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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 579 of 2015

- Dular Singh S/o Late Shri Fulsingh by Caste-Yadav Aged About 30 Years R/o Village Khamhariya, Post-Doma, Thana And Tahsil-Dhamtari, Civil And Revenue District- Dhamtari, Chhattisgarh **---- Appellant**

Versus

1. Kulwant Singh, R/o Janta Cycle Stores Shastri Chowk Dhamtari Civil And Revenue Distt.- Dhamtari, Chhattisgarh
2. Kulwant Singh S/o Gurudyal Singh Tuleja R/o Janta Cycle Stores Shastri Chowk Dhamtari Civil And Revenue Distt.- Dhamtari, Chhattisgarh
3. Oriental Insurance Company Limited, Through Regional Monager Oriental Insurance Company Limited, Kachahari Chowk Jail Road Raipur, District- Raipur, Chhattisgarh **---- Respondents**

MAC No. 1057 of 2015

- The Oriental Insurance Company Limited Divisional Manager, Oriental Insurance Company Limited, Katcheri Chowk, Jail Road, Raipur, District-Raipur Chhattisgarh Non - Applicant No. 3

---- Appellant

Versus

1. Dular Singh S/o Late Fulsingh Aged About 30 Years R/o Khamhariya, Post Doma, Tahsil Dhamtari, District Dhamtari Chhattisgarh Claimant
2. Kulwant Singh S/o Gurudayal Singh Tuleja R/o Janta Cycle Stores, Shastri Chowk, Dhamtari, District - Dhamtari Chhattisgarh Non - Applicant No.2

---- Respondents

For Appellant	:	Shri Santhosh Das, Advocate on behalf of Shri Sunil Sahu, Advocate
For Respondent/Insurance Company	:	Shri Pankaj Agrawal, Advocate

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Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

23.09.2021

1. As MAC-579 of 2015 and MAC-1057 of 2015 are arising out of same impugned award dated 28.02.2015, passed by the Additional Motor Accident Claims Tribunal, District Dhamtari (for short,'Claims Tribunal') in Claim Case-1 of 2014, these two appeals are being disposed of by this common order.

2. MAC-579 of 2015 is filed by claimant seeking enhancement of amount of compensation, whereas, MAC-1057 of 2015 is filed by insurer of offending vehicle challenging fastening of liability to satisfy the amount of compensation

on the ground that offending vehicle was a goods carrying vehicle. Deceased was travelling on goods carriage vehicle along with about more than 65 passengers, as such, she was gratuitous passenger and risk of gratuitous passenger is not covered under the policy.

3. Facts relevant for disposal of these appeals as pleaded in claim application are that on 09.01.1997, Urmilabai was standing near Bus Stand at village-Domar along with her friends for travelling to Raipur. While so, one Metador bearing No.MP 26 B-3153 (hereafter, referred to as ‘offending vehicle’) driven by NA1 rashly and negligently, turned turtle and met with an accident. In the accident, Urmila bai came under offending vehicle, suffered grievous injuries and died on sport. Incident was reported to concerned Police Station, based upon which criminal case was registered against NA1.

4. Claimant, son of deceased Urmilabai filed application under Section 166 of the Motor Vehicles Act, 1988 (for short, ‘Act of 1988’), seeking total compensation of Rs.7,30,000/- on different heads, pleading therein that on the date of accident, deceased was working as labourer and earning Rs.1,200/- per month.

5. NA1, driver of offending vehicle submitted his reply, admitting that at the time of accident, he was driving offending vehicle. He was possessed with valid and effective driving license. It was further pleaded that he was not the driver engaged by owner of offending vehicle, but he was asked by driver Shatruhan Maratha, driver of offending vehicle engaged by NA2 to take care of the vehilce as he has to go to attend the court case. One Constable and one local Politician, forced him to take offending vehicle to Dhamtari, and on the way, Politician asked the people to board on Dala (platform) of offending vehicle.

