NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 80 of 2015

1. Smt. Kumari Bai W/o Vishnu Dewangan, Aged About 40 Years.
2. Basant Dewangan S/o Vishnu Dewangan, Aged About 21 Years.

   Both are R/o: Village- Tikripara, Ward No. 15, Chhuikhadan, Civil & Revenue -Distt Rajnandgaon, C.G.

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

Versus

1. Smt. Rarhin Bai Wd/o Arjun Lodhi, Aged About 50 Years.
2. Rajkumar @ Konda S/o Arjun Lodhi, Aged About 27 Years.

   Both are R/o: Village- Kutelikhurd, P.S & Tah. Chhuikhadan, Distt. Rajnandgaon C.G. **---Claimants/Applicants.**
3. Bhartiya General Insu. Co. Ltd, 1st Floor, Chawla Complex, Devendra Nagar Road, Sai Nagar, Raipur, Distt. Raipur C.G.

--- Respondents/Non-applicant No.3.

For Appellants	:	Mr.Sanjeev Sahu & Shri Prabhakar Tiwari, Advocate.
For Respondent Nos.1 to 2	:	None.
For Respondent No.3	:	Mr. Rohitashva Singh, Advocate.

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

Per Parth Prateem Sahu, J
22/01/2021

1. Non-applicant Nos.2 & 1/appellants (owner & driver) have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') challenging the impugned award dated 27.11.14 passed by learned Additional Motor Accident Claims Tribunal, Khairagarh, Distt-Rajnandgaon, (for short 'Tribunal') in Claim Case No.20/2012, whereby Tribunal partly allowed application filed under Section 166 of the Act of 1988, awarded total compensation of Rs.3,55,568/- in a fatal accident case.

2. Facts relevant for disposal of this appeal are that on 04.12.2011, Arjun Lodhi (deceased) had gone to Rajnandgaon for selling 'Tomatoes' on Tata ACE bearing registration No. CG-08/C/0657 (for short, 'offending vehicle'). When he

was returning his village- Kutelikhurd along-with remaining tomatoes, non-applicant No.1 drove offending vehicle rashly and negligently, dashed against stationary truck near Sanjay Crusher Plant at Salehbharri and caused accident. In the said accident, Arjun Lodhi and other persons who were travelling in offending vehicle, suffered grievous injuries. They were taken to Community Health Centre, Khairagarh. Upon diagnosis it revealed that Arjun Lodhi suffered multiple fracture injuries on his left leg, therefore, he was referred to the hospital at Durg, where during the course of treatment he died on 24.12.2011.

3. Claimants, who are widow and son of deceased, filed application under Section 166 of the Act of 1988 seeking compensation of Rs.24,10,000/- pleading therein that on the date of accident, deceased was earning Rs.1,00,000/- per annum from his agriculture work.

4. Non-applicant Nos.1 & 2, driver and owner of offending vehicle, submitted reply to application, denying pleadings made therein. It was further pleaded that on the date of accident, non-applicant No.1 was possessed with valid and effective driving license and said vehicle was insured with non-applicant No.3-Insurance Company, hence, they are not liable to satisfy the amount of compensation.

5. Non-applicant No.3-Insurance Company, submitted reply to application, while denying pleadings made therein further pleaded that offending vehicle was a 'goods vehicle' having seating capacity of only two ie for driver and cleaner, deceased was traveling in goods vehicle as a 'gratuitous passenger' as he was neither driver nor cleaner of offending vehicle. On the date of accident, non-applicant No.1 was not possessed with valid and effective driving license, as such, there was breach of policy condition, therefore, Insurance Company is not liable to indemnify the insured.

6. Upon appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that Arjun Lodhi died on account of motor-accidental injuries suffered by him due to rash and negligent driving of offending vehicle by non-applicant No.1. Breach of policy conditions was found to be proved. Tribunal allowed claim application in part, awarded total compensation of Rs.3,55,568/- along-with interest @ 6% p.a and fastened liability upon non-applicant Nos.1 & 2, jointly & severally, to satisfy the amount of compensation.

