NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 260 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 R/o Dasrangpur Post Jarhagaon Mungei District Mungeli C.G.
2. Gyan Sing Yadaw S/o Shyam Lal Yadaw Sai Baba Colony J.N. Road Medikhana Kamthi Maharastra **–---Owner**
3. 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**
4. Punit Ram S/o Mehtara
5. Heera Sing S/o Mehtara
6. Haritramas S/o Mehtara

----Respondents

For Appellant : Mr. B.N. Nande, Advocate.
For Respondent No.1, 4 to 6 : 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. 36/2011 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. 2,93,500/- as compensation in a death case.

2. Facts relevant for disposal of this appeal are that on 01-04-2009 when

mother of applicant/ Respondent 1 by name Smt. Rajbai was traveling with minor child Ku. Choti 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 Smt. Rajbai died on spot. Respondent 1/ claimant filed an application seeking compensation of Rs. 10,25,000/- against the death of his mother.

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

4. Appellant/ Non-applicant 3-Insurance Company submitted reply to the claim application pleading therein that the offending vehicle is insured as goods carriage vehicle but on the date of accident, it was carrying passengers. The deceased mother of the claimant was traveling on the offending vehicle with other passengers. No risk of passengers was 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. Respondent 4 to 6/ Non-applicant 4 to 6 accepted the pleadings made in the claim application and pleaded that due to accidental death of their mother Rajbai, they are also entitled for amount of compensation.

6. 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 3/ Non-applicant 2 driver. In the said accident, mother of the claimants died. Breach of conditions of insurance policy was not proved and awarded Rs. 2,93,500/- as compensation.

7. 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 passengers traveling along with the deceased is covered. He submits that the deceased was traveling on the 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 of fastening of liability upon the Insurance Company be set aside and the Insurance Company be exonerated from the liability.

8. Madam Debina Maity learned counsel for Respondent 1/claimant submits the learned Claims Tribunal has taken into consideration the insurance of the offending vehicle with the Insurance Company, premium for labourers has fastened the liability to satisfy the amount of compensation upon it which cannot be said to be an erroneous finding.

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

10. The pleadings made in the application filed under Section 166 of the Motor Vehicle Act, 1988, the claimants have specifically pleaded that the deceased went to work to brick kiln manufacturing unit. When she was traveling on offending truck, it met with an accident and turned turtle and in the said accident, Smt. Rajbai died. The pleadings, evidence clearly show that when the deceased was traveling on truck and going to brick kiln unit on truck which met with an accident and she died. Punnilal who is son of deceased was examined as AW-1, who in his evidence submitted an affidavit under Order 18 Rule 4 of CPC stating that she along with minor girl Ku. Choti went 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 claim 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. Upon translating, when once there is specific plea in the claim application of the deceased traveling on the offending vehicle along with 7 to 8 other passengers, we do not have the second thought to held that it was breach of conditions of insurance policy in the light of the law laid down 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 she was traveling in a goods vehicle. 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 the person has to travel in the cabin of the vehicle. No such evidence has been placed on record that the deceased was traveling on the cabin of the vehicle along with minor girl child. The policy was proved by NAW-1, Senior Assistant of Insurance Company and marked Ext. D-1c. This witness stated that Ext. D-1c is a comprehensive schedule policy. It is further admitted that the Insurance Company has accepted the premium for three labourers of Rs. 75/- and Rs. 75/- for non-fare paying passenger-1.

11. Perusal of Insurance Policy Ext. D-1c 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 was traveling along with other passengers and, therefore, the risk of the deceased 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."

12. Even if any premium towards labourer is charged then they have to travel in cabin of the vehicle as per the dictum of the Apex Court in the above case. For the reasons discussed above, 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 shall be of Respondent 2 and 3/ Non-applicant 1 and 2 owner and driver of the offending vehicle.

13. The appeal filed by the Insurance Company is allowed and the liability to satisfy the amount of compensation has been held to be on Respondent 2 and 3/ Non-applicant 1 and 2 owner and driver of the offending vehicle. Claimants will be entitled to recover the amount of compensation from Respondent 2 and 3/ Non-applicant 1 and 2- owner and driver of the offending vehicle. Rest conditions imposed by the learned Claims Tribunal will remain intact.

14. Any amount deposited by the appellant-Insurance Company in pursuance of 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 2 and 3/ Non-applicant 1 and 2.

15. Appeal is allowed.

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

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