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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No.792 of 2014

1. Vimal Bachhad, aged about 25 years, S/o Shri Tarachandra Bachhad, Occupation Driver, R/o Village Silfili (Madanpur), P.S. Jainagar, Tahsil Surajpur, Distt. Surguja (Now District Surajpur) C.G.
(Resp No.1)
(Driver cum Second Purchaser)

2. Smt. Geeta Haldar, aged about 40 years, W/o Shri P.C. Haldar, R/o Village Kamalpur, P.S. Jainagar, Tahsil Surajpur, Distt. Surguja (C.G.) (Now Distt. Surajpur), presently resided at Village Ganeshpur, P.S. Jainagar, Tahsil Surajpur, Distt. Surguja (Now Distt. Surajpur) (C.G.)
(Respondent No.2)
(Owner)
---- Appellants

Versus

1. Ramlal, aged about 63 years, S/o Late Dakhal, Occupation Agriculturist

2. Bhola, aged about 40 years, S/o Shri Ramlal, Occupation Agriculturist

   Both are Uraon by caste, R/o Village Chandrapur, P.S. and Tahsil Pratappur, Distt. Surguja (Now Distt. Surajpur) (C.G.)

3. Sheela, aged about 33 years, D/o Late Amso, W/o Shri Munshi Ekka, Caste Uraon, Occupation Housewife, R/o Village Ganeshpur, P.S. Jainagar, Tahsil Surajpur, Distt. Surguja (Now Distt. Surajpur) (C.G.)

4. Savita, aged about 28 years, D/o Late Amso, Caste Uraon, W/o Dilsai Tirky, Occupation Housewife, R/o Village Jirgi, P.S. Rajpur, Tahsil Rajpur, Post Office Basen, P.S. Rajpur, Distt. Surguja (C.G.)
(Claimants)

5. H.D.F.C.R.G.O. General Insurance Company Limited, Raipur (C.G.)
(Insurer)
---- Respondents

For Appellants: Mr. Vivek Bhakta, Advocate.
For Respondents No.1 to 4: -
Mr. A.K. Prasad, Advocate.
For Respondent No.5: -
Mr. N.K. Thakur and Mr. Rohitashva Singh, Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

02/12/2021

1. This appeal by the driver-cum-second purchaser / owner is directed against the impugned award dated 9-5-2014 passed by the 3rd Additional Motor Accident Claims Tribunal, Ambikapur in Motor Accident Claim Case No.20/2012 by which the Insurance Company – respondent No.5 herein has been exonerated from fastening liability upon it to pay ₹ 3,08,000/- along with interest.

2. Mr. Vivek Bhakta, learned counsel appearing for the appellants, would submit that the Insurance Company has failed to establish that the vehicle owned by appellant No.1 / appellant No.2 did not have valid permit to carry the passengers and further the driver – appellant No.1 did not have valid and effective driving license to drive the offending vehicle, as such, fastening liability upon the appellants herein is unsustainable and bad in law, rather the Insurance Company – respondent No.5 should have been fastened with the liability of paying the amount of compensation by the learned Claims Tribunal, as such, it is liable to be set-aside.

3. Mr. A.K. Prasad, learned counsel appearing for the claimants / respondents No.1 to 4 herein, would support the submission advanced by Mr. Bhakta, learned counsel for the appellants, whereas, Mr. N.K. Thakur, learned counsel appearing for the Insurance Company / respondent No.5, would submit that the Insurance Company has rightly been exonerated from the liability of paying the amount of compensation.

4. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

5. The offending vehicle was Tempo Trax Gama bearing registration

No.CG-15/A-2427 its registration certificate being Ex.D-3 by registering officer. The vehicle was registered as motor cab (taxi).

6. The Insurance Company in order to be exonerated from its liability took a plea that the vehicle was being used contrary to the terms of the policy for which it was insured; it was insured as passenger vehicle with sitting capacity of 1 + 5, but it was carrying more than the permitted persons / passengers and the driver did not have valid and effective driving license to drive the vehicle.

7. In order to prove the defence so raised, the Insurance Company has examined Mr. Raghavendra Raghuvanshi (NAW-2), Assistant Manager (Law), in which he has stated that the offending vehicle was a tempo trax jeep and it was insured as a passenger vehicle to carry the passengers in the vehicle / taxi. He has further stated that the driver did not have valid and effective driving license and since it was a taxi, therefore, permit and fitness are essential. He has also stated that the driver did not have the valid and effective driving license to drive the offending vehicle and he was carrying more than the required passengers, therefore, the Insurance Company is not responsible for any liability.

8. Mr. Pawan Kumar Sahu (NAW-3), Assistant Grade-III from the Office of the Regional Transport Officer, Ambikapur has also been examined in which he has stated that on 23-3-2005, the driver was given the license to drive the light motor vehicle and endorsement to the transport vehicle was made on 24-9-2013. The original driving license was produced as Ex.D-1.

9. Registration certificate of the offending vehicle which is a motor cab (taxi) is Ex.D-3 and its ladden weight is 2,250 Kgs.. According to the definition contained in sub-section (21) of Section 2 of the Motor

Vehicles Act, 1988, “light motor vehicle” means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms. As such, the offending vehicle was light motor vehicle and as per the statement of Mr. Pawan Kumar Sahu (NAW-3), clerk from RTO, the driver appellant No.1 did have the license to drive the light motor vehicle. Similarly, though the Insurance Company took the plea that the driver did not have valid and effective driving license to drive the offending vehicle, but in order to prove the said defence, only Mr. Raghavendra Raghuvanshi (NAW-2), Assistant Manager (Law), has been examined who has simply stated that the driver did not have valid and effective driving license to drive the offending vehicle and the offending vehicle did not have permit and fitness as required, nothing more than that has been stated. Further, the offending vehicle in question is admittedly registered as passenger carrying vehicle and sitting capacity of the same is 1 + 5 persons. But no evidence has been led by the Insurance Company except the self-serving statement of the officer of the Company – Mr. Raghavendra Raghuvanshi (NAW-2), Assistant Manager (Law); in other words, there is no legally admissible evidence available on record nor any evidence led by the Insurance Company that the offending vehicle was carrying more than six persons. Since the driver did have valid and effective license to drive the offending vehicle and the another plea that the vehicle was carrying more than six persons has not been proved, the plea of the Insurance Company that the vehicle did not have valid permit and fitness has not been proved. Therefore, the learned Claims Tribunal is absolutely unjustified in exonerating the Insurance Company from the liability of paying compensation. Accordingly, the part of the impugned award fastening liability upon the appellants herein is hereby set aside and it is held that the Insurance Company / respondent No.5 herein is liable to pay the amount under the impugned award. Such amount shall be deposited within 60 days from the date of receipt of a copy of this order.

10. The appeal is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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