HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 1228 of 2012

1. Smt Budhwara Wd/o Sukhlal Aged About 42 years, Occupation dependant
2. Chitra D/o Late Sukhlal Aged About 19 Years, Occupation Agriculture, Labour,
3. Minor Sunil S/o Sukhlal, aged about 11 years, appellant No.3 minor through legal guardian mother Smt Budhwara Wd/o Sukhlal, aged about 42 years, appellant No.1

All are caste Gond, resident of village Gopalpur, Tahsil And District Raigarh (C.G.)

---- Appellants

Versus

1. Bhuwal Prasad Shukla S/o Bimlesh Shukla, aged about 38 years, Occupation Tractor owner R/o Binobanagar, Ward No. 27, Raigarh, Tah. And Distt. Raigarh (C.G.)
2. Pradeep @ Bideshi Uraon S/o Chandalal Uraon Aged About 34 Years, Occupation Driver, R/o village Koriyadadar, P.S. Chakradhar Nagar, P.S. Chakradhar Nagar, Tah. And Distt. Raigarh C.G.
3. Branch Manager, The Oriental Insurance Company Limited, Branch Office, Itwari Bazar Raigarh, Tah. And Distt. Raigarh C.G.

---- Respondents

For Appellants - Shri Manoj Jaiswal, Advocate.
For Respondents No.1 & 2 - Shri Pawan Kesharwani, Advocate.
For Respondent No.3 - Shri Anumeh Shrivastava, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

16/07/2015

1. This is an appeal against the award dated 5th October, 2012 passed by the Motor Accidents Claims Tribunal, Raigarh in claim case No.34/2010 whereby claim petition filed by the claimants was dismissed. The learned claims tribunal by the said award though calculated quantum of compensation but has dismissed the claim

petition on the ground that the claimants have failed to prove rash and negligent act on behest of the owner and driver of the tractor.

2. Claim petition was preferred by mother, brother and sister, one of them was minor against respondents on the ground that on 17/10/2009 the deceased namely Sonam @ Ladhi was traveling in a tractor driven by original non-applicant Pradeep @ Videshi Oraon. Tractor was owned by non-applicant No.1 Bhuval Prasad Shukla. It was pleaded that while deceased was traveling in a tractor on kaccha road the tractor was being driven in a high speed in rash and negligent manner whereby the deceased lost her control and fell down whereby she sustained injuries and came under the wheels of the trolley of the tractor, consequently, she died. Admittedly the tractor was insured with original non-applicant No.3 the Oriental Insurance Company Limited and amount of Rs.31,91,000/- was claimed for the compensation on different heads.

3. Non-applicants No.1 and 2, the owner and driver of the vehicle denied the averments of the pleading of the claim petition and even happening of the accident was also denied. In additional pleading in the written statement it was contended by the owner and driver of the tractor that petition is liable to be dismissed for misjoinder of the parties and further stated that deceased was mentally retarded and she used to consume liquor and she was heavily drunk at the time of accident and as such stood up over the mudguard of tractor and started dancing. It is stated that she was objected to do so but

deceased did not hear and as such she fell down. Therefore it is stated because of negligence of the deceased of her own the accident happened and claimants are not entitled for any relief. The insurance company respondent No.3 also refuted the averments of the claim petition and predominantly it was stated deceased was traveling on the tractor, though according to the registration tractor was not allowed for sitting. It was contended that therefore it amounted to breach of the condition of the policy. It was further stated that on the date of accident, driver of the tractor was not having valid licence, thereby it also leads to breach of policy and insurance company is not liable for payment of compensation.

4. Learned tribunal by its award assessed the dependency and loss and came to a finding that claimants are entitled for Rs.4,82,000/-. It was further observed that the claimant the mother was entitled to receive said amount and was directed that out the said amount 50% to be deposited in some bank, however it was qualified with the word that in case rash and negligent act is proved.

5. Learned counsel for the appellants during the course of argument would contend that he does not challenge the amount of award assessed of Rs.4,82,000/- and the findings with respect to it. He submits that tribunal has failed to appreciate evidence in proper perspective and has failed to hold the respondents liable. He submits that tribunal has failed to assess the contents of FIR and the facts of contradictory averments made in written statement and

thereby it leads to substantiate the rash and negligent act of the driver of the offending vehicle. He therefore submits that such part of award should be set aside whereby the court has held that appellants have failed to prove rash and negligent act of the offending vehicle and the award be passed against the respondents.

6. Per contra, Shri Pawan Kesharwani learned counsel appearing for respondents No.1 and 2 would submit that order is well merited and evidence has come on record that on the date of accident deceased was traveling on the tractor after she was heavily drunk and for that reason she fell down and despite objection being made she stood over the mud guard of tractor and eventually fell down. Consequently, negligence cannot be attributed to the driver and owner.

7. Learned counsel for the insurance company would submit that in any case the tractor was not meant for carrying passenger and the insurance policy which is placed on record it is proved that insurance was for Kisan Package policy which would mean that insurance is only covered if vehicle was used for agricultural purpose. It is further contended that as per evidence vehicle was being used other than agriculture purpose therefore, it would amount to breach of policy and the insurance company cannot be held liable to make compensation.

