

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 704 of 2013

1. Guddu Patel, S/o Ramdayal Patel, Aged About 27 Years, R/o Village Konari, Tah. Palari, P.S. Kasdol, Distt. Raipur C.G. Now Revenue Distt. Baloda Bazar, Civil Distt. Raipur C.G.
2. Ramdayal, S/o. Late Motiram Patel, Aged About 50 Years, R/o. Village Konari, Tah. Palari, P.S. Kasdol, Distt. Raipur C.G. Now Revenue Distt. Baloda Bazar, Civil Distt. Raipur C.G.

----Appellants

Versus

1. Sadhuram, S/o. Parasram Chandel, Aged About 75 Years
2. Fulkunwar, W/o. Sadhuram Chandel, Aged About 60 Years
3. Rameshwari, W/o. Late Kamal Narayan Chandel, Aged About 30 Years,
4. Vivek Chandel, S/o. Late Kamal Narayan Chandel, Aged About 13 Years
5. Sanjana Chandel, S/o. Late Kamal Narayan Chandel, Aged About 6 Years

No.4 & 5 Minor, Through natural guardian, Mother Smt. Rameshwari Chandel, W/o. Kamal Narayan Chandel,

All R/o. Village Konari, Tah. Palari, P.S. Kasdol, Distt. Raipur C.G. Now Revenue Distt. Baloda Bazar, Civil Distt. Raipur C.G.

6. The New India Insurance Company Ltd. Branch Office, Garden Chowk, Baloda Bazar, Distt. Raipur, Now Distt. Baloda Bazar C.G.

---- Respondents

For Appellants	:	Mr. Palash Tiwari, Advocate.
For Respondent No.1 to 6	:	None present
For Respondent No.3.	:	Mr. S.N. Nande, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

18/08/2015

1. The appeal is by the driver and owner of the offending vehicle, which was involved in the accident.
2. Challenge in this appeal is to the award dated 20.06.2013, passed in Claim Case No.40/2011, by the Second Additional Motor Accident Claims Tribunal, Baloda Bazar.
3. Briefly stated facts of the case is that a claim petition was filed by the mother, father, wife and two minor children of the deceased namely Kamal Narayan Chandel stating that on 21.05.2011 the deceased was engaged as labour in tractor and trolley bearing No.C.G.-04-DM-9411 and in a consequence of rash and negligent driving, the deceased, Kamal Narayan fell down from the tractor and sustained injuries and subsequently succumbed to the injuries. It was stated that the deceased was working as labour in the said tractor and trolley and on the date of accident, some stones were being carried in the tractor for construction of pump house in the field. So on the different heads, an amount of Rs.25,62,000/- was claimed.
4. The original non-applicant No.1 and 2, the driver and the owner of the offending vehicle tractor refuted the claim averments. It is contended that on the relevant date, the tractor and trolley was insured with the insurance company. Consequently, the insurance company will be liable to make good the payment.

5. The insurance company contended that on the date of accident, the offending vehicle was being driven in breach of terms of insurance policy and therefore, the owner and the driver themselves are liable to make good the amount.
6. The tribunal after assessment of evidence, passed an award of Rs.4,49,000/- in favour of the claimants. By such award, the Claims Tribunal had exonerated the insurance company and fastened the liability on the driver and owner of the offending vehicle. Therefore, the instant appeal is by the owner and driver of the offending vehicle.
7. Mr. Palash Tiwari, learned counsel appearing on behalf of the appellants would submit that the Tribunal has failed to appreciate the fact that on the date of accident, there was no breach of terms of policy was committed. He would further submit that the insurance company has failed to prove the fact that what was the terms for which the breach was committed. He further submits that admittedly, in this case, as would be evident, the driver of the offending vehicle was holding a valid driving license, therefore, it can not lead to hold breach of terms of insurance policy. He would further submit that on the date of accident, the tractor was being used for carrying the stones for construction of pump house in the agricultural field, in a result, the use would be within the ambit of agricultural purpose. He further submits that the place of accident, wherein the accident occurred would be of much relevance, since it is in the middle of agricultural field, it would go to show the nature of work, which was carried out at the relevant time of accident. He

would further submits that according to the policy itself, the insurance was covered apart from the driver and two persons, therefore, it can not be stated that at the relevant time, there has been a breach of insurance policy. Consequently, the liability fastened over the appellants by exonerating the insurance company is completely illegal.

