AFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No.405 of 2015

The Oriental Insurance Company Limited, Rama Trade Centre, 1st Floor, Near Bus Stand, Opposite Rajeev Plaza, Bilaspur, C.G. Through Divisional Manager, The Oriental Insurance Company, Geetanjali Bhavan, Old Bus Stand Korba, Tahsil and District- Korba, Chhattisgarh.

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

Versus

1. Smt. Melan Bai W/o Shri Nohar Singh Gond, Aged About 47 Years, R/o- Kalmibhatha, Post Tilkeja, Tahsil -Bhaisma, Police Station -Urga, District- Korba, Chhattisgarh.
---- Applicant/Claimant.

2. Budhram Gond S/o Shri Kanwal Singh, Aged About 42 Years, R/o- Kalmibhatha, Post- Tilkeja, Tahsil -Bhaisma, Police Station -Urga, Distt.- Korba, Chhattisgah. (Driver).
---- Non-applicant No.1.

3. Devi Prasad Kashyap S/o Shri Mohan Lal Kashyap, Aged About 55 Years, R/o- Kalmibhatha, Post -Tilkeja, Tahsil -Bhaisam, Post- Tilkeja, Tahsil Bhaisma, Police Station -Urga, Distt.- Korba, Chhattisgarh. (Owner). **--Non-applicant No.2/Respondents.**

For Appellant	:	Mr.Pankaj Agrawal, Advocate.
For Respondent Nos.1 & 3	:	None.

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J
Order on Board

Per Parth Prateem Sahu, J
27/01/2021

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 23.12.2014 passed by learned 2nd Additional Motor Accident Claims Tribunal, Korba, Distt -Korba, CG (for short, 'Tribunal') in Claim Case No.39/2014, whereby Tribunal partly allowed application filed under Section 166 of the Act of 1988 and awarded total compensation of Rs.30,555/-.

2. Facts relevant for disposal of this appeal are that on 29.07.12, Smt. Melan Bai (claimant) along with other persons was going to village -Judga (Sakti) from Kalmibhata on a new Pick-Up -407 Vehicle bearing temporary registration No.CG-10/TR/3169 (for short, 'offending vehicle') to attend the birth ceremony. On the way, due to rash and negligent driving of offending vehicle by Non-appellant No.1, vehicle turned turtle and met with an accident. In the said accident, Smt. Melan Bai suffered grievous injuries on her head, cut injury near right eye and fracture injury on humerus bone.

3. Applicant/respondent No.1 filed an application under Section 166 of the Act of 1988 before Tribunal seeking compensation of Rs.4,63,000/- on different heads pleading therein that on account of motor-accidental injuries suffered by her, she became permanently disabled and incurred expenditure of Rs.18,000/- towards her treatment.

4. Non-applicant Nos.1 & 2, driver & owner of offending vehicle, submitted reply to application denying pleadings made therein. Accident from offending vehicle is also denied. They have further pleaded that claimant is a housewife and not doing any work as agriculture labourer. On the way to village -Judga (Sakti), seeing a truck coming from opposite direction in high speed, non-applicant No.1 in order to avoid accident, applied brakes due to which offending vehicle turned turtle. On the date of accident, non-applicant No.1 was possessed with valid and effective driving license, vehicle was insured with Non-applicant No.3/Insurance Company.

5. Non-applicant No.3/Insurance Company submitted its reply to application denying the pleadings made therein. It was further pleaded that Insurance Policy was issued for unregistered vehicle for a period

from 20.6.12 to 19.06.13. At the time of accident, offending vehicle was not having registration number, Non-applicant No.1 was not possessed with valid and effective driving license. As there was breach of policy condition, Insurance Company cannot be held liable to satisfy the amount of compensation.

6. On appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that appellant suffered motor-accidental injuries due to rash and negligent driving of offending vehicle by non-applicant No.1; permanent disability was not found to be proved; allowed claim application in part, awarded total compensation of Rs.30,555/- with interest @ 6% p.a. and fastened liability upon non-applicant No.3-Insurance Company to satisfy the amount of compensation.

7. Learned counsel for the appellant -Insurance Company submits that the Tribunal erred in holding the Insurance Company liable to satisfy the amount of compensation. Tribunal further erred in not considering the pleadings of claim application minutely, wherein there was specific pleading that claimant was travelling along-with other passengers on offending vehicle, whereas offending vehicle is a 'goods carrying vehicle' and no person can travel on a 'goods carrying vehicle'. Claimant was a 'gratuitous passenger' for which, Insurance Company cannot be held liable. He further submits that offending vehicle was a new purchased vehicle for which initially temporary registration was given which expired on 18.07.12, whereas accident took place on 29.07.12. Offending vehicle could not have been plied on the public road without registration of vehicle under the Act of 1988. Non-applicant No.2-Owner of offending vehicle got the vehicle registered with Transport Department only on 29.11.12 ie after

