / respondent-1.

15. In view of above, appellant/ Insurance Company cannot be held liable to satisfy the amount of the compensation.

16. So far as the ground raised by learned counsel for the appellant that learned Claims Tribunal erroneously not held that there was breach of conditions of Insurance Policy because on the date of accident driver of offending vehicle was not possessing valid and effective driving license and further there was no valid permit and fitness, learned Claims Tribunal while dealing with this issue decided in issue nos. 5 & 6 has misread the evidence of NAW3/1 namely Mohd.Ibrahim (investigator of the Insurance Company). With regard to the license particulars issued from the RTO office, in its evidence this witness categorically stated that he visited office of RTO, Raipur on 11.10.2011 and submitted an application for providing particulars of license dated 27.10.2011 bearing No.G/3079/R and MIS/23/617/R of Gangaram Sen. Thereafter, employee of that office has supplied particulars under his own signature mentioning therein that the license was not entered in the register and the license has not been issued from that office.

17. Learned Claims Tribunal appears to have considered one line of paragraph 4 partly and held that appellant / insurance company has not lead any evidence considering the portion of sentence and held that "it is apparent that this witness has not made any proceeding for verification of the license. The Tribunal failed to read the last three words of the same line wherein it is mentioned that it is wrong.

18. So far as the offending vehicle was plying without any valid permit and fitness is concerned, learned Claims Tribunal has put the burden to prove the same on the shoulders of appellant / Insurance Company. Without there being appearance of the owner of the offending vehicle

before the learned Claims Tribunal. It is burden upon the owner of offending vehicle to place on record copy of permit and fitness certificate which was not brought on record. Owner of offending vehicle was represented through an advocate before learned Claims Tribunal and before this court also, but he did not choose to place on record copy of permit and fitness certificate even when the Insurance Company took specific plea in its reply before the tribunal as well as before this court.

19. Learned Counsel for the respondent-3/ owner of offending vehicle before this court also has not placed on record any copy of permit and fitness certificate.

20. For the aforementioned reasons, we find that respondent-1 /claimant travelled in the goods vehicle as gratuitous passenger and he is not covered under the policy there was no valid permit and fitness of the offending vehicle leading to breach of conditions of Insurance Policy. The finding recorded by learned Claims Tribunal that there was no breach of condition of Insurance Policy, is not sustainable being perverse and is hereby set aside. Now, the liability to satisfy the amount of compensation will be upon the owner and driver of the offending vehicle.

21. The appeal is allowed and appellant/Insurance Company is exonerated from its liability to satisfy the amount of compensation for the reasons assigned in preceding paragraphs.

22. The amount of compensation awarded by th Tribunal will be satisfied by the owner and driver of the offending vehicle. Any amount deposited by the Insurance Company and not disbursed, then, it will be

returned to the Insurance Company and in case the amount deposited is disbursed to the claimant, then the Insurance Company will be at liberty to recover the said amount from the owner and driver of the offending vehicle in the very same proceeding by filing an application for its execution.

23. No order as to costs.

Sd/-	Sd/-
(PR Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	**Judge**

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