8. Per contra, learned counsel appearing on behalf of the respondent/insurance company would submit that on the date of accident, the vehicle was used for other than agricultural purpose, which would go to show that there has been a breach of policy. He would further submit that for such breach of policy, the insurance company can not be held liable. He would further submit that the award is well merited which do not call for any interference by this Court.
9. I have heard the learned counsel for the parties, perused the documents and the evidence on record.
10. The father of the deceased namely Sadhuran had stated that at the time of the accident, the deceased Kamal Narayan was engaged in the tractor as labour and was coming back from village Gabaud to Konari. At the relevant time of accident, the vehicle was being driven by Guddu Patel. This witness has lodged the FIR, which was marked as Ex.P/2. In the FIR, Ex.P/2, it has been stated that on the date of accident, the offending vehicle was being driven by Guddu Patel, the original non-applicant No.1, in rash and negligent manner and in a result the deceased fell down into the field and the tractor

and trolley passed over him. This witness is hearsay witness, he has not seen the accident, but has confirmed the happening of the accident. In the cross-examination of this witness, the suggestion was given that the accident happened while the tractor was in the agricultural field and was passing over the field. The witness has further stated that at the relevant time, the tractor was being used to bring the stones.

11. Another witness, Krishna Bhushan (A.W.-2) has stated that on the date of accident, Kamal Narayan, the deceased had went to discharge the job of labour in the tractor and on the date, the tractor had gone to fetch the stones so as to construct a pump house in the agricultural field and the accident happened while the vehicle was coming. The witness in the cross-examination had stated that he saw the deceased was traveling/sitting in the trolley alongwith two persons. Further reading of the cross-examination, the fact that the deceased was traveling in the trolley, has not been diluted. This witness has affirmed the fact that the place of accident was in the middle of the agricultural field and the tractor was being used to bring the stones to construct a pump house in the agricultural field. The place of incident is further fortified by the document Ex.A/4, which is a spot map, which shows that the place of incident was in the middle of agricultural field.
12. The witness on behalf of the insurance company had proved the insurance policy as Ex.D/2. Perusal of such policy would show that it was for vehicle tractor and trolley, wherein the passengers excluding the driver has been shown to be two. Though the witness

of the insurance company has stated that there has been a breach of policy since the policy was issued only for agricultural purpose, but perusal of the Ex.D/2 do not show the same it only shows and captioned as 'tractor vehicle package'. Except this document, no other document has been placed on record. Therefore by oral statement of Mahesh M. P. Achari, (NAW-2), examined on behalf of the insurance company, the terms of policy can not be inferred. Further more, even if, for the sake of presumption, it is assumed that the policy was only confined for agricultural purpose, it is important to note that at the relevant time, when the accident happened, the vehicle was being used to carry stones for construction of pump house in the agricultural field this has been stated by Krishna Bhushan (AW-2). Further the place of accident is of much relevance, which shows that in the middle of the agricultural field, the accident had happened. The document, Ex.D/2, which is a policy for tractor trailer, covers the number of two persons excluding the driver thereby three persons were covered. Further, as per statement of the eye-witness, the deceased was traveling in trolley when he met with an accident so in view of such existing evidence only on basis of oral statement of witness of insurance company it can not be assumed that a breach of policy was committed. Consequently, the finding of the learned Claims Tribunal with respect to breach of policy at the relevant time of the insurance can not be upheld. Accordingly, such finding of breach of policy is set-aside.

13. In a result, the appeal is allowed. The order of the learned Claims Tribunal, whereby the liability has been fastened over the appellants is set-aside. It is directed that the insurance company shall be liable to pay the awarded sum in terms of the award being the insurer alongwith the driver & owner, the appellants.
14. No order as to cost.

Sd/-
(Goutam Bhaduri)
Judge