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HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 21.10.2021
Pronounced on 01.11.2021
M.A(C) No.1358 of 2016

Shri Ram General Insurance Co. Ltd. S/o E-8 Riico Industrial Area, Sitapura, Jaipur Rajasthan 302022, Insurer Of Tractor C. G. 10- A- 8472, Rajasthan

---- Appellant

Versus

1. Punnilal Kurray S/o Puranlal, Aged About 55 Years R/o Gram Amalideh, Post Office- Bhalukhodhra, Chauki- Fasterpur, Thana- Mungeli, District- Mungeli Chhattisgarh., Chhattisgarh
2. Ramkali, W/o Punnilal, Aged About 50 Years R/o Rgram Amalideh, Post Office- Bhalukhodhra, Chauki- Fasterpur, Thana- Mungeli, District- Mungeli Chhattisgarh..... Claimants, District : Mungeli, Chhattisgarh
3. Rammandas Dhidhe, S/o Anandas Dhidhe, Aged About 60 Years R/o Gram-Amalideh, Post Office Bhalukhodhra, Chauki- Fasterpur, Thana- Mungeli, District- Mungeli Chhattisgarh, Driver Of Tractor C. G. 10-A- 8472, District : Mungeli, Chhattisgarh

---- Respondents

M.A(C) No.1359 of 2016

Shri Ram General Insurance Co. Ltd. S/o E-8 Riico Industrial Area, Sitapura, Jaipur Rajasthan 302022, Insurer Of Tractor C. G. 10- A- 8472, Rajasthan

---- Appellant

Versus

1. Suresh Kumar Kurray S/o Ramdas Kurray, Aged About 40 Years R/o Gram Amalideh, Post Office- Bhalukhodhra, Chauki- Fasterpur, Thana- Mungeli, District- Mungeli Chhattisgarh., Chhattisgarh
2. Devmati Bai, W/o Suresh Kumar Kurray, Aged About 35 Years R/o Gram Amalideh, Post Office- Bhalukhodhra, Chauki- Fasterpur, Thana- Mungeli, District- Mungeli Chhattisgarh.... Claimants, District : Mungeli, Chhattisgarh
3. Rammandas Dhidhe, S/o Anandas Dhidhe, Aged About 60 Years R/o Gram-Amalideh, Post Office Bhalukhodhra, Chauki- Fasterpur, Thana- Mungeli, District- Mungeli Chhattisgarh, Driver Of Tractor C. G. 10-A- 8472, District : Mungeli, Chhattisgarh **---- Respondents**

M.A(C) No.1360 of 2016

Shri Ram General Insurance Co. Ltd. S/o E-8 Riico Industrial Area, Sitapura, Jaipur Rajasthan 302022, Insurer Of Tractor C. G. 10- A- 8472, Rajasthan

---- Appellant

Versus

1. Maniram Diwakar S/o Kejha Diwakar, Aged About 55 Years R/o Gram Amalideh, Post Office- Bhalukhodhra, Chauki- Fasterpur, Thana- Mungeli,

District- Mungeli Chhattisgarh., Chhattisgarh

2. Samunda Bai, W/o Maniram Diwakar, Aged About 50 Years R/o Gram Amalideh, Post Office- Bhalukhodhra, Chauki- Fasterpur, Thana- Mungeli, District- Mungeli Chhattisgarh..... Claimants, District : Mungeli, Chhattisgarh

3. Rammandas Dhidhe, S/o Anandas Dhidhe, Aged About 60 Years R/o Gram-Amalideh, Post Office Bhalukhodhra, Chauki- Fasterpur, Thana- Mungeli, District- Mungeli Chhattisgarh, Driver Of Tractor C. G. 10-A- 8472, District : Mungeli, Chhattisgarh **----Respondents**

For Appellants:	Shri Raghavendra Verma, Advocate.
For Respondents No.1 & 2:	Shri Vipin Singh, Advocate.
For Respondent No.3:	None.

Single Bench: Hon'ble Shri Deepak Kumar Tiwari, J
C A V Judgment

1. All these Appeals have been preferred by the Appellant/Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging the common award dated 30.06.2016 passed in Claim Case Nos.85/2015, 83/2015 and 11/2016 respectively by the Additional Member to the Court of Additional Motor Accident Claims Tribunal, Mungeli (for short 'the Tribunal') whereby, it has been held that the Insurance Company is liable to indemnify the award.

2. Learned Counsel for the Insurance Company submits that the Insurance Company is not liable to indemnify the award insured in the given facts of the case. It is evident from the record that the offending vehicle was used for carrying *baratis* and the same was insured for agricultural purposes and the offending trolley was also not insured with the Appellant. Hence, the Appellant cannot be held liable for payment of compensation.

