

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT
BILASPUR

MISC. APPEAL NO. 619 / 2002

Appellant

(Non-Applicant No.3)

National Insurance Company Ltd.,

Malanjkhanda, Tehsil Baihar, Dist : Bhalaghat,

Through the Branch Manager,

P. R. No.

Presented by Shri. Arun Kumar Singh,

dated

Versus

Respondents

R 1.S. Itwari S/o Durjan Gond, aged about 35 years,
R/o Salhewara, Tehsil : Chuikhadan, Dist :
Rajnandgaon – (C.G.)

R 2.S. Mahesh Kumar S/o Durjan Gond, aged about
19 years, R/o Salhewara, Tehsil : Chuikhadan,
Dist : Rajnandgaon – (C.G.)

R 3.S. Ramesh Kumar S/o Durjan Gond, aged about
16 years, R/o Salhewara, Tehsil : Chuikhadan,
Dist : Rajnandgan – (C.G.)

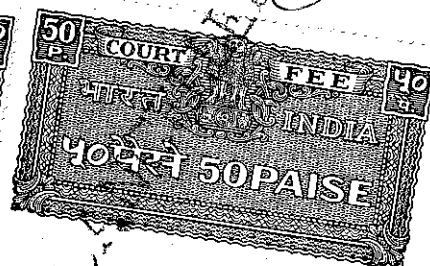
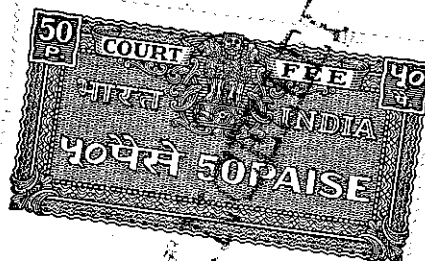
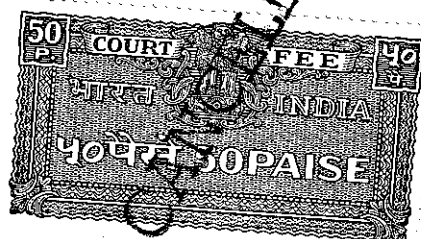
(Respondents 1 to 3 are the claimants.)

4. S. Sukhdeo alias Sanju, S/o Dwarika Prasad, aged
about 25 years, Occupation Driver, R/o Gram
Wadi (Salhewara) Tehsil : Chuikhadan, Dist :
Rajnandgaon – (C.G.)

-----Non-Applicant No.1-----

5. S. Sandeep Agarwal S/o Govindlal Agarwal, aged
about 27 years, Occupation Vehicle Driver, R/o
Salhewara, Tehsil: Chuikhadan, Dist :
Rajnandgaon – (C.G.)

---Non Applicant No.2 ---



MISCELLANEOUS APPEAL U/S 173 OF THE MOTOR
VEHICLE ACT.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Shri Justice Sanjay K. Agrawal

MISCELLANEOUS APPEAL No. 909 of 2002

APPELLANT : National Insurance Company
(Non-applicant No. 3) Limited.

VERSUS

RESPONDENTS : Sheikh Gaffar Khan & others.

MISCELLANEOUS APPEAL No. 84 of 2003

APPELLANT. : National Insurance Company
(Non-applicant No. 3) Limited.

VERSUS

RESPONDENTS : Muneem Khan & others.

MISCELLANEOUS APPEAL No.85 of 2003

APPELLANT : National Insurance Company
(Non-applicant No. 3) Limited.

VERSUS

RESPONDENTS : Amarlal & others.

MISCELLANEOUS APPEAL No. 614 of 2002

APPELLANT : National Insurance Company
(Non-applicant No. 3) Limited.

VERSUS

RESPONDENTS : Itwari & others.

MISCELLANEOUS APPEAL No. 615 of 2002

APPELLANT : National Insurance Company
(Non-applicant No. 3) Limited.

VERSUS

RESPONDENTS : Samay Lal & others.

MISCELLANEOUS APPEAL No. 616 of 2002

APPELLANT : National Insurance Company
(Non-applicant No. 3) Limited.

VERSUS

RESPONDENTS : Nankun Bai & others.

And

MISCELLANEOUS APPEAL No. 898 of 2002

APPELLANT : National Insurance Company
(Non-applicant No. 3) Limited.

VERSUS

RESPONDENTS : Dhanush Kumar & others.

**(MISCELLANEOUS APPEAL UNDER SECTION 173 OF THE
MOTOR VEHICLES ACT, 1988)**

Appearance of the counsel:

Shri Goutam Khetrapal, counsel for the appellant- National Insurance Company Limited in all the appeals.

Shri Sunil Sahu, counsel for the owner in all the appeals.