6. NA2, owner of offending vehicle submitted reply pleading that he is owner of offending vehicle, which was insured with NA3, Insurance Company. NA1 was not driver engaged by him. His driver was Shatruhan Maratha, whom he engaged on salary of Rs.1,500/- per month and Rs.30/- as daily allowance. He also pleaded that Constable and local Politician came and under their pressure, Jitendra took the vehicle, on the way to Dhamtari, on the direction of politician, number of persons boarded on the vehicle. Offending vehicle met with an accident while returning.

7. NA3/Insurance Company submitted reply, denying facts pleaded in claim application. It was further pleaded that on the date of accident, driver of offending vehicle was not possessed with valid and effective driving license. Offending vehicle is insured as 'goods vehicle', on the date of accident it was carrying passengers in which deceased Urmila Bai was also travelling along with others. There was no contract of covering risk of passengers /caring on offending vehicle, there was breach of policy conditions. Hence, NA3 is not liable to satisfy the amount of compensation.

8. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties, held that deceased- Urmilabai died on account of motor accidental injuries suffered by her due to rash and negligent driving of offending vehicle by NA1. Claimant to be legal representative of deceased, awarded total amount of compensation of Rs.3,95,000/-.

9. Shri Santosh Das, learned counsel for appellant/claimant would submit that learned Claims Tribunal erred in awarding meager sum of compensation. Tribunal, though correctly assessed income of deceased, not awarded any amount of compensation towards future prospects. He further submits that

Tribunal also erred in awarding meager sum of compensation on other conventional heads.

10. Shri Pankaj Agrawal, learned counsel for the Insurance Company/NA3 and appellant in MAC-1057 of 2015 would submit that learned Claims Tribunal erred in passing impugned award and fastening liability upon the Insurance Company. Learned Claims Tribunal overlooking the fact that offending vehicle is registered as 'goods vehicle' on the date of accident, deceased along with other persons were travelling as passengers in offending vehicle, has held the Insurance Company liable to satisfy amount of compensation. Tribunal has not considered and decided the grounds raised by Insurance Company before Claims Tribunal that there was breach of policy conditions on account of driver NA1 driver of offending vehicle on the date of accident was not possessed with valid and effective driving license and further, offending vehicle was registered as goods carrying vehicle, but it met with an accident while carrying passengers. Learned counsel in support of his contention, referred to preliminary statement of claimant recorded before Claims Tribunal at the time of registration of claim case and also pleadings of NA1 and NA2, who are driver and owner of offending vehicle. He contended that in FIR and final report placed on record as Annexure P1 and P2 also it is mentioned that at the time of accident, offending vehicle was carrying passengers. Learned Claims Tribunal overlooked aforementioned facts and passed award against Insurance Company, appellant in MAC-1057 of 2015.

11. I have heard learned counsel for the parties and also perused record of claim case.

12. In view of rival contentions raised by learned counsel for the respective parties and further, the grounds raised by appellant/Insurance Company, I find it appropriate to first consider appeal filed by Insurance Company.

13. To appreciate contention of learned counsel for the appellant/ Insurance Company that on the date of accident, offending vehicle was registered as 'goods vehicle' and it was engaged in carrying passengers, I have perused record of claim case minutely. Claimant in support of his claim application, has submitted documents of Criminal case, including copy of FIR as Ex.P1 and final report as Ex.P2. Copy of seizure memo is also placed on record as Ex.P5, showing documents seized by Police during the course of investigation. In Ex.P1 FIR it is mentioned that on Matador bearing No.MP26 D 3193 (offending vehicle), about 60 passengers of village Domar and Khamariya boarded for joining rally at Raipur. While offending vehicle was going to Raipur-via- Dhamtari, due to rash and negligent driving of its driver, it met with an accident.

14. Shri Ghanshyam and Smt Urmilabai, who were travelling on offending vehicle died on the spot. Preliminary statement of applicant- Dular Singh (son of Urmilabai) is available at Page-67 of record of Tribunal. In his statement, he made categorical statement that his mother was travelling on offending vehicle and going to Raipur. In reply to claim application filed by NA1 and NA2, Driver and Owner of offending vehicle also, they admitted that at the time of accident, offending vehicle was carrying passengers, but they stated that that was under pressure and threat by one Constable and local Politician.