3. As per the Claimants' version, on 24.05.2012, when deceased Dhani Ram, Mahendra Pal and Manmohan Diwaker were coming to their village from the market of gram Khapri, the driver of the offending vehicle, bearing registration No.CG 10 A 8472 in which the *barat* was going to gram Dabhari

from gram Amlidih, was driving the same in a rash and negligent manner due to which, it turned turtle resulting in the death of three children of Respondents No.1 & 2/Claimants. The incident was reported at P.S Farastpur and Crime No.173/2012 under Sections 279, 337 and 304-A IPC was registered against the driver.

4. Respondent No.3-driver has, in his written reply, denied the allegation and stated that no such accident has occurred by his vehicle and he has been falsely implicated in the crime in question.

5. Learned Counsel for the Appellant submits that the Tribunal has decided the issue against the Insurance Company by holding that it has failed to prove any violation of the policy condition and therefore, the Appeals may be allowed setting aside the award impugned.

6. I have heard the arguments of Counsel for the parties and perused the record.

7. Ramesh Sinha, Legal Assistant of the Insurance Company was examined in the matter, who has stated that tractor No.CG 10 A 8472 was insured for agricultural purposes in terms of the policy Ex.D-2 and further deposed that on the fateful day, the tractor trolley was used for carrying *barat* and unauthorized persons were sitting in the trolley, which is an absolute violation of the policy conditions of the Insurance Company. Even in the claim Petition, it is admitted that the tractor was used for carrying members of *barat* of Shatruhan, S/o Kurank Kurre and was going to village Amlidih to Gram Dabhari. Charge sheet has been filed against the driver (Respondent No.3) and Ex.A-1 also stated the same fact that 30-35 persons were going on the said tractor. The said fact was not rebutted and also admitted by the claimants and in spite of such pleading by the Claimants themselves and the evidence

placed on record, the Tribunal wrongly decided Issue No.3 by relying on Rule 97 of the Chhattisgarh Vehicle Rules that the insured has not violated the policy conditions and therefore, the finding as arrived at by the Tribunal on this issue is not maintainable.

8. In the matter of *Bhav Singh vs. Savirani and others* reported in **2008 (1) M.P.L.J 72,** wherein the Full Bench has opined that Rule 97 is not to cover the risk under Section 147 of the Act 1988 and the liability of the insurer to indemnify the insured in respect of death or bodily injury suffered by a passenger or an employee would be covered by the provisions of Section 147 of the Act of 1988 or the terms and conditions of the insurance policy.

9. In these cases accident took place on 24.05.2012 at 6.30 p.m. and on the information of claimant Punnilal father of deceased Dhaniram, 'Dehati Nalishi'(F.I.R, Ex.D-1) was lodged on the same day at 8.20 p.m., in which it has been stated that his son was going to barat of Satruhan, in which 50-60 other persons of his village were also travelling and the tractor turned turtle at Lagra Khar. However, Punnilal, Samundabai (Mother of deceased Manmohan), Suresh Kumar Kurrey (Father of deceased Mahendra Pal) claimants in their respective cases have changed their version and failed to explain in their cross-examination as to how it has been recorded in the investigation of the said incident that deceased children were also travelling as members of marriage party. Although, the claimants rely on the police papers prepared during the said investigation and also filed in support of their claim.

10. Ramman Das(driver cum owner) also stated that at the time of incident he was not carrying any barat on his tractor. He deposed in Para 1 of his statement that trolley was not attached with the tractor at the time of incident, however, in his cross examination, he has given contradictory statement in

Para 8 that on the date of incident, he was driving with empty trolley for bringing manure*.*

11. In *National Insurance Co. Ltd V Rattani & Ors* reported in **AIR 2009 SC 1499**, where the claimants were traveling in goods vehicles as members of marriage party, the Insurance Company was not held liable. The relevant paragraphs i.e. 7, 8, 13 & 14 of the said judgment are as under:-

> "7. We are not oblivious of the fact that ordinarily an allegation made in the first information would not be admissible in evidence per se but as the allegation made in the first information report had been made a part of the claim petition, there is no doubt whatsoever that the Tribunal and consequently the appellate courts would be entitled to look into the same.
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> 8. However, in their depositions, the claimants raised a new plea, namely that the deceased and the other injured persons were travelling in the said truck as representatives of the owner of the goods.
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> 13.........when the First Information Report itself has been made a part of the claim petition, there cannot be any doubt whatsoever that the same can be looked into for the aforementioned purpose.
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> 14. An admission made in the pleadings, as is well-known, is admissible in evidence proprio vigore. We, thus, are of the opinion that the Tribunal as also the High Court committed a serious error in opining that the insurance company was liable."

12. In the application of postmortem, the particulars of the incident are specifically mentioned that deceased children were going on *barat* in the alleged Tractor- Trolley. So, looking to the evidence and in the facts and circumstances of the case, the story of the Claimants appears to have been developed to save the owner and with an object to fasten the liability on the insurance company and is not reliable. It is widespread practice of using tractor-trolly in rural areas for group travel on occasions like marriages, festivals and functions. It is the duty of Tribunal to unfold the truth and satisfy itself the real accident and ascertain that there is no collusion and fabrication

of an accident.