Shri Vipin Tiwari, counsel for the claimants in all the appeals.

None for the driver in all the appeals.

ORDER

(Passed on 30.09.2013)

(1) By this common order, Miscellaneous Appeal Nos. 909/2002, 84/2003, 85/2003, 614/2002, 615/2002, 616/2002 & 898/2002 are being disposed of as the common facts & issues are involved in all the appeals and are arise out of same accident, leading case of which is Misc. Appeal No. 909/2002.

(2) These are the insurer's appeals preferred against the awards dated 16.08.2002, 26.10.2002, 28.10.2002, 30.4.2002, 30.04.2002, 30.04.2002 & 5.9.2002 passed by the Addl. Motor Accident Claims Tribunal, Khairagarh, Distt. Rajnandgaon (for short 'the Tribunal') in

claim cases No. 18/1998, 30/1998, 24/1998, 16/98, 23/98, 15/98 & 29/1998, respectively

(3) Necessary facts (as stated in lead case – Misc. Appeal No. 909/2002) required for adjudication of these appeals are as under:-

(3.1) Claimant- Shekh Gaffar Khan filed an application under Section 166 of the Motor Vehicles Act (for short 'the Act') claiming compensation to the tune of Rs. 6,59,000/- jointly and severally from the respondents, stating inter alia that on 18.12.1997 he along with other claimants while sitting in the Metador (offending vehicle) bearing registration No. MP 24-D/1375 with their goods after paying rent for the goods, driven by respondent No. 2- Sukhdeo alias Sanju in a rash & negligent manner, owned by respondent No. 3- Sandeep Agrawal and insured by appellant/Insurance Company, coming to village Bakarkatta after completing weekly market, the said vehicle met with an accident resulting injuries to him and offences under Sections 279, 337, 304 – A of the Indian Penal Code were registered against the respondent No. 1/driver.

(3.2) Respondent No. 2/driver of the offending vehicle remained ex parte before the Claims Tribunal whereas owner – Sandeep Agrawal filed his reply before the Claims Tribunal and opposed the claim petition.

(3.3) Appellant/Insurance Company in its written statement raised a plea that the claimant was travelling in the offending vehicle as a gratuitous passenger which is in violation of 149 (2) of the

Motor Vehicles Act, 1988 and, therefore, the appellant/Insurance Company is not liable for payment of compensation.

(3.4) Learned Claims Tribunal, after appreciating oral and documentary evidence available on record, came to the conclusion the accident had occurred due to rash and negligent driving of driver of offending vehicle on the date of accident i.e. 18.12.1997; the claimants suffered multiple injuries in the said accident; and assessed and awarded a sum of Rs. 34,135/- along with interest @ 9% per annum from the date of filing of claim petition till its actual payment (In claim Case No.18/1997). Learned Claims Tribunal also recorded a finding that there is no evidence available on record to hold that the offending vehicle was being driven in violation of policy conditions.

(4) Shri Goutam Khetrapal, learned counsel appearing for the appellant/Insurance Company would submit that claimants in all the claim cases were travelling in the offending vehicle on the date of accident as a gratuitous passenger, which was strictly prohibited in the goods carrying vehicle and, therefore, the finding of the learned Claims Tribunal fastening the liability of payment of compensation upon Insurance Company is absolutely unjustified and deserves to be set aside.

(5) Per contra, Shri Sunil Sahu, learned counsel appearing for the respondent/owner while supporting the award impugned vehemently opposed the submission made by Shri Khetrapal and submits that

Claimant Sheikh Gaffar Khan and other claimants were sitting in the offending vehicle as a owner of the goods and there is no evidence available on record to hold that they were traveling in the offending vehicle as a gratuitous passenger and consequently the learned Claims Tribunal is absolutely justified in fastening the liability of payment of compensation upon the appellant/Insurance Company. He further submits that though the plea was raised by the appellant/Insurance Company that the claimants were traveling in the offending vehicle as a gratuitous passenger but appellant/Insurance Company failed to substantiate the same by leading cogent and clinching evidence in this regard.

(6) Mr. Vipin Tiwari, learned counsel appearing for the claimants while supporting the impugned award fastening the liability of payment of compensation upon the Insurance Company submits that claimants in all the claim cases travelling in the offending vehicle as a owner of the goods and as per Section 147 (1)(b) of the Motor Vehicles Act, the learned Claims Tribunal is fully justified in fastening the liability of the payment of compensation upon the appellant/Insurance Company.

(7) I have heard learned counsel appearing for the parties and perused the material available on record including award impugned.