7. Learned counsel for the appellants submits that deceased was not a 'gratuitous passenger' but he was owner of goods transported in offending vehicle, from his village -Kutelikhurd to Rajnandgan and while returning in goods vehicle alongwith remaining tomatoes ie goods owned by deceased himself, offending vehicle met with an accident. Deceased was sitting in cabin of offending vehicle where seating space is provided for two persons. He further submits that deceased was sitting besides the driver but Tribunal ignoring that Insurance Company failed to prove the fact that risk of deceased was not covered under the policy, fastened liability upon appellants. It only considered that deceased was neither driver nor cleaner of offending vehicle and held that risk of persons like deceased was not covered under the provisions of Section 147 of the Act of 1988. Date of issuance of policy is 17.02.2011 as mentioned in Ex.D-1 for one year, whereas accident occurred on 04.12.2011 ie within currency period of Insurance Policy. He further contended that risk of deceased was also covered under the Policy being owner of goods.

8. No one appeared on behalf of respondent No.1 & 2/Claimants.

9. Per contra, learned counsel for respondent No.3/Insurance Company submits that Tribunal has rightly taken into consideration that deceased was

travelling as 'gratuitous passenger' in goods vehicle, no person can travel in goods vehicle, hence, Insurance Company is not having any liability to cover risk of 'gratuitous passenger'. He further submits that risk of deceased was not covered under the policy, more than two persons were traveling in goods vehicle and there is no proof that deceased was travelling where seating space is available in offending vehicle. He further submits that Tribunal in para No.17 to 19 has elaborately discussed the fact and evidence available on record and held that deceased was traveling as 'passenger', which does not call for any interference.

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

11. Only question raised before this Court by learned counsel for the appellants is that Tribunal erred in exonerating Insurance Company from its liability by recording a finding that there was breach of policy condition and fastening liability to satisfy the amount of compensation upon appellant No.1 -owner of offending vehicle.

12. Perusal of records would show that claimants in support of their claim application have placed on record final report filed under Section 173 of Cr.P.C as Ex.P-1 and FIR as Ex.P-2. Claimants have pleaded in application that on the date of accident, deceased travelled to Rajnandgaon to sell his tomatoes by offending vehicle and when he was returning back to his village on the said vehicle it met with an accident. Claimants have examined respondent No.1 as AW-1, who in her evidence in chief has stated similar facts, she was cross-examined by learned counsel for the Insurance Company therein at length, but this witness remained un-shakened. One Ramadhar was examined as AW-2 who has also given evidence on the same line, his evidence also remained un-

shakened on the fact that deceased while returning back to his village along-with remaining tomatoes from Rajnandgaon met with an accident.

13. In Ex.P-2 ie copy of FIR lodged after two hours of the accident by one of the occupants of offending vehicle, it is mentioned that at the time of accident, apart from driver of offending vehicle, deceased Arjun Lodhi, Lalla Lodhi and Balram Lodhi were sitting in cabin and three persons were traveling on platform of offending vehicle. After completion of investigation, police submitted final report vide Ex.P-1 in which also similar facts, as mentioned in FIR, are appearing.

14. Section 147 of the Act of 1988 envisages that a policy of insurance must be a policy which insures the persons or classes of persons specified in the policy to the extent specified in sub-section- (2), wherein it is liability of Insurance policy to cover risk of any person including owner of goods or his authorized representative carried in the vehicle.

15. Sub-section (1) & (2) of Section 147 of the Act of 1988 are extracted below for ready reference :-

> "147. **Requirements of policies and limits of liability.** — (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which--
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> (a) is issued by a person who is an authorised insurer; and
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> (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—
>
> (i) against any liability which may be incurred by him in respect of the death of or bodily [injury to any person, including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
>
> (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:
>
> Provided that a policy shall not be required—

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee—

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability."

"(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:—

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

16. Perusal of motor vehicle insurance and cover note placed on record as Ex.D-1 would show that Insurance proposal was made for commercial vehicle (Tata ACE) having seating capacity of 2 (1+1). Certificate of registration of offending vehicle is also available on record as Ex.D-2 wherein class of vehicle has been shown as 'light goods vehicle'. Under section 147 of the Act of 1988, there is no liability upon insurer or insured for covering risk of passengers traveling in goods vehicle.

17. To appreciate the submissions made by learned counsel for the appellant, we have perused the evidence of NAW-1 & 2 -1 Smt. Kumari Bai W/o Vishnu Dewangan (Owner of offending vehicle) who stated in Para 2 of her evidence-in-chief that she sent her vehicle to Rajnandgoan loaded with tomatoes'. In

same para, she further stated that incident happened when 'Balla' was returning with left over tomatoes. In Para 4, she stated that Arjun was working as loader in her vehicle.

18. Non-applicant No.2/Basant Dewangan (driver of offending vehicle) was examined as NAW 1-2/2. In Para 1 of his evidence, he specifically stated that he loaded tomatoes of Smt. Kumari Bai and Lalla in offending vehicle. In Para 5 of his evidence, he stated that they took them for loader/labourer work also.

