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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 188 of 2015

- National Insurance Company Limited, Branch Office, Rajnandgaon C.G.

-----Appellant/ Non-applicant 3

VERSUS

1. Smt. Anjani Bai widow of Tikam Sahu, aged about 32 years
2. Ku. Indrautin daughter of late Tikam Sahu, aged about 14 years
3. Ku. Govesh daughter of late Tikam Sahu, aged about 09 years
4. Jayprakash so of late Tikam Sahu, aged about 6 years,

   Non-applicant 2 to 4 are minor, through mother Smt. Anjani Bai widow of Tikam Sahu
5. Kamla Bai wife of late Gulal Sahu, aged about 60 years,

   All are resident of village Bhatguna, Police Station and Tahsil Dongargaon, District Rajnandgaon C.G.
6. Bhushan Lal son of Budhram Sahu, aged about 23 years,
7. Budhram son of Indrajeet Sahu, aged about 50 years,

   Non-applicants 6 & 7 are resident of Village Bhatguna, Post Raja Khujji, Police Station and Tahsil-Dongargaon, District Rajnandgaon C.G.
8. Chola Mandalam, M.S. General Insurance Company Limited, through the Branch Manager, Branch Office, Raipur C.G.

----Respondents

WITH

MAC No. 189 of 2015

- National Insurance Company Limited, Branch Office, Rajnandgaon C.G.

---- Appellant/ Non-applicant 3

Versus

1. Smt. Savli Bai widow of late Teejram Sahu, aged about 40 years,
2. Soniya Bai wife of late Siyaram Sahu, aged about 65 years
3. Shyamsunder son of late Teejram Sahu, aged about 17 years (now aged about 18 years)

   Respondent 1 to 3 are resident of Village Bhatguna, Police Station and Tahsil Dongargaon, District Rajnandgaon C.G.
4. Bhushan Lal son of Budhram Sahu, aged about 23 years
5. Budhram son of Indrajeet Sahu, aged about 50 years

   Non-applicant 4 & 5 are resident of Village Bhatguna, Post-Raja Khujji, Police Station and Tahsil-Dongargaon, District Rajnandgaon, C.G.
6. Chola Mandalam, M.S. General Insurance Company Limited, through the Branch Manager, Branch Office Raipur C.G.

---- Respondents

WITH

MAC No. 190 of 2015

- National Insurance Company Limited, Branch Office, Rajnandgaon C.G.

-----Appellant/ Non-applicant 3

VERSUS

1. Smt. Meena Bai wife of late Ubhayram Sahu, aged about 39 years,
2. Ramkishore son of late Ubhayram Sahu, aged about 16 years,
3. Sukhmabai daughter of Premlal, aged about 38 years,
4. Kumari Mamta daughter of late Ubhayram Sahu, aged about 11 years,

   Respondents 2 to 4 are minor, through mother Smt. Meena Bai,

   All are resident of Village Bhatguna, Police Station and Tahsil Dongargaon, District Rajnandgaon C.G.
5. Bhushan Lal son of Budhram Sahu, aged about 23 years,
6. Budhram son of Indrajeet Sahu, aged about 50 years,

   Non-applicants 5 & 6 are resident of Village Bhatguna, Post Raja Khujji, Police Station and Tahsil-Dongargaon, District Rajnandgaon C.G.
7. Chola Mandalam, M.S. General Insurance Company Limited, through the Branch Manager, Branch Office, Raipur C.G.

----Respondents

MAC 188/2015; MAC 189/2015 & MAC 190/2015

For Appellant/ Insurance Company	:	Mr. Goutam Khetrapal, Advocate
For Respondent/Claimants	:	Mr. Abhishek Sharma, Advocate.
For Respondent/Insurance Company	:	Mr. Abhishek Sinha, Advocate

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Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per Parth Prateem Sahu, J.

12/01/2021

1. MAC No. 188/2015 is arising out from claim case no. 176/2012 in which claimants have sought compensation against the death of late Teekam Sahu. MAC No. 189/2015 is arising out from claim case no. 178/2012 in which compensation has been sought against death of late Teejram Sahu. MAC No. 190/2015 is arising out from claim case no. 177/2012 in which, claimants have sought compensation against the death of late Ubhayram

Sahu.

All the three claim applications were decided by learned 2nd Additional Motor Accident Claims Tribunal, Rajnandgaon C.G. and passed three different awards *vide* award dated 16.10.2014 dealing with the applications filed under Section 166 of the Motor Vehicles Act, 1988 (for short "Act of 1988").