(8) The claimants have filed claim petitions, in which, they have clearly stated that being the owner of the goods on the date of accident they have hired the vehicle of respondent No.2 i.e. original owner of the vehicle and while coming back after weekly market, they have suffered accident by the offending vehicle which was owned by

respondent No. 3 and driven by respondent No. 2 and insured by appellant/Insurance Company.

(9) On being noticed, the owner and the Insurance Company have filed their separate written statement and the Insurance Company has taken a plea in the written statement that claimants were sitting the offending vehicle as a gratuitous passenger, which is not permissible under Section 149(2) of the Motor Vehicles Act.

(10) Claimant - Sheikh Gaffar Khan (AW-1) in his evidence has clearly stated that he along with other claimants has hired the matador from respondent No. 3 - Sandeep Agrawal and given rent of the goods and, thus they were travelling in the offending vehicle on the date of accident as owner of the goods. Though, Sheikh Gaffar Khan (AW-1) has been subjected to lengthy cross examination by the Insurance Company but nothing has been brought on record to show that they were traveling in the offending vehicle as a gratuitous passenger.

(11) Respondent No. 3/owner of the vehicle -Sandeep Agrawal has also examined as (NAW-1), in paragraph 4, he has clearly admitted that claimant Sheikh Gaffar Khan (AW-1) along with his goods after paying rent sitting in the offending vehicle for security of his goods and in the cross-examination also nothing has been brought by the appellant/Insurance Company to show that he was travelling on the vehicle as a gratuitous passenger, which was prohibited in the goods vehicle, not only this, appellant/Insurance Company after taking plea in the written statement did not adduce any evidence to prove the fact that the claimants were travelling in the goods vehicle as a gratuitous

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passenger, in the absence whereof, it cannot be said that appellant/insurance company has proved violation of policy conditions.

(12) The Supreme Court in case of National Insurance Company Limited Vs. Baljit Kaur and other, reported in (2004) 2 SCC 1 has

held as under:-

"20. It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people.

(13) The Supreme Court in case of Narcinva V. Kamat and another vs. Alfredo Antonio doe Martins and others, reported in

(1985) 2 SCC 574 has held as under:-

"14. The last question is whether he had a valid driving licence. The High Court has not recorded a clear cut finding on this point. The finding of the Tribunal is more evasive than the one by the High Court. Mr. Sharma did not dispute that the second appellant had a driving licence. His grievance is that he having failed to produce the same when called upon to do so in the cross-examination, an adverse inference be drawn against him that he did not have a valid licence to drive a pick-up van. The submission fails to carry conviction with us. The burden to prove that there was breach of the contract of insurance was squarely placed on the shoulders of the insurance company. It could not be said to have been discharged by it by a mere question in cross-examination. The second appellant was under no obligation to furnish evidence so as to enable the insurance company to wriggle out its liability under the contract of insurance. Further the R.T.A. which issues the driving licence keeps a record of the licences issued and renewed by it. The insurance Company could have got the evidence produced to substantiate its allegation. Applying the test who would fail if no evidence is led, the obvious answer is to insurance Company.

(15) To sum up the insurance company failed to prove that there was a breach of the term of the contract of insurance as evidenced by the policy of insurance on the ground that the driver who was driving the vehicle at the relevant time did not have a valid driving licence. Once the insurance company failed to prove that aspect, its liability under the contract of insurance remains intact and unhampered and it was found to satisfy the award under the comprehensive policy of insurance."

(14) The Supreme Court in case of G. Ravindranath @ R. Chowdary vs. E. Srinivas, reported in 2013 (9) Scale page 503 has held as under:-

"28. Since the offending vehicle was insured with respondent No. 2 and no evidence was produced by it to prove that the driver was not having any valid licence or that there was any breach of the insurance policy, respondent No. 2 is held liable to pay the enhanced compensation and interest to the appellant. The needful must be done within a period of eight weeks by getting a demand draft prepared in his name from a nationalized bank.

(15) The appellant/Insurance Company having taken a plea in written statement, it was incumbent upon it to prove that the vehicle was plying in violation of policy conditions, the evidence was required to be produced by the appellant/Insurance Company to prove the said fact what has been taken in the written statement, but in the instant case, the appellant/Insurance Company miserably failed to adduce any evidence to prove the above fact and thus the finding recorded by the Claims Tribunal that Insurance Company has failed to prove the said fact by leading evidence is based on evidence available on record and all the appeals liable to be dismissed.

(16) No other point was pressed before me.

(17) For the reasons mentioned hereinabove, the appeals being devoid of merit are liable to be and are hereby dismissed. No order as to costs.

(18) Copy of this order be placed on record of Miscellaneous Appeal Nos. 909/2002, 84/2003, 85/2003, 614/2002, 615/2002, 616/2002 & 898/2002.

Sd/-
Sanjay K. Agrawal
Judge

Dubey