the date of accident. Requirement of registration of vehicle is mandatory under the provisions of Section 39 of the Act of 1988. He further submits that Non-appellant No.1 has admitted the fact of accident in his evidence and further stated that offending vehicle was a Pick-up vehicle; Smt. Agan Bai & Smt. Melan Bai were found standing in front of their house, they requested him to give lift on offending vehicle. In Para No.10 of his evidence, he admitted that on the date of accident, offending vehicle was not having registration certificate and fitness certificate. In Para No.12 he admitted that he was prosecuted for not having permit and fitness certificate of offending vehicle. Learned counsel also refers to the document of Ex.D-2, which is the copy of Insurance Policy to argue that offending vehicle was insured as 'public carrier' other than three wheelers, offending vehicle was insured as 'goods carrying vehicle'.

8. No one appeared on behalf of respondent Nos. 1 to 3 even in second call.

9. To appreciate the submission made by learned counsel for the appellant, we have perused copy of Insurance Policy, evidence of (NAW/1-1)-driver of offending vehicle and also evidence of Purusshuttom (NAW-3).

10. Admittedly, offending vehicle was a 'goods carrying vehicle', Non-applicant No.1 has admitted in his evidence that on the date of accident, offending vehicle was not having its registration. Owner of offending vehicle was examined as NAW-2 (Devi Prashad Kashyap), in Para No.6 of his evidence, he admitted that temporary registration of offending vehicle was expired on 18.07.2012, it was registered on 29.11.2012 and thereafter he got fitness certificate. In view of above facts it is evident that offending vehicle is a 'goods vehicle' in which claimant was travelling on the date of

accident. Offending vehicle was not having the registration under Section 39 of the Act of 1988. Necessity for registration of vehicle is provided under the Act of 1988, which is extracted below for ready reference :-

> "39. **Necessity for registration. --** No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner:
>
> Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government."

11. Under the definition, it is very specifically mentioned that no person shall drive any motor-vehicle, no owner of vehicle shall permit the vehicle to be driven in any public place, unless the vehicle is registered in accordance with this chapter. Section 56 of the Act of 1988 provides for certificate of fitness. It reads as under:-

> "**56. Certificate of fitness of transport vehicles.**— (1) Subject to the provisions of sections 59 and 60, a transport vehicle shall not be deemed to be validly registered for the purposes of section 39, unless it carries a certificate of fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority, or by an authorized testing station mentioned in sub-section (2), to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made thereunder:
>
> Provided that where the prescribed authority or the "authorized testing station" refuses to issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal."

12.Hon'ble Supreme Court in case of **Narinder Singh vs. New India Assurance Company Ltd. & ors** reported in **(2014) 9 SCC 324** has considered the effect of non-registration of vehicle and held thus:-

> "12.Indisputably, a temporary registration was granted in respect of the vehicle in question, which had expired on 11.1.2006 and the alleged accident took place on 2.2.2006 when the vehicle was without any registration. Nothing has been brought on record by the appellant to show that before or after 11.1.2006, when the period of temporary registration expired, the appellant, owner of the vehicle either applied for permanent registration as contemplated under Section 39 of the Act or made any application for extension of period as temporary registration on the ground of some special reasons. In our view, therefore, using a vehicle on the public road without any registration is not only an offence punishable under Section 192 of the Motor Vehicles Act but also a fundamental breach of the terms and conditions of policy contract."

13. In view of very specific provision under the Act of 1988 and above ruling of Hon'ble Supreme Court, owner of vehicle could not have permitted non-applicant No.1 to ply the vehicle in public place, as such, there was breach of policy condition. Secondly, claimant was travelling in a 'goods vehicle', as per the law laid down in case of **New India Assurance Company Limited v. Asha Rani and Ors** reported in **(2003) 2 SCC 223** and **National Insurance Co. Ltd vs Baljit Kaur And Ors** reported in **(2004) 2 SCC 1.** There is no liability of Insurance Company to cover risk of 'gratuitous passenger'.

14. For the foregoing, we are of the considered view that Tribunal erred in not considering that there was breach of policy condition and fastened liability upon Insurance Company to satisfy the amount of compensation. Said finding recorded by the Tribunal on Issue No.3 is erroneous, not sustainable and liable to be set aside. It is ordered accordingly. Insurance Company is exonerated from its liability. Now liability to satisfy

the amount of compensation will be upon respondent Nos.2 & 3/owner and driver of offending vehicle.

15. Appellant-Insurance Company will be at liberty to recover the amount so deposited by it before Tribunal from respondent Nos.2 & 3. It is made clear that if any amount deposited by Insurance Company is lying with Tribunal then said amount be returned to the appellant.

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

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

Jamal/-