



IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

M.A. NO. 741 of 2003

Division Bench

APPELLANT
NON-APPLICANT No.4

The New India Assurance Co. Limited
Branch Sastigarhi Chowk, Raigarh
Tahsil and District Raigarh (C.G.)

VERSUS

RESPONDENTS
APPLICANTS

1. Heeralal s/o Santram Patel,
aged 50 years,
2. Minor Bhoori Bai D/o Heeralal
aged 17 years,
3. Minor Basant Kumar s/o Heeralal
aged 15 years,
4. Deepak Kumar s/o Heeralal,
aged 12 years.
5. Ganga Bai D/o Heeralal, aged
5 years.

Respondent No. 2 to 5 minor
through- Guardian father
Heeralal s/o Santram Patel
all resident of Dahejari ,
P.S. Kharsiya Distt. Raigarh
(C.G.)

Above persons are parties in
claim case No. 59/2002 appeal
valued at Rs. 1,51,000/- only.

NON-APPLICANT NO.1

6. Seetaram Agrawal s/o not
known, aged about 40 years
Transport owner, resident of
Kewada Bai Road, Raigarh
Tahsil and Distt. Raigarh

NON-APPLICANT NO.2

7. Ashok Kumar s/o Brijlal
Agrawal, aged about 38 years
Transport owner and Business
Resident of Station Raod
Kharsiya Distt. Raigarh.

// 2 //

8

NON-APPLICANT NO.3

: 8.

Firtooram Patel s/o Chamar
Singh, aged 36 years (about)
Driver Resident of Dahejari
Tahsil Kharsiya District
Raigarh (C.G.)
(TRUCK DRIVER)

RESPONDENT
APPLICANT

: ← 9.

Ghureau Singh s/o Jagaturam
Dhanuwar, aged about 30 years
resident of Dahejari Tahsil
Kharsiya Distt. Raigarh (C.G.)

CLAIMANT

Above persons is party in
claim case No. 60/2002 appeal
valued at Rs. 55,000/- only.

APPEAL UNDER SECTION 173 OF MOTOR VEHICLE ACT 1988 .

CONSOLIDATED APPEALS TOTAL VALUED AT RS. 2,06,000/- .

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. No. 741/ 2003

APPELLANT : The New India Assurance Co. Ltd.

VERSUS

RESPONDENTS : Heeralal and others

SB: Hon'ble Shri Goutam Bhaduri, J.

Present: Shri Shree Kumar Agrawal, Sr. Advocate with Shri
Anand Gupta, Advocate for the appellant.
None for respondents.

ORDER

(Passed on 31st July, 2014)

1. This is an appeal by the insurance company, against the award dated 25.01.2003, passed in Claim Case No.59/2002 by Fourth Additional Motor Accidents Claims Tribunal (Fast Track Court), Raigarh (C.G.), whereby an award of Rs.1,51,000/- was passed as against the claim of Rs.6,92,000/-.
2. Brief facts of the case are that a claim petition was filed by the husband and the children of the deceased Rambai on the pleadings that on 30.06.1999 a truck bearing No. M.P.-26D-3954 met with an accident whereby Rambai who was travelling in the said truck died while Mangli Bai sustained severe injuries. This fact is not in dispute that that the truck

bearing No. M.P.-26D-3954 was covered under the insurance issued by the New India Assurance Company Limited on the date of accident.

3. During the course of trial, the owner of the truck Seetaram Agrawal remained ex-parte while the driver of the offending vehicle did not file his written statement. The reply was filed by the insurance company while one of the person Ashok Kumar Agrawal who has also arrayed as non-applicants has filed his written statement and denied the claim of the claimants.
4. Learned Tribunal as against the claim made for Rs.6,92,000/- by the claimants, i.e. legal heirs of the deceased Rambai, has passed an award of Rs.1,51,000/-. By such award, the learned Tribunal has held the insurance company liable alongwith other non-applicants and directed to pay the amount of award and the liability has been fastened over the insurance company jointly.
5. Learned Counsel for the appellant insurance company would submit that Rambai the deceased was travelling as a gratuitous passenger and therefore, the liability which has fastened over the insurance company is completely illegal. He would further submit that the deceased was travelling in the goods carriage vehicle as a gratuitous

76

passenger and therefore, there was a clear breach of policy and the policy did not cover such passenger, who were travelling in the goods vehicle, therefore, it was submitted that, the insurance company can not be held liable for the same.

6. I have heard the learned Counsel for the appellant at length and perused the record.
7. In order to ascertain the liability of the insurance company, the documents and the evidence of insurance company was perused. The insurance company on their behalf has examined their officer Shri A. Toppo as non-applicant witness No.1. According to the said witness the vehicle was insured by New India Assurance Company for the period of 11.02.1999 to 10.02.2000 and it was for the goods vehicle. The copy of the policy was proved as Ex.N.A./1. This witness has also stated that the policy was for goods vehicle wherein the passenger could not have been carried.
8. Perusal of the policy, which is marked as Ex.NA-1 shows that policy was for goods carriage vehicle. This evidence can not be sidelined. The accident in this case had taken place on 30.06.1999. Therefore, as per the definition of the goods carriage U/s. 2(14) it means motor vehicle

constructed or adapted for use solely for the carriage of goods. Section 2(35) of the Motor Vehicle described public service vehicles which means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward. Therefore, taking to definition of goods carriage, it leads to expression that in the vehicle wherein the accident occurred, the passenger could not have been carried. Therefore, after examination of the evidence which is available on the record I am of the opinion that the accident happed in a vehicle which was meant for goods carriage and passengers were not entitled for travelling in it. Accordingly it is held that the fastening of liability over the insurance company by the Tribunal was wrong as there was a clear breach of policy.

9. Further more taking into fact that with respect to satisfy the liability of the award by the insurance company, considering the beneficial object of the motor vehicle act as the claimants can not be compelled to struggle for recovery of the amount, in view of the fact that the accident had occurred in the year 1999 and almost 15 years have passed and further as per principle laid down in case of **National Insurance Company Ltd. Vs. Challa Bharathamma & Ors. reported in 2004 AIR SCW 523**, it is directed that the insurance company shall first satisfy the

78

liability and thereafter shall be entitled to recover the same from the owner and driver of the vehicle namely Sitaram Agrawal and Firturam Patel. Further it is directed that the insurance company need not to file a separate proceeding and the same shall be recovered in the execution proceeding itself. The appeal is therefore partly allowed.

10. No order as to costs.

Sd/-
Goutam Bhaduri
Judge

balram