**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 568 of 2007**

IFFCO TOKIO GENERAL INSURANCE COMPANY, through its Manager, R/o 3rd Floor, Shop No.345-347, Lalganga Shopping Maal, G.E. Road, Raipur (C.G) **---- Appellants**

**Versus**

1. HEERA SAI @ HEERADHAR, Son of Govind Ram, aged about 50 years

2. PRATAP SINGH, S/O Heera Sai, aged about 25 years

3. DEV KUMAR, s/o Heera Sai, aged about 22 years,

4. KRISHNA, s/o Heera Sai, aged about 20 years,

5. JAN KUMARI BAI, s/o Heera Sai, aged about 18 years,

   Respondents 1 to 5 are residents of Gram Salhepali, Tahsil Gharghoda, District Raigarh (C.). --- **Claimants**

6. ANAND @ THAKURRAM, s/o Saheb Ram Yadav, aged about 28 years, Occupation – Driver, resident of Gram Teram, Thana – Gharghoda, District – Raigarh (C.G) --- **Driver**

7. NATWAR AGRAWAL, son of Harikishan Agrawal, Occupation – Owner of the Offending Vehicle, Resident of Sakti Video Hall Line, Durga Medical, Gharghoda, District Raigarh (C.G). ---***Owner***

**---- Respondents**

---

| | | |
|---|---|---|
| For Appellant | : | Mr. Yogesh Pandey, Advocate |
| For Respondents 6 & 7 | : | Mr. Aditya Bharadwaj, Advocate |

---

**Hon'ble Shri Justice Goutam Bhaduri**

**Judgment on Board**

**14.09.2015**

1. This is an appeal against the award dated 22.02.2007 passed in claim Case No.5/2006 by the Fourth Additional Motor Accidents Claims Tribunal (FTC), Raigarh, Chhattisgarh whereby the Tribunal has partly allowed the claim petition of the claimants by awarding Rs.1,77,000/-.

2. Briefly stated facts of the case are that the deceased Shanti Bai @ Chutigudhin on the date of accident i.e., 20th July, 2006 was traveling in the vehicle Tractor bearing Regn. No. C.G. 13-A/7339 &Trolley No. C.G.ZG 2160. On the way at about 7.30 p.m., the Tractor Trolley met with an accident and thereby she sustained injuries and she died. On different heads, an amount of Rs.6,30,000/- was claimed by the claimants i.e., the husband, 3 sons and one daughter of the deceased.

3. The owner and driver of the offending vehicle refuted the averments of the claim case and stated that the claimants are not entitled for any compensation. The original non-applicant No.3/Insurance Company contended that at the relevant time the deceased was traveling as a labourer and since no premium was paid for labourers, the Insurance Company is not liable to pay the compensation.

4. The Tribunal after evaluating the facts and evidence came to a finding that the deceased was traveling in the tractor-trolley bearing Regn. No. C.G. 13A 7339 & Trolley No.C.G.13/ZJ/2160 and because of the rash and negligent driving of non-applicant No.1 and for use of the vehicle, Shanti Bai who was travelling in Trolley died and consequently directed the insurance Company to make good the payment of compensation.

5. No appeal has been preferred either by the claimants or by the owner and driver against the award passed in the instant claim case. This appeal is preferred by the Insurance Company.

6. It is contended on behalf of the Insurance Company that the deceased was traveling in the Tractor and since no premium was paid for the labourers to travel in the Tractor, the Insurance Company would not be liable to pay compensation. It is submitted that

according to the statement of witness one Manish Pandey, no policy covering the insurance of Trolley was existing for trolley and therefore, the death of deceased person who was traveling in the trolley cannot be compensated by the Insurance Company.

7. Per contra, learned counsel for the respondent owner & driver opposed the same and submits that the award is well merited which do not call for any interference.

8. I have heard learned counsel for the parties and have also perused the documents and evidence on record.

9. Reading of the award would show that the Tribunal has recorded the finding that at the time of accident, deceased Shanti Bai was sitting in the trolley. The eye witness in this case is one Pardeshi. He deposed that the Tractor was coming in which six persons were sitting. He further stated that the said Tractor turned turtle, due to which, 3 persons came under the tractor and died and Shanti Bai, wife of Harisay was one of the deceased in the said accident. It is further stated that the said tractor was driven rashly and negligently. In the cross examination, this witness further admitted the suggestion that six persons were sitting in the Tractor and in addition driver, one labourer (Kalasi) and two others were sitting in tractor-trolley and out of them, he knows only one person that is Shanti Bai. In the cross examination, he further stated that the Trolley was also completely over-turned on the ground and Shanti Bai died because she came under the trolley. Therefore, it is evident from the above statement that the deceased died in the accident as she came under the Trolley which turned turtle due to rash and negligent driving of the Tractor. The inference can be drawn that if the trolley was not linked with the Tractor, then the deceased would not have come under Trolley and

would have met with accident. Therefore, it is established that Shanti Bai died because of the use of the Trolley.

10. The Insurance Company on its behalf had examined one witness Shri Manish Pandey. He made a categorical statement on oath that the trolley was not insured. The suggestion about the insurance of the trolley was also denied. As against this evidence on behalf of the insurance Company, owner Natwar Agrawal has produced the policy of the Insurance Company. The policy is marked as Ex.N.A.5. A perusal of the said policy would show that it is meant for both the Tractor bearing No. C.G.13/ZG 2159 and Trailer No.C.G.13/ZG 2160. In the column of calculation of premium, it is shown that the amount was also paid for the Trailer and it also shows that for 4 labourers, an amount of Rs.100/- was paid and in respect of third party for trailer also, premium of Rs.375/- was paid. Ex.N.A.5 the insurance Policy do not show that it only restricts to agricultural purpose, rather it allows the use of vehicle for carriage of passengers also. Therefore, the submission of the learned counsel that it was only for agricultural purpose and the trailer was not insured is completely against the terms of Policy which shows that the trailer was also insured. The Insurance Company though on its behalf has filed the copy insurance Policy marked as Ex.N.A.3, but it does not reflect the number of vehicle. However, it shows that the insurance was paid for the period from 22.11.2005 to 22.11.2006, but at the same time Ex.N.A.5 filed by the owner shows that Tractor No.C.G.13-ZG-2159 and Trailer No.C.G.13-ZG/2160 was insured for the period from 14.02.2006 to 13.02.2007. The accident in the instant case took place on 20th July 2006. Therefore, certainly the trolley/trailer was covered by the insurance.

11. A perusal of the record would show that the witness on behalf of the

Insurance Company made all deliberate efforts to give false statement on oath before the Court. Therefore, after due consideration of the facts and taking into the documentary evidence, it is held that the Tractor-Trollery was insured and the effort made by the witness of the insurance Company to give false evidence is deprecated.

12. In view of this, the finding arrived at by the learned Tribunal, cannot be disturbed and accordingly, the appeal is dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

**Sd/-**
**GOUTAM BHADURI**
**JUDGE**

Rao