

(2019) 01 CHH CK 0109

In the Chhattisgarh High Court

Case No : Miscellaneous Appeal (c) No. 214 Of 2013

Krishna Kumar Sahu And Ors

APPELLANT

Vs

Nirmala Bai And Ors

RESPONDENT

Date of Decision : 24-01-2019

Acts Referred:

Indian Penal Code, 1860 — Section 304A
Motor Vehicles Act, 1988 — Section 66, 149, 163A

Citation : (2019) 01 CHH CK 0109

Hon'ble Judges : Parth Prateem Sahu, J

Bench : Single Bench

Advocate : Uttam Pandey, Dashrath Gupta

Final Decision : Dismissed

Judgement

1. By this instant appeal, the appellants, who are driver and owner of Minibus bearing registration No. CG04/E/0856 (hereinafter refereed to as 'offending vehicle') have challenged the legality, validity and propriety of the impugned award dated 20/11/2012 passed by the learned 7th Additional Motor Accident Claims Tribunal, Raipur, Chhattisgarh (hereinafter referred to as 'the Claims Tribunal') in Claim Case No.116/2011, wherein the learned Claims Tribunal has partly allowed the claim application and awarded a total sum of Rs.4,31,711/- as compensation in a death case while exonerating Insurance Company from its liability directed the Insurance Company first to pay the amount of award and then to recover the amount of compensation from the driver and owner of the offending vehicle.

2. Backgrounds facts in a nutshell are that on 10/01/2011, one Vishwanath Sahu was travelling on the offending vehicle and going to village Asouda from Raipur. When the offending vehicle stopped near Asouda turn at Kharora Road, Vishwanath Sahu was stepping down from the offending vehicle, the driver of the offending vehicle rashly and negligently moved the offending vehicle with a high accelerator, due to which, Vishwanath became unbalanced and came under the

wheel of the offending vehicle. He sustained severe injury over his person and was immediately taken to the Khanak Hospital at Kharora. Thereafter, he was referred to Balaji Hospital, Raipur where he took treatment as in-door patient from 11/01/2011 to 19/01/2011 and during the course of treatment, he succumbed to the injuries on 20/01/2011. The accident was reported to the concerned police station and crime bearing No.12/2011 was registered against the driver of the offending vehicle under Section 304-A of the Indian Penal Code.

3. Respondents No. 1 to 3/claimants, who are legal representatives of deceased filed an application under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') claiming Rs.9,20,000/- as compensation on account of death of Vishwanath Sahu before the competent Claims Tribunal.

4. The appellants, who are non-applicants No. 1 and 2 before the learned Claims Tribunal have submitted their reply to the claim application and denied all the adverse pleadings made against them as also the manner of accident as pleaded in the claim application. They have further pleaded that on the date of accident, the offending vehicle was insured with the Insurance Company, therefore, the liability, if any, would be on the Insurance Company for payment of compensation.

5. Respondent No.4/Insurance Company submitted its reply separately and denied the contents of the claim application. It has been pleaded that the deceased himself was contributory negligent in the accident. It was further pleaded that on the date of accident, there was no valid and effective driving license to drive the vehicle. It has been lastly pleaded that there was violation of conditions of insurance policy as there was no valid fitness certificate and permit of the offending vehicle, therefore, no liability can be imposed upon it.

6. After appreciating the pleadings and evidence available on record, learned Claims Tribunal arrived at a finding that the accident took place due to rash and negligent act of driver of the offending vehicle and there was violation of conditions of insurance policy as on the date of accident, there was no valid permit to ply the vehicle on public road/route and thereafter awarded a total sum of Rs.4,31,711/- as compensation in a death case. The Claims Tribunal exonerating the Insurance Company from the liability to satisfy the award but has directed to deposit the amount of award and thereafter to recover the same from non-applicants No. 1 & 2/appellants.

7. Learned counsel appearing for the appellants submitted that prior to the date of accident, there was a temporary permit issued by competent authority to ply the offending vehicle for the period from 05/11/2010 to 30/11/2010, owner of the vehicle also deposited an amount of Rs.4,600/- towards fee and also made an application for fresh temporary permit, to which, learned Claims Tribunal has not taken into consideration and came to the conclusion that offending vehicle was being driven without permit. He further submitted that as appellant-owner has moved an application by paying an amount of fee for fresh temporary permit

prior to the date of accident, but due to fault of employees of the Regional Transport Office, the same had not been issued and therefore, it is a fault on the side of Government Department and not on the part of the appellant-owner.