2. Facts relevant for disposal of these appeals are that, on 07.09.2012, Teekam Sahu, Teejram Sahu and Ubhayram Sahu along with other labourers were traveling on trolley bearing no. CG07D2421 attached with tractor bearing registration no. CG08P3969 and going for loading *murum*. On the way, tractor trolley turned turtle near village Badbhum due to rash and negligent driving of non-applicant 1. In the said accident, on account of motor accidental injury suffered by labourers traveling on trolley, aforesaid three persons ie. Teekamram, Teejram and Ubhayram died. Legal heirs of all the three have filed separate claim applications claiming Rs. 62,70,000/-, Rs. 16,40,000/- and Rs. 16,90,000/- as compensation, respectively.

3. Non-applicant 1 and 2 who are driver and owner of tractor trolley have denied the pleadings made therein and further pleaded that the tractor was insured with non-applicant 3/ Insurance Company (National Insurance Company) and trolley was insured with non-applicant 4 (Cholamandalam General Insurance Company). Accident was not a result of rash and negligent driving of non-applicant 1.

4. Non-applicant 3/ appellant Insurance Company submitted reply to claim application and denied the entire adverse pleadings made therein. It was further pleaded that amount of compensation claimed is highly exaggerated. Offending tractor was insured by appellant/ insurance company only for agricultural purpose. Non-applicant 1 was not

possessed with valid and effective driving licence on the date of accident. Offending tractor was being used other than agricultural purpose ie. for commercial purpose, as such, there was breach of policy conditions. It was further pleaded that deceased persons were travelling on trolley as labourers, risk of any of the labourer was not covered under the policy issued for tractor. There is only one sitting space of one person in the tractor ie. for driver. Deceased persons were traveling on trolley and non-applicant 3/ company is not related in any manner with the insurance of trolley.

5. Non-applicant 4/ insurance company of trolley submitted its reply, while denying pleadings made in the claim applications, Accident itself was denied. Claimants do not come within the purview of 3rd party. Deceased persons along with other co-labourers were traveling on tractor trolley where there was no sitting space. No person can travel in a trolley where there is no sitting space and there is no statutory liability under Section 147 of the Act of 1988 for covering risk of passengers travelling on trolley. Driver of the tractor trolley was not possessed with valid and effective driving licence, and raised other grounds also.

6. Learned Claims Tribunal, upon appreciation of pleadings and evidence brought on record by the respective parties, held that the aforesaid three persons died on account of motor accidental injuries suffered by them due to rash and negligent driving of offending tractor trolley by non-applicant 1. Breach of policy conditions was not found to be proved and awarded Rs. 3,97,000/-, Rs. 3,45,000/- and Rs. 3,47,000/- respectively in three different claim cases.

7. Mr. Goutam Khetrapal, learned counsel for Appellant/ Insurance Company submits that the appellant is insurer of tractor only, trolley was insured by non-applicant 4. As per the documents of the criminal case prepared by the Police, it is apparent that the deceased persons were travelling on

trolley as labourers. There is no sitting space either on tractor or trolley (except driver). Trolley is used only for the purpose of carrying goods. He submits that under Section 147 of the Act of 1988, appellant/ Insurance Company is not having any statutory liability to insure and cover risk of gratuitous passengers. He submits that the Claims Tribunal has not considered the ground raised by the appellant/ Insurance Company in their reply that the deceased persons were travelling on trolley where there was no sitting space so also in the tractor and have dealt only with the issue with regard to valid and effective driving licence of non-applicant 1 and arrived at an erroneous finding that there was no breach of policy conditions. He submits that admittedly deceased persons were travelling on trolley and not on tractor, hence, no liability can be fastened upon the appellant who is insurer of tractor only and not of trolley attached with it. It is also contended that the Claims Tribunal erred in fastening liability of 50% of the total amount of compensation upon the appellant and rest 50% liability upon non-applicant 4/ insurance company of trolley. He submits that the appellant/ Insurance Company may be exonerated from liability of satisfying the amount of compensation, as it is not only factually wrong but also it is contrary to law. In support of his submission, he places his reliance on ***Oriental Insurance Company Limited v. Brij Mohan and others*** reported in ***(2007) 7 SCC 56*** and ***Shivaraj v. Rajendra and another*** reported in ***(2018) 10 SCC 432***

8. Mr. Abhishek Sharma, learned counsel for Respondent-claimants supports the impugned award.

9. Mr. Abhishek Sinha, learned counsel for Respondent 8/ Cholamandalam General Insurance Company (insurer of trolley), submits that the Claims Tribunal has fastened liability upon non-applicant 4 only to the extent of 50% of the total compensation. He submits that if the liability fastened upon the appellant-Insurance Company is to be set aside on any legal

ground then the liability fastened upon Respondent 8/ Insurance company be also set aside.

