NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No.436 of 2015

Royal Sundaram Alliance Insurance Co. Ltd, Rama Trade Center, Opposite Rajiv Plaza and Near Bus Stand, Distt. Bilaspur, At Present - Near Over Bridge, Mova Pandri, P.S. Pandari, Civil and Revenue Distt-Raipur, Chhattisgarh.

---- Appellant/Non-applicant No.3.

Versus

1. Shivkumari Bhaina W/o Late Babulal Bhaina, Aged About 26 Years.
2. Roshan Kumar S/o Late Babulal Bhaina, Aged About 5 Years, (Minor).
3. Jitendra Kumar S/o Late Babulal Bhaina, Aged About 2 Years, (Minor).
4. Anandkuwar W/o Jagatram Bhaina, Aged About 50 Years.
5. Jagatram S/o Awadhram Bhaina Aged About 56 Years.

Respondent Nos.2 & 3 are Minor through their mother Mrs. Shivkumari Baina. All are R/o Village- Bhothidih, Post- Khajurani, Tah. Dabhra, Thana- Dabhra, Distt. Janjgir-Champa, Civil and Revenue Distt : Janjgir-Champa, Chhattisgarh. **---Claimants/Applicants.**

6. Gajanand Sidar S/o Lilchand Sidar Aged About 26 Years. **(Driver).**
7. Lilchand Sidar S/o Rirangi Sidar, Aged About 48 Years. **(Owner).**

Both R/o Village- Bhothidih, Post- Khajurani, Tah. Dabhra, Thana-Dabhra, Civil & Revenue Distt -Janjgir-Champa, Chhattisgarh.

--- Respondents/Non-applicant Nos.1 & 2.

For Appellant	:	Mr. N.K. Thakur, Advocate.
For Respondent Nos.1 to 5	:	Mr. Alok Bakshi & Mr. Dashrath Prajapati, Advocate.
For Respondent No.6 & 7	:	Mr. Shalvik Tiwari, Advocate on behalf of Mr. Parag Kotecha, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ

Hon'ble Shri Parth Prateem Sahu, J

Order on Board

Per Parth Prateem Sahu, J

01/02/2021

1. Appellant -Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, ‘Act of 1988) challenging the impugned award dated 20.01.2015 passed by learned 2nd Additional Motor Accident Claims Tribunal, Sakti, Distt :Janjgir -Champa, CG (for short, ‘Tribunal’) in Claim Case No.11/2014, whereby Tribunal partly allowed application filed under Section 166 of the Act of 1988 and awarded total compensation of Rs.4,67,000/- in a fatal accident case.

2. Facts relevant for disposal of this appeal are that on 26.02.2014, Babulal Baina (deceased) alongwith one Dileshwar Sidar was going towards Birra Stones Crusher Plant situated at village -Birra on Tractor- Trolley bearing registration No.CG-11-DA-5111 & 5112 (for short, 'offending vehicle') for transporting stones. On the way near Birra bus stand, non-applicant No.1 -driver of offending vehicle, drove his vehicle rashly and negligently due to which, Babulal Baina fell down from offending vehicle and suffered grievous injuries over his person. On the way to hospital, he scummed to the injuries suffered by him. Accident was reported to Police Station -Birra based upon which crime was registered against non-applicant No.1.

3. Claimants, who are widow, children and parents of deceased, filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.40,46,000/- pleading therein that on the date of accident, deceased was aged about 30 years, working as “Mason" and earning Rs.5,000/- per month. They were dependant upon income of deceased.

4. Non-applicant Nos.1 & 2, driver & owner of offending vehicle, submitted reply to application denying the pleadings made therein. It was further pleaded that they have been falsely implicated in this case. Non-applicant No.1 never drove offending vehicle rashly and negligently. On the date of accident, offending vehicle was insured with non-applicant No.3-Insurance Company, as such, liability, if any, to pay the amount of compensation would be of Insurance Company.

5. Non-applicant No.3/Insurance Company submitted reply to application, while denying pleadings made therein further pleaded that on the date of accident, non-applicant No.1 was not possessed with valid and effective driving license. Deceased was traveling as a “gratuitous passenger" in offending vehicle, hence, he will not come within the purview of third party.

Seating capacity in offending vehicle is only one ie driver, whereas on the date of accident, apart from non-applicant No.1, deceased and other persons were also traveling on it. There was breach of policy condition, hence Insurance Company is not liable to indemnify the insured.

6. On appreciation of pleadings and evidence placed on record by respective parties, the Tribunal held that Babulal Baina died on account of motor-accidental injuries while traveling on offending vehicle driven by non-applicant No.1 rashly and negligently. Breach of policy condition was not found to be proved. Upon assessing monthly income of deceased as Rs.3,000/- per month, awarded compensation of Rs.4,67,000/- with interest @ 7% p.a, fastened liability upon non-applicants to pay the amount of compensation, jointly and severally.

7. Learned counsel for the appellant -Insurance Company submits that Tribunal erred in arriving at a conclusion that Insurance Company failed to prove breach of policy condition, overlooking the registration book of offending vehicle, FIR, final report and pleadings made in application. Claimants themselves have pleaded that deceased suffered grievous injuries over his person because he fell down from offending vehicle while travelling on it. Copy of FIR, final report etc have been placed on record wherein the manner in which accident took place has been very specifically mentioned but Tribunal has not considered the same. There is no seat available on offending vehicle for traveling of other persons except driver but on the date of accident, deceased along-with another person was traveling on it, hence, there was clear breach of policy condition. He further submits that Tribunal misinterpreted the provisions contained in Section 147 of the Act of 1988, not considered Rule 28 of **The Rules of the Road Regulations, 1989**. He further submits that as under the insurance policy risk of deceased was not covered, Tribunal ought

not to have held Insurance Company liable to satisfy the amount of compensation. In support of his submissions he relied upon the decisions of Hon'ble Supreme Court in cases of **Oriental Insurance Company Limited vs Brij Mohan & Ors**[1], **New India Assurance Company Limited v. Asha Rani and Ors**[2] and **National Insurance Co. Ltd. vs Bommithi Subbhayamma and Ors**[3]**.**

8. Learned counsel for respondent Nos.1 to 5/claimants while supporting the impugned award, submits that Insurance Company has deposited the entire amount of compensation. This Court vide order dated **20th April, 2015,** permitted to withdraw Rs.3,00,000/-.