8. I have heard learned counsel for the parties at length. Challenge to the quantum of award which has been assessed by the

tribunal is of Rs.4,82,000/-. The said assessment is not under challenge either by the appellants or respondents. In absence of challenge to the same, same do not require any re-consideration.

9. Now coming to the question of rash and negligent part of driving. The question falls for consideration as to whether on the relevant time tractor was being driven in rash and negligent manner which resulted into death of Sonam @ Ladhi. Statement or the deceased herself was liable?

10. The non-applicant had examined one witness who is stated to be eye witness namely Kamla Oraon. She had stated that she was present along with the deceased on the tractor. Deceased after consuming liquor stood up and started dancing on mud guard of tractor and despite being objected she did not hear. Consequently, in such process she fell down from the tractor and sustained injuries. It is further contended that when she fell down she came under the rear wheels of the tractor trolley. In the cross examination she admitted to the suggestion that deceased and one Samari was sitting over the mudguard of the tractor. The suggestion also she accepted that the place where the accident occurred namely near Shakambari Factory road is not a tar road and is soil road and it is bumpy. She admitted the suggestion that deceased was sitting in the tractor without holding anything and when the tractor came over bumpy road she fell down. In the examination in chief she stated that deceased had consumed liquor and was not hearing to them.

11. The FIR in this case is proved by the claimant which is marked as Ex.P-2. Reading of the FIR purports that happening of the accident was on 17/10/2009 at about 1 O'clock. The FIR was lodged by same witness examined on behalf of non-applicant i.e. Kamla Oraon. In FIR contrary to her court statement it was stated that she along with one Samari and deceased Sonam were sitting by the side of the driver Pradeep in the tractor. While tractor was passing over kaccha road, the tractor was being driven at a high speed and because of the bump caused while passing over the kacha road, deceased fell down and came under the wheels of the trolley. The witness was confronted with such FIR however the contents of FIR was not admitted. She admits the fact that when the FIR was made she did not disclose the fact that deceased had consumed liquor and was un-controlled. With such averments of drunkenness in continuation when the post mortem report Ex.P-4 is examined, which was done on 17/10/2009 itself at about 3.50 pm i.e. about 2 ½ hours of the happening, it do not show any presence of alcohol inside the stomach. Post mortem shows, after opening of the stomach that 100 ml creamy fluid, no abnormal smell and semi digested food present.

12. Now if the pleading and evidence are examined. In the pleading the owner and driver have initially completely denied accident and subsequently in the same pleading it has been stated that deceased had consumed alcohol and was uncontrolled.

Consequently, she fell down. In the cross examination the witness Kamla Oraon had stated that till the date of evidence, she works in the tractor of Bhuval Prasad Shukla, the owner of the tractor. Therefore, the pleading and the evidence if are assessed then it would show that initially the owner and the driver had denied the complete happening of the accident. Further stated that deceased had consumed liquor, consequently fell down. Said averments of consumption of liquor is neither supported by the post mortem report nor it is supported by the FIR which was made. Therefore, in view of the fact that when the witness Kamla Oraon had admitted that still on the date of adducing evidence she is working with the owner of the tractor, therefore the evidence as appears adduced by Kamla Oraon become untrustworthy to believe. This can be examined from the other angle that when the tractor which was not meant to carry passengers if passengers were being carried in tractor and according to the FIR the tractor was driven in rash and high speed in a kacha road as a result there off the deceased fell down, then in such eventuality owner and the driver cannot escape ambit of rash and negligent act. The contents of FIR, which was made after the accident is more trust worthy than that of statement of eye witness who completely became hostile to the claimant as against her FIR. Consequently, finding arrived by the learned tribunal that no negligence have been proved by the claimant on the part of the driver of the offending vehicle is set aside.

13. Now coming to the liability on the part of the insurance company. Admittedly, in this case it is proved that tractor was being driven under Kisan Package Policy as per Ex.NA3-1. The insurance has also examined witness Atul Athaley who has stated that for the said vehicle the policy was issued for Kisan Package Policy and if vehicle is used for other than agricultural purpose, insurance company would not be liable. This evidence is also corroborated by defendant witness Kamla Oraon wherein she stated that tractor was being used for loading and unloading and she was working along with the deceased as labour in such tractor.

14. In view of this, it is established that there has been breach of policy was caused and the tractor was being used other than agricultural purpose. The insurance company cannot be held liable. Therefore, finding arrived by the learned tribunal that insurance company cannot be held liable for making good the compensation is also upheld.

15. In view of the foregoing discussions, award passed by the learned tribunal of Rs.4,82,000/- is affirmed and it is however held that respondents No.1 and 2 shall be liable to make good the compensation with interest @ 6% from the date of accident. The appeal stands allowed to the above extent.

Sd/-
(Goutam Bhaduri)
JUDGE

Gouri