8. Per contra, learned counsel appearing for respondent No.4/Insurance Company supported the award impugned. He submitted that the learned Claims Tribunal has considered all the evidence and material available on record and arrived at a correct finding that there was no permit on the date of accident to ply the offending vehicle on the route where accident took place. He further submitted that the amount as said to be deposited by the appellant-owner is with respect to the road tax and not with respect to the fee for permit.

9. I have heard learned counsel appearing for the parties and perused the records carefully.

10. Section 66 of the M.V. Act, deals with the necessity for permits. Relevant portion of Section 66 of the M.V. Act is reproduced herein-below:-

"66. Necessity for permits.-(1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorizing him the use of the vehicle in that place in the manner in which the vehicle is being used:

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorize the use of the vehicle as a contract carriage:

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorize the use of the vehicle as a goods carriage either when carrying passengers or not:

Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorize the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

x x x x"

11. Section 149 of the M.V. Act provides for duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. Section 149 of the M.V. Act is reproduced herein-below:-

"149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.-(1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (i) of section 147 (being a liability covered by the terms of the policy) [or under the provisions of section 163A] is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have

avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or (b) that the policy is void on the ground that it was obtained by the non- disclosure of a material fact or by a representation of fact which was false in some material particular.

(3) Where any such judgment as is referred to in sub-section (1) is obtained from a Court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of section 13 of the Code of Civil Procedure, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938) and whether or not he is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgment were given by a Court in India: Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before the commencement of the proceedings in

which the judgment is given, the insurer had notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).

(4) Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 147, be of no effect: Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(6) In this section the expression "material fact" and "material particular" means, respectively a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(7) No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be.

Explanation.-For the purposes of this section, "Claims Tribunal" means a Claims Tribunal constituted under section 165 and "award" means an award made by that Tribunal under section 168."

12. To appreciate the only contention raised by the learned counsel appearing for the appellants that appellant-owner was having temporary permit for the period from 05/11/2010 to 30/11/2010 and thereafter, he had deposited the amount for fresh permit, I have perused the document, Exhibit D/1-C, which is a permit for the period from 12/01/2011 to 11/01/2016.

13. I have also perused the document, Exhibit D/3, which appears to be a receipt

of deposit of Rs.4,600/-, but from perusal of the same, it would show that the amount deposited is towards the road tax and not for the fee of fresh permit.

14. One Ramchandra Kunjam, who is working as Assistant Grade-III in the Regional Transport Office, Raipur was examined by the Insurance Company as NAW-1, who in his deposition, categorically stated that Exhibit D/2-C is a permit and Exhibit D/3 is a receipt of deposit of road tax for a period from 01/01/2011 to 30/01/2011.

15. From the aforementioned material available on record, there is no document and material to show that the appellant-owner has filed any application for grant of fresh temporary permit. The permanent permit was issued to him after the date of accident, therefore, undoubtedly, on the date of accident, the offending vehicle was running without permit as validity period of earlier temporary permit was expired on 31/12/2010, which is apparent from one of the documents filed by the appellants in the records of the appeal.

16. The issue with respect to running of the vehicle on public place without permit has been considered by the Hon'ble Supreme Court in the matter of National Insurance Co. Ltd. v. Challa Bharathamma and others¹, in which, Hon'ble Supreme Court held as under :-

"12. The High Court was of the view that since there was no permit, the question of violation of any condition thereof does not arise. The view is clearly fallacious. A person without permit to ply a vehicle cannot be placed on a better pedestal vis-a-vis one who has a permit, but has violated any condition thereof. Plying of a vehicle without a permit is an infraction. Therefore, in terms of Section 149(2) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication. The question of policy being operative had no relevance for the issue regarding liability of insurer. The High Court was, therefore, not justified in holding the insurer liable."

17. This issue was again considered by the Hon'ble Supreme Court in the matter of Amrit Paul Singh and another v. Tata AIG General Insurance Company Limited and others², in which, Hon'ble Supreme Court held as under:-

"24. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers.

Therefore, the principles laid down in National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 and Lakhmi Chand v. Reliance General Insurance, (2016) 3 SCC 100 , in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the "Tripitaka", that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer.....emphasis supplied."

18. In the case in hand also, the offending vehicle was not having valid permit to ply the vehicle on public road on the date of accident and there is violation of conditions of insurance policy. The law laid down by the Hon'ble Supreme Court in the matters of Challa Bharathamma (supra) and Amrit Paul Singh (supra) squarely applies to the fact of the present case.

19. In view of the above analysis, I am of the considered view that learned Claims Tribunal has not committed any error in passing the impugned award. The appeal being devoid of any substance is liable to be dismissed and is hereby dismissed. No order as to costs.