15. Learned Claims Tribunal, based on pleadings of respective parties, framed as many as six issues for consideration, but has not framed any issue with regard to whether offending vehicle was being used in breach of policy

conditions and whether on the date of accident, driver of offending vehicle was possessed with valid and effective driving license or not, overlooking reply filed by Insurance Company, wherein in para-8 specific plea has been taken that there was breach of policy conditions on two grounds that goods vehicle was used for carrying passengers and driver of offending vehicle was not possessed with valid and effective driving license.

16. For deciding claim application, procedure is specifically provided under the Act, 1988 and Chhattisgarh Motor Vehicle Rules, 1994. Section 169 of the Act prescribes procedure and powers of Claims Tribunal. It mentions that Claims Tribunal is required to hold enquiry under Section 168 of the Act and to record evidence on oath.

17. Section 168 of the Act, 1988 provides for procedure to be adopted by Claims Tribunal in deciding application for compensation and passing of award. In exercise of powers conferred under the Act of 1988, State Government formulated rules known as Chhattisgarh Motor Vehicle Rules, 1994. Chapter 9 of Rules, 1994 deals with Claims Tribunal. Under Rule 220 procedure for filing of application for compensation arising out of accident is provided. Under Rule 223, Tribunal may examine applicant immediately after receiving an application under Rule 220 of Rules, 1994. After satisfying that there are sufficient grounds for proceeding, Tribunal issues notice under Rule, 225 to opposite party. Under Rule 230, it's duty of Tribunal for framing and determination of issues based on pleadings of respective parties ie claimants and Non-applicants and other material available on record. Framing of issue is an important stage in procedure prescribed for conducting enquiry with application for grant of compensation. Framing of issues made the parties to know about facts which are required to be proved by producing evidence in support of respective parties.

18. In the case at hand, though there was specific pleading of Non-applicants about use of vehicle carrying passengers on the date of accident and further, additional plea was taken by Insurance Company that NA1, driver of offending vehicle was not possessed with valid driving license. In view of specific plea by all three Non-Applicants, including preliminary statement of claimant himself, as also contents of FIR, learned Claims Tribunal was required to frame issue "Whether offending vehicle was used in breach of policy conditions, and whether on the date of accident, NA1 was possessed with valid and effective driving license or not".

19. In view of pleadings of respective parties and other documents available on record, above two issues are important issues to be considered and decided by Tribunal. Claims Tribunal utterly failed in framing aforementioned two issues, contrary to procedure prescribed for holding an enquiry under Sections 168 and 169 of the Act, 1988 and Rules framed thereunder. In appeal filed by Insurance Company, learned counsel for the appellant/Insurance Company has raised a ground that there was violation of terms of policy, as on the date of accident, 60/70 persons were travelling on the offending vehicle, and driver of that vehicle was not possessed with valid and effective driving license, hence, appellant is not liable to pay any compensation. As Tribunal failed to formulate specific issues with regard to use of offending vehicle in breach of policy conditions, this Court is of the opinion that matter requires consideration at the end of Claims Tribunal to frame above discussed two issues and thereafter, to decide the same after giving opportunity of hearing to all the respective parties to claim application.

20. Claimant has also challenged quantum of impugned award raising ground that amount of compensation awarded is low. In the above facts of the case, it will be appropriate to remit back the case to Claims Tribunal to

consider and decide claim application afresh after framing of two additional issues and to pass the award afresh. It goes without saying that the parties will be at liberty to lead further evidence oral and documentary in support of their case.

21. For the foregoing reasons, appeal filed by appellant/Insurance Company in MAC-1057 of 2015 is allowed. Impugned award passed by the Tribunal is set aside. Case is remitted back to claims Tribunal for deciding the claim application afresh after formulating two additional issues, ie use of offending vehicle in breach of policy conditions and with regard to effective driving license of NA1 on the date of accident.

22. In view of above, appeal filed by claimant in MAC-579 of 2015 is also disposed of. Appellant/claimant is at liberty to raise all the grounds of appeal before Claims Tribunal.

23. Record of claim case be sent back.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma