

**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 1099 of 2013**

- Ajay Patle S/o A. Patle Aged About 30 Years R/o Beltukri, Thana And Tahsil Baloda, District Janjgir-Champa, Chhattisgarh (Owner), District : Janjgir-Champa, Chhattisgarh

**---- Appellant****Versus**

1. Kamal Rathore (since dead)
  - 1a. Siyaram Rathore, S/o Dhanauram Aged About 62 Years
  - 1b. Gauribai Rathore W/o Siyaram Rathore Aged About 55 Years
  - 1c. Kamlesh Kumar Rathore S/o Siyaram Rathore Aged About 38 Years
  - 1d. Hemlata, D/o Siyaram Rathore Aged About 30 Years
 All R/o Village Khisora, Thana Baloda, District Janjgir-Champa, Chhattisgarh
2. I.C.I.C.I. Lombard General Insurance Company Limited Through Branch Manager, Bilaspur, Chhattisgarh
3. Mahendra Kumar Patle S/o Tikaitram Patle Aged About 32 Years R/o Beltukri, Thana And Tahsil Baloda, District Janjgir-Champa, Chhattisgarh (Driver)

**---- Respondents**

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For Appellant	: Shri Parag Kotecha with Shri Shalvik Tiwari, Advocates
For Respondents 1a to 1d	: Shri TR Chandrakar, Advocate
For Respondent- 2/Insurance Company	: Shri Amrito Das, Advocate
For Respondent- 3/Driver	: None appears

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**Hon'ble Shri Justice Parth Prateem Sahu****31.01.2019**

1) By this appeal, appellant/owner is challenging the legality and validity of the award dated 03.09.2013 passed by the Motor Accident Claims Tribunal, Janjgir-Champa (for short, 'Claims Tribunal') in claim case No.15 of 2010, whereby learned claims Tribunal partly allowed the claim and awarded a sum of Rs.4,23,080/- as compensation to the claimant and exonerated the Insurance Company from its liability holding that there is violation of conditions of Insurance Policy.

2) Brief facts for disposal of this appeal are that on 07.11.2009 original claimant Kamal Rathore along with his friends Narayan Sahu and Yograj Pandey were going to Amarkantak from Khisora in Bolero Jeep bearing No.CG11BB-1472 (for short, 'offending vehicle'). On the way at about 2.30 am on 08.11.2009, at Kewchi, respondent-3 driver of offending vehicle rashly negligently drove the vehicle and met with an accident. The vehicle fell down in valley due to which Kamal Rathore sustained grievous injuries on his waist. He sustained fracture injury over his spinal cord and during the course of treatment, it was found that there was fracture of D-12 vertebrae. He was immediately taken to the nearest Primary Health Centre and from there he was taken to Bilaspur Hospital and took treatment as inpatient from 10.11.2009 to 24.11.2009. Even after making efforts for the best treatment, the original claimant was not recovered fully and sustained *paraplegia* below waist and he was unable to walk as his legs were not working. The claimant, thereafter appeared before medical Board and the District Medical Board issued permanent disability certificate showing disability of Kamal Rathore to the extent of 50% on account of injuries and disability sustained by him. He filed a claim application before competent Claims Tribunal claiming Rs.18,50,000/- in total on all heads including medical expenditure mentioning therein that the accident took place due to rash and negligent driving of respondent- 3.

3) Appellant/non-applicant-2, owner and respondent-3 driver submitted reply to the claim application and pleaded that driver of offending vehicle was not driving the offending vehicle rashly and negligently. It was further pleaded that the claimant was healthy and was doing all his routine work

by himself and illness of claimant is fabricated. The offending vehicle was not given on hire but claimant was using it due to their relationship. The driver of the vehicle was having valid and effective driving license on the date of accident and it was insured with non-applicant Insurance Company.

4) Insurance Company submitted its reply in which it is specifically pleaded that the offending vehicle was insured as a private vehicle and 'Private Car Package' policy was issued to it, but on the date of accident, offending vehicle was being used as taxi. It has also been pleaded that on the date of accident driver of the offending vehicle was not possessing a valid and effective driving license, therefore, there was violation of conditions of Insurance Policy and pleaded for its exoneration from liability of payment of compensation.

5) Learned Claims Tribunal on appreciation of pleadings and evidence available on record, arrived at a conclusion that though driver of offending vehicle was having valid and effective driving license on the date of accident, but the vehicle which is registered as a private vehicle and the policy which was purchased by the owner of the vehicle is a 'Private Car Package' policy but on the date of accident it was being used as taxi and held that there is violation of conditions of Insurance Policy and exonerated the Insurance Company from its liability to satisfy the amount of compensation. Learned Tribunal looking to the medical documents available on record, evidence of doctor, who issued the disability certificate (Ex.P/23), held that original claimant Kamal Rathore sustained 50%

permanent disability and awarded a total sum of Rs.4,23,080/- as compensation.

6) Learned counsel for the appellant vehemently argued that learned Claims Tribunal committed error in exonerating the Insurance Company from its liability holding that on the date of accident offending vehicle is being used as taxi. He submitted that in fact, Kamal Rathore/claimant and owner of the offending vehicle being residents of the same village, they are known to each other and the vehicle was given to the claimant without any rent or hire. It was further argued that the claimant should be treated as third party and once there is a policy purchased by making payment of premium, then, liability to cover the risk of third party would be on the Insurance Company. He further argued that learned Claims Tribunal committed error in assessing the disability of claimant to the extent of 50% and further in awarding compensation on higher side.

7) Per contra, learned counsel appearing for the Insurance Company submitted that there is a categorical statement of claimant himself before learned Claims Tribunal that the claimant and his friends hired the offending vehicle from the appellant. They also paid Rs.2,500/- as fare which clearly shows that on the date of accident the offending vehicle was being used as taxi, whereas the vehicle was registered as private vehicle and the owner of offending vehicle has taken 'Private Car Package' policy in which risk of four paid passengers is not included. He further submits that the owner of offending vehicle has taken calculated risk in using the vehicle in contravention of the conditions of the Insurance Policy. He further submits that learned Claims Tribunal rightly held that there is

violation of conditions of Insurance Policy and also rightly exonerated the Insurance Company.

8) Learned counsel appearing for respondents 1a to 1d submitted that during pendency of the appeal, original claimant died and therefore, his legal heirs were substituted as respondents "1a to 1d". He further submitted that learned Claims Tribunal correctly passed impugned award of compensation which needs no interference.

9) I have heard learned counsel for the parties and perused the record. From perusal of categorical statement made by claimant- Kamal Rathore in para-6 of his evidence before learned Claims Tribunal, it appears that claimant had settled fare of the vehicle at Rs.2,500/- and it was paid to appellant/owner in two instalments. It is further been stated by the claimant that he hired the offending vehicle, owned by the appellant, as taxi. During the course of his cross-examination by the counsel appearing for the appellant/owner of offending vehicle, he had specifically denied the suggestion that the vehicle has been given to him without any fare. From the aforementioned categorical evidence available on record that the vehicle on the date of accident was being hired by the claimant and they were travelling in the said vehicle as passengers. After remand of the case by High Court vide order dated 20.10.2011, further evidence of the driver of vehicle NA2-1, namely, Mahendra Patle was recorded in which he admitted that his vehicle met with an accident and in the said accident Kamal Rathor (claimant) sustained injuries. One other person Yograj only submitted affidavit under Order 18 Rule 4 of CPC but he was not cross examined.

10) The appellant examined himself before learned Claims Tribunal as NAW-1, who proved the driving license of driver as Ex.NA-1 and the Insurance Policy as Ex.NA-2. He did not dispute that his vehicle was insured as private vehicle. From bare perusal of Ex.NA-2, it is clear that the policy bears an endorsement as a 'Private Car Package' policy.

11) Hon'ble Supreme Court in its recent judgment in the case of **Manuara Khatun and others Vs Rajesh Kumar Singh and others** reported in 2017 (4) SCC 796 while dealing with the identical situation wherein the persons were travelling in hired Tata Sumo, upheld the finding of High Court that these persons are the gratuitous passengers and exonerated the Insurance Company from its liability.

12) Looking to the specific evidence available on record, referring to the facts of the case therein and that too of a claim of injured himself who hired the vehicle, the learned Claims Tribunal have rightly held that on the date of accident the offending vehicle was being used in contravention of the conditions of the Insurance Policy.

13) So far as the argument of the appellant with respect to the assessment of permanent disability of claimant to the extent of 50% is concerned, after remand of case Dr HS Chandel was again examined before Court and he has categorically stated that both legs of the claimant became nonfunctional due to paraplegia. He also stated that it cannot be cured and the claimant was not supposed to move himself and one person/attendant will be required for his movement. In view of specific uncontroverted evidence of Dr HS Chandel (AW3), in the opinion of this

Court the disability assessed and amount awarded by the Tribunal cannot be said to be on higher side.

14) In view of the aforementioned discussion, I do not find any error committed by the learned Claims Tribunal in fastening the liability for payment of compensation on the appellant and further any ground calling for interference in the impugned award.

15) The appeal being devoid of any substance, it is liable to be and is hereby dismissed.

16) No order as to costs.

Sd/-  
(Parth Prateem Sahu)  
JUDGE