19. Ex.P-2 ie copy of FIR mentions that along-with driver other persons were also travelling in the cabin of offending vehicle ie Lalla Verma, Balram Verma and Arjun Lodhi. Complainant, Tilak, Santosh Sahu and Bhonsu Sahu were travelling on platform (dala) in the offending vehicle. As many as seven persons other than the driver were travelling on offending vehicle at the time of accident.

20. Non-applicant No.2 (Owner of offending vehicle) stated in her evidence that 'Balla' was returning with balance tomatoes. She has not stated that Arjun was returning with balance tomatoes, instead she stated that deceased was working as labourer (loader) in her vehicle. Non-applicant No.1 -driver of offending vehicle (son of owner) in categorical terms has stated in chief that loaded tomatoes in offending vehicle was of Kumari Bai and Lalla. He has not stated that tomatoes of Arjun lodhi were also loaded.

21. In view of evidence of owner and driver of offending vehicle it cannot be accepted that Arjun Lodhi went to sell his tomatoes and travelling as owner of goods. Owner and driver have not controverted the contents of FIR (Ex.P-1) and Final Report (Ex.P-2) that as many as seven persons were travelling in offending vehicle at the time of accident. Whereas, in evidence of owner and driver it has come that apart from tomatoes of Smt. Kumari Bai, tomatoes of one another person was also loaded.

22. Submission of learned counsel for the appellant that deceased on the date of accident was travelling as owner of goods is contrary to the oral and documentary evidence available on record. In view of above, finding recorded by Tribunal that risk of deceased was not covered under the policy, there was breach of policy condition as deceased was travelling as passenger along-with others is based on evidence. The vehicle is not a passenger vehicle but seven persons other than the driver were travelling. Hence, the finding that there is breach of policy conditions recorded by the Tribunal cannot be said to be erroneous.

23. Issue of person's traveling on goods vehicle was considered and deiced by the Supreme Court in the matter of **National Insurance Co. Ltd. v. Cholleti Bharatamma and Ors**[1] wherein the Hon'ble Supreme Court held thus : -

> "8. The Act does not contemplate that a goods carriage shall carry a large number of passengers with small percentage of goods as considerably the insurance policy covers the death or injuries either of the owner of the goods or his authorized representative."

24.Further Hon'ble Apex Court in the aforementioned judgment while considering the case of **National Insurance Co. Ltd vs Baljit Kaur and Ors**[2] and **New India Assurance Co. Ltd vs Vedwati**[3] held thus :-

> "11.The effect of 1994 amendment came up for consideration in National Insurance Co. Ltd. v. Baljit Kaur (supra), wherein this court following **New India Assurance Company Limited v. Asha Rani and Ors** (2003) 2 SCC 223 opined that the words "injury to any person" would only mean a third party and not a passenger travelling on a goods carriage whether gratuitous or otherwise. The question came up for consideration again in National Insurance Co. Ltd. v. Bommithi Subbhayamma & Ors (2005) 12 SCC 243 wherein upon taking into consideration a large number of decisions, the said view was reiterated.
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> 12. Yet again in New India Assurance Co. Ltd. v. Vedwati (supra) this Court held :

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[1] (2008) 1 SCC 423
[2] (2004) 2 SCC 1
[3] (2007) 9 SCC 486

> “9.....The difference in the language of "goods vehicle" as appear in the old Act and "goods carriage" in the Act is of significance. A bare reading of the provisions makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger. This is clear from the expression "in addition to passengers" as contained in definition of "good vehicle" in the old Act. The position becomes further clear because the expression used is "good carriage" is solely for the carriage of goods. Carrying of passengers in a goods carriage is not contemplated in the Act. There is no provision similar to Clause (ii) of the proviso appended to Section 95 of the old Act prescribing requirement of insurance policy..........
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> 10. The inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor.”

25. In the given facts, evidence available on record and taking support of the aforementioned ruling of Hon'ble Supreme Court in cases of **Cholleti Bharatamma and Ors, Baljit Kaur and Ors**[4] and **Vedwati & Ors** (supra), we do not find any error in the finding recorded by Tribunal with regard to breach of policy conditions, exonerating Insurance Company from its liability to indemnify the insured and fastening liability upon appellants to satisfy the amount of compensation.

26. For the foregoing reasons, we do not find any merit in this appeal which is liable to be and it is hereby dismissed.

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

Jamal/-

[4] (2004) 2 SCC 1