9. Learned counsel for respondent No.6 & 7,driver & owner of offending vehicle, submits that Tribunal taking into consideration the Insurance Policy of offending vehicle and facts & circumstance of this case, has rightly recorded a finding that there was no breach of policy condition as Insurance Company has accepted the premium covering risk of driver and cleaner of offending vehicle. Once premium is accepted then Insurance Company cannot say that risk of deceased was not covered under the Insurance Policy.

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

11. Short question arises for consideration of this Court is whether Tribunal was justified in holding that Insurance Company failed to prove breach of policy condition ?

12. Perusal of pleadings and documents of criminal case available on record shows that deceased fell down from offending vehicle and suffered grievous injuries while traveling on it. Admittedly, as per Insurance Policy, seating

[1] (2007) 7 SCC 56
[2] (2003) 2 SCC 223
[3] (2005) 12 SCC 243

capacity in offending vehicle is shown to be 'one', meaning thereby in offending vehicle only driver can travel. Claimants in their pleadings have very specifically pleaded that deceased was working as 'mason' and not driver or cleaner of offending vehicle. Hence, submission made by learned counsel for respondents No.6 & 7 that risk of deceased was covered under the Policy is not sustainable and it is hereby repelled.

13. Admittedly, offending vehicle was being used as 'goods vehicle' and as such, no person can travel in a 'goods vehicle' except owner of goods and in a place provided for sitting. Definition of 'tractor' is defined under Section 2 (44) of the Act of 1988 which itself is not a 'goods vehicle', but it becomes a 'goods carriage vehicle' after trolley is connected with it.

14. In view of above, it is clear that seating space in tractor is only one i.e. of 'driver' only, and there is no seating space in trolley. Policy issued for offending vehicle is for goods carrying vehicle. Hon'ble Supreme Court in case of **Asha Rani and Ors** (supra) while considering the persons travelling on 'goods vehicle' met with an accident has held as under :-

> “26. In view of the changes in the relevant provisions in 1988 Act vis - a-vis the 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.
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> 28. An owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers. If a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid. But if the ratio of this Court's decision in **New India Assurance Company v. Satpal Singh** reported in **(2000) 1 SCC 237** is taken to its logical conclusion, although for such passengers, the owner of a goods carriage need not take out an insurance policy, they would be deemed to have been covered under

the policy wherefor even no premium is required to be paid.

29. We may consider the matter from another angle. Section 149 (2) of the 1988 Act enables the insurers to raise defences against the claim of the claimants. In terms of clause (c) of sub section 2 of Section 149 of the Act one of the defences which is available to the insurer is that the vehicle in question has been used for a purpose not allowed by the permit under which the vehicle was used. Such a statutory defence available to the insurer would be obliterated in view of the decision of this Court in **Satpal Singh's** case (supra)."

15. The Hon'ble Supreme Court in case of **Oriental Insurance Company Limited vs Brij Mohan & Ors**[4] again considered risk of persons traveling in goods vehicle. Further in case of **Shivraj vs. Rajendra & Anr**[5] the Hon'ble Supreme Court while considering the coverage of risk of 'gratuitous passenger' traveling in tractor held thus :-

“10. The High Court, however, found in favour of respondent No.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 No.2) was not 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.”

16. In the aforementioned case laws, the Hon'ble Supreme Court in categorical terms held that no person can travel in a 'goods vehicle' on tractor. In case at hand deceased was travelling on tractor, hence, Insurance Company is not having any liability to cover risk of 'gratuitous passenger'. However, Tribunal overlooking the pleadings and documents placed on record has erroneously held that Insurance Company failed to prove breach of policy condition. It is settled position in law that admitted facts are not required to be proved.

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[4] (2007) 7 SCC 56

[5] (2018) 10 SCC 432

17. For the foregoing reasons, we are of the view that Tribunal erred in arriving at a conclusion that Insurance Company failed to prove breach of policy condition, the same being erroneous and not sustainable in the eyes of law is liable to set aside and it is hereby set aside.

18. As deceased was traveling on offending vehicle, fell down from it and died, we hold that there was breach of policy condition, risk of deceased was not covered under the policy (Ex.D-1). Hence, appellant -Insurance Company cannot be saddled with the liability to satisfy the amount of compensation. Accordingly, appellant -Insurance Company is exonerated from its liability to pay the amount of compensation. Now, liability to satisfy the amount of compensation will be upon respondent No.6 & 7/driver and owner of offending vehicle. It is informed to this Court that the appellant has deposited entire amount of compensation awarded by Tribunal and out of which, Rs.3,00,000/- is disbursed to claimants. The claimants shall be entitled to recover amount of compensation disbursed to claimants from the owner and driver of the offending vehicle. Balance amount of compensation deposited by the Insurance Company and lying with the Tribunal shall be returned to Insurance Company.

19. In result, appeal is allowed in part and impugned award stands modified to the extent as indicated herein-above.

Sd/-
(P. R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-