13. There is no dispute as to the nature and type of the vehicle involved, which is 'Tractor-Trolley'. Admittedly there is only one seat in the Tractor, which is exclusively for the driver. Nobody else is intended to be carried in the Tractor or Trolley, but for carrying the goods for agriculture purposes (in the Trolly). Whether the risk of a person travelling in any goods vehicle could be covered under the policy issued in terms of Section 147 of the Act of 1988 had come up for consideration before the Apex Court in the matter of *New India Assurance Co. Ltd. v/s Asha Rani & Others* reported in **(2003) 2 SCC 223**. It was categorically held that no passenger is entitled to travel in a goods carriage except in the capacity as the owner/representative of the goods carried in the vehicle or as the employee of the insured.

14. The Apex Court has made it clear, as per the decision reported in *National Insurance Co. Ltd. v/s Cholleti Bharatamma and others* reported in **(2008) 1 SCC 423,** that if at all the authorized person(owner/representative of the goods or employee of the insured) is travelling in the goods vehicle, he has to be in the 'cabin' of the vehicle, depending upon the number of seats provided and not on the platform or anywhere else; admittedly; in the instant case, the vehicle involved is a 'Tractor-Trolly', and in the F.I.R. and even in the pleadings of the claimant, it is an admitted and established fact that at the time of accident, the 'Tractor-Trolley' was being used for carrying members of the marriage party.

15. In the instant case, three children died on the spot, allegedly due to rash and negligent driving of Respondent No.3, who is the owner and driver of the Tractor- Trolley. The Tribunal awarded compensation of Rs.2,60,000/-(Two lac sixty thousand) in each case along with interest @ 6% per annum from

08.01.2013, i.e. the date of presentation of the claim Petitions and fastened the liability on the owner (Respondent No.3) and the Appellant/Insurance Company, jointly and severally but primary liability was fastened on the Appellant/Insurance company though the Insurance company has successfully established that there was breach of conditions of insurance policy.

16. In the case of gratuitous passenger, the liability for payment of compensation for death or body injury to the passengers of such goods vehicle would not be covered, hence the principle of pay and recover would not apply. (See: New India Assurance Co. Ltd. v. Asha Rani (2003) 2 SCC 223; National Insurance Co. Ltd. v. Baljit Kaur (2004) 2 SCC 1; National Insurance Co. Ltd. v. Kaushalya Devi (2008) 8 SCC 246; 6 National Insurance Co. Ltd. v. Rattani (2009) 2 SCC 75; National Insurance Co. Ltd. v. Prema Devi (2008) 5 SCC 403; Bharat AXA General Insurance Co. Ltd. v. Adani MANU/TN/6503/2018; Bajaj Allianz General Insurance Co. Ltd. v. Lal Singh (2015) SCC Online Del 7508.)

17. The Hon'ble Supreme Court in *Shamanna & Anr vs. Divisional Manager, Oriental Insurance Company Ltd. & Ors* reported in **(2018) 9 SCC 650,** while considering the issue of 'pay & recover' it has been held in paragraph-5 as under:-

> "5. In the case of third party risks, as per the decision in *National Insurance Company Ltd. v. Swaran Singh reported in (2004) 3 SCC 297*, the insurer had to indemnify the compensation amount payable to the third-party and the insurance company may recover the same from the insured. Doctrine of "pay and recover" was considered by the Supreme Court in Swaran Singh case wherein the Supreme Court examined the liability of the insurance company in cases of breach of policy condition due to disqualifications of the driver or invalid driving licence of the driver and held that in case of third-party risks, the insurer has to indemnify the compensation amount to the third-party and the insurance company may recover the same from the insured. Elaborately

> considering the insurer's contractual liability as well as statutory liability vis-a-vis the claims of third parties, the Supreme Court issued detailed guidelines as to how and in what circumstances, "pay and recover" can be ordered….."

18. The deceased children were travelling in the Tractor- Trolley in the form of *Barati* as gratuitous passengers. In Ram General Insurance Co. Ltd. v/s Phoolsingh and others (MAC No. 671/2014 Judgment dated 17.07.2020), this court held that the Insurance Company is not liable when deceased was travelling in a Tractor-Trolley.

19. In view of material available on record, this Court is of the considered opinion that the Tribunal has committed an error in recording the finding that there was no breach of conditions of insurance policy. The said finding being contrary to the facts and law is not sustainable and is hereby set aside. The liability under the awards is to be satisfied by Respondent No. 3-Owner cum Driver of the Tractor-Trolly. The amount so deposited by the Appellant, if not yet paid, be refunded to Insurance Company and in case of any payment made to the Claimant, the same be recovered from Respondent No. 3 in the same execution. The Claimants are at liberty to proceed against Respondent No.3 for satisfaction of their award.

20. Accordingly, the Appeals filed by the Insurance Company are allowed. There shall be no order as to costs.

Sd/-

(Deepak Kumar Tiwari)
Judge

Priya