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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 144 of 2015

Bajaj Allianz General Insurance Company Limited, Divisional Office, Mova Raipur, Shiv Mohan Bhavan, Vidhan Sabha Road, Pandri, P.S. Pandri, Civil & Revenue Distt. Raipur C.G.

---- Appellant

Versus

1. Boda Bai W/o Late Hira Singh Aged About 61 Years, R/o- Amruwa, P.O. Chandan, P.S. Kasdol, Distt. Baloda Bazar – Bhatapara, Civil & Revenue Distt – Baloda Bazar Bhatapara, C.G. (Claimant).
2. Ramkumar S/o Devsingh Aged About 28 Years, R/o Amruwa, Tah. Kasdol, P.S. Kasdol, Distt. Baloda Bazar – Bhatapara, Civil & Revenue Distt – Baloda Bazar Bhatapara, C.G. (Driver).
3. Narendra Kumar S/o Shital Prasad Baghel, Aged About 41 Years, R/o- Amruwa, Tah. Kasdol, P.S. Kasdol, Distt. Baloda Bazar – Bhatapara, Civil & Revenue Distt – Baloda Bazar Bhatapara, C.G. (Owner).

---- Respondents

MAC No. 146 of 2015

Bajaj Allianz General Insurance Company Limited, Divisional Office, Mova, Raipur, Shiv Mohan Bhavan, Vidhan Sabha Road, Pandri, P.S. Pandri, Civil & Revenue Distt. Raipur C.G., Chhattisgarh

----Appellants

Versus

1. Pili Bai God W/o Duryodhan, Aged About 60 Years.
2. Duryodhan S/o Tilakram Aged About 65 Years.

   Both are R/o- Amruwa, Tah - Kasdol, P.S - Kasdol, Distt. Baloda Bazar – Bhatapara, Civil & Revenue Distt – Baloda Bazar Bhatapara, C.G. (Claimants).
3. Ramkumar S/o Devsingh, Aged About 28 Years, R/o- Amruwa, Tah- Kasdol, P.S -Kasdol, Distt. Baloda Bazar –Bhatapara, Civil & Revenue Distt – Baloda Bazar Bhatapara, C.G. (Driver).
4. Narendra Kumar S/o Shital Prasad Baghel, Aged About 41 Years, R/o - Amruwa, Tah - Kasdol, P.S. Kasdol, Distt. Baloda Bazar – Bhatapara, Civil & Revenue Distt – Baloda Bazar Bhatapara, C.G. (Owner).

---- Respondents

MAC No.144 of 2015

For Appellant : Shri Sachin Singh Rajput, Advocate.
For Respondent No.1 : Shri Sumit Shrivastava, Advocate.
For Respondent No.2 & 3. : None.

MAC No.146 of 2015

For Appellant : Shri Abhishek Sinha, Advocate.
For Respondent No.1 & 2 : Shri Sumit Shrivastava, Advocate.
For Respondent No.3 & 4 : None.

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

Per Parth Prateem Sahu , J
12.01.2021

1. As both the appeals arise out of same accident, they are being disposed of by this common order.
2. Challenge in these appeals is to the award dated 07/11/2014 passed by learned 1st Additional Motor Accident Claims Tribunal, Balodabazar, (CG) (for short, 'the Tribunal') in Claim Case Nos.102/2013 & 66/213 (MAC No.144/2015 & MAC No.146/2015), whereby Tribunal allowed applications in part, awarded compensation of Rs.3,95,000/- & Rs.4,20,000/- respectively, in a fatal accident case.
3. Facts relevant for disposal of these appeals are that on 23.05.2013, at about 1:30 a.m. in night, Tractor bearing registration No.CG06-E-6349 (for short 'offending vehicle) driven by non-applicant No.1 rashly and negligently turned turtle and met with an accident in between village -Baya and Rangrora. In the said accident, Ishwar & Ramachand came under offending vehicle and died. Accident was reported to concerned Police Station based upon which crime was registered against non-applicant No.1.

4. Claimants in both claim cases are parents of deceased Ishwar & Ramachand who had filed separate applications under Section 166 of the Act of 1988 seeking compensation of Rs.14,80,000/- in each claim case pleading therein that on the date of accident, both the deceased were working as 'labourer' and each of them were earning Rs.6,000/- per month.

5. Non-applicant No.1 & 2, driver & owner of offending vehicle, submitted reply to claim application, denying the fact that non-applicant No.1 was driving offending vehicle in rash and negligent manner, but admitted the fact of accident. They have further pleaded that on the date of accident, non-applicant No.1 was possessed with valid and effective driving license. Offending vehicle was insured with non-applicant No.3/Insurance Company. The liability to satisfy the amount of compensation, if any, would be upon Insurance Company.

6. Non-applicant No.3/Insurance Company submitted its reply to claim application and taken a very specific plea that on the date of accident, deceased persons were travelling on offending vehicle alongwith other persons whereas there was no seating space except driver. Risk of other occupants except driver was not covered under the policy. There was breach of policy condition as on the date of accident, non-applicant No.1 was neither having valid and effective driving license nor there was valid permit or fitness certificate of the offending vehicle, hence, Insurance Company is not liable to indemnify the insured.