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

11. From the pleadings and documents available on record, ie the documents prepared by investigating agency in criminal case it is apparent that on the date of accident deceased persons were travelling on trolley along with other co-labourers. Tractor trolley turned turtle and they suffered injuries and succumbed to those injuries. Issue with regard to travelling of passenger on goods carriage vehicle or traveling of persons in tractor trolley has been considered by Hon'ble Supreme Court in many cases. Travelling of persons in goods carriage vehicle has been initially considered by Hon'ble Supreme Court in case of ***New India Assurance Co. Ltd. v. Asha Rani*** reported in **(2003) 2 SCC 223,** wherein, it has been held that it is not the statutory liability of the insurer to issue policy covering the risk of gratuitous passengers. In case of **Brijmohan (supra)** Hon'ble Supreme Court has considered the issue with regard to persons traveling on tractor trolley and held thus:

> “10. Furthermore, respondent was not the owner of the tractor. He was also not the driver thereof. He was merely a passenger travelling on the trolley attached to the tractor. His claim petition, therefore, could not have been allowed in view of the decision of this Court in *New India Assurance Co. Ltd. v. Asha Rani & Ors.* [(2003) 2 SCC 223] wherein the earlier decision of this Court in *New India Assurance Co. v. Satpal Singh* [(2000) 1 SCC 237] was overruled. In *Asha Rani* (supra) it was, inter alia, held: (SCC p. 235, paras 25-27)
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> "25. Section 147 of the 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmens Compensation Act. It does

not speak of any passenger in a "goods carriage".

26. In view of the changes in the relevant provisions in the 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 the 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.

27. Furthermore, sub-clause (i) of clause (b) of sub- section (1) of Section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle 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."

[See also *National Insurance Co. Ltd. v. Bommithi Subbhayamma and Others* [(2005) 12 SCC 243 and *United India Insurance Co. Ltd., Shimla v. Tilak Singh and Ors.* [(2006) 4 SCC 404].

12. Interpretation of the contracts of insurance in terms of Sections 147 and 149 of the Motor Vehicles Act came up for consideration recently before a Division Bench of this Court in *National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700* wherein it was held: (SCC p. 714, paras 23-24)

'*23[24].* x x x x x x x

24[25]. x x x x x x x

It was further observed: (SCC pp. 718-19, paras 33-35)

33[36]. x x x x x x x

34[37]. Francis Bennion in his book *Statutory Interpretation* described 'purposive interpretation' as under:

'A purposive construction of an enactment is one which gives effect to the legislative purpose by–

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose, or

(b) applying a stained meaning where the literal meaning is not in accordance with the legislative purpose.'

35[38]. More often than not, literal interpretation of a statute or a provision of a statute results in absurdity. Therefore, while interpreting statutory provisions, the courts should keep in mind the objectives or purpose for which statute has been enacted. Justice Frankfurter of US Supreme Court in an article titled as '*Some Reflections on the reading of Statutes' (*47 Columbia Law Review 527), observed that,

' legislation has an aim, it seeks to obviate some mischief, to supply an adequacy, to effect a change of policy, to formulate a plan of Government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statutes, as read in the light of other external manifestations of purpose.' ”

Recently, the Supreme Court has again considered the issue with regard to persons traveling on the tractor in case of **Shivaraj (supra)** and held thus:

“10. The High Court, however, found in favour of Respondent 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 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.”

12. In the aforementioned rulings, Supreme Court, in very categoric terms, has held that no person can travel on goods vehicles where no sitting space is provided. In the case at hand, it is undisputed fact that the

deceased persons and other co-labourers were traveling on trolley which is breach of policy condition. Additional ground in these cases that the appellant/ Insurance Company is only the insurer of tractor whereas the deceased persons were traveling on trolley which was insured by Respondent 8/ Cholamandalam General Insurance Company. In view of the aforementioned facts and circumstance of the case and the aforementioned ruling of Supreme Court, Claims Tribunal erred in fastening liability upon the appellant/ Insurance Company for satisfying the amount of compensation. Liability fastened upon the appellant/ Insurance Company for satisfying the amount of compensation to the extent of 50% is hereby set aside. Claimants/respondents in all the three appeals shall be entitled to recover the said portion of amount of compensation which was fastened upon appellant-Insurance Company from the owner and driver of tractor. Appellant/Insurance Company will be entitled to recover the amount deposited by it, in pursuance of impugned award passed by the Claims Tribunal, from non-applicant 1 and 2 owner and driver by filing appropriate proceedings in accordance with law. As non-applicant 4/ Insurance Company of trolley has not challenged the impugned award fastening liability of 50% upon it, the said portion of the award cannot be interfered in the appeal filed by non-applicant 3-Insurance Company challenging its portion of the liability only.

13. In view of the above discussions, appeals filed by appellant/ Insurance Company are allowed in part and the impugned award is hereby modified to the extent as indicated herein-above.

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

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