7. On appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that deceased Ishwar and Ramchand died on account of motor-accidental injuries due to rash and negligent driving of offending vehicle by non-applicant No.1. There was no breach of policy

condition. Tribunal allowed both applications in part, awarded compensation of Rs.3,95,000/- & Rs.4,20,000/- respectively along with interest @ 7% p.a and fastened liability upon Non-applicant No.3/ Insurance Company to satisfy the amount of compensation.

8. Sri S. S. Rajput & Shri Abhishek Sinha, learned counsel for the appellants submit that on the date of accident, deceased persons were travelling on offending vehicle and returning to their village after purchasing diesel. On the way at about 12:30 am (mid night), offending vehicle turned turtle, deceased persons came under it and suffered grievous injuries and succumbed to those injuries. They further submits that there is no space for sitting of any other persons/passengers on offending vehicle except driver. Insurance Policy (Ex.NA-1) also mentions seating capacity of vehicle as 'one' i.e. driver only. Owner of offending vehicle has paid premium only for Basic third party liability, P.A cover for owner-driver, LL for operation/maintenance for one person. No premium is paid for any other person except for owner-driver, LL for operation/maintenance for one person. Risk of the deceased persons was not covered under the Policy. Insurance Company is liable only for its contractual liability and there is no contract between insured and insurer for covering risk of deceased persons, who were travelling as 'Gratuitous Passengers'. Finding of the Tribunal that there was no breach of policy condition is perverse. In support of their contentions, they relied upon the judgment passed by Hon'ble Supreme Court in case of **Shivraj vs. Rajendra & Anr[1].**

9. No one appeared on behalf of respondents/driver & owner of offending vehicle though served.

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10. Shri Sumit Shrivastava, learned counsel for the claimants supports the impugned award passed by the Tribunal.

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

12. From the pleadings and evidence available on record there is no dispute that deceased persons were traveling on offending vehicle. In the evidence of AW-2 it has clearly come on record that deceased persons were traveling on tractor's engine. In FIR (Ex.A-2) also it is mentioned that deceased persons came under tractor's engine.

13. Perusal of copy of Insurance Policy would show that seating capacity of offending vehicle is 'one' ie for the driver only, and premium for covering risk of owner-driver and paid driver ie under LL for operation/maintenance for one person is paid.

14. From the aforementioned facts and contents of Insurance Policy it is crystal clear that risk of deceased persons was not covered under the Policy issued by appellant -Insurance Company.

15. Issue with regard to the persons travelling on tractor has been considered by Hon'ble Supreme Court in case of **Shivraj vs. Rajendra & Anr[2].** Relevant portion of which held as under :-

> "10. The High Court, however, found in favour of Respondent 2 (insurer) that the appellant travelled in the tractor as a passenger which was in breach of the policy condition, for the tractor was insured for agriculture purposes and not for carrying goods. The evidence on record unambiguously pointed out that neither was any trailer insured nor was any trailer attached to the tractor. Thus, it would follow that the appellant travelled in the tractor as a passenger, even though the tractor could accommodate only one person, namely, the driver. As a result, the Insurance Company (Respondent 2) was not

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> liable for the loss or injuries suffered by the appellant or to indemnify the owner of the tractor. That conclusion reached by the High Court, in our opinion, is unexceptionable in the fact situation of the present case.
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> 14. In view of the above, the appeals are partly allowed to the extent of directing Respondent 2 Oriental Insurance Company Ltd, to pay the compensation amount determined by the Tribunal and affirmed by the High Court to the appellant in the first place and with liberty to recover the same from the owner of the offending tractor, Respondent 1 in accordance with law. ..”

16. In case at hand also deceased persons were travelling on tractor ie offending vehicle as gratuitous passenger, hence, it is squarely covered by aforementioned ruling of Hon'ble Supreme Court in case of **Shivraj (supra).**

17. Tribunal while deciding Issue No.4 has only taken into consideration the breach of policy condition on the ground of valid and effective driving license and not considered whether deceased persons can travel on offending vehicle and whether their risk was covered under the Policy issued by appellant-Insurance Company vide Ex. NA-1 and fastened liability upon Non-applicant No.3/Insurance Company to satisfy the amount of compensation. Said finding is erroneous and not sustainable in the eye of law. Consequently, we hold that the deceased persons were travelling as gratuitous passengers, risk of deceased persons was not covered under the policy who were travelling on offending vehicle where there was no sitting space of any other person except driver, there was breach of policy conditions, as such, Insurance Company cannot be made liable to indemnify the insured. Hence, liability fastened upon Insurance Company to satisfy the amount of compensation is hereby set aside.

18. Now, liability to satisfy the amount of compensation will be upon Non-applicants No.1 & 2/driver and owner of offending vehicle. Insurance Company will be at liberty to recover the amount of compensation so deposited by it from Non-applicant Nos.1 & 2/driver and owner of offending vehicle upon depositing the entire amount of compensation along with interest by the owner and driver of the offending vehicle.

19. For the foregoing reason, both appeals are allowed and impugned award stands modified to extent as indicated above.

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

Jamal