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IN THE HIGH COURT OF CHHATTISGARH

AT - BILASPUR

Single Bench

M. A. (C) NO. 1377/2014

APPELLANTS:

(1) — Deendayal Verma, aged 55 years, son
of Shri Thanuram Verma, residents of Village
Tohda, P.S./P.O. Newra, tahsil/district Raipur
(C.G.)

(2) Ghanshyam Verma, aged years; son of
late Shri Thanuram Verma, residents of
Village Tohda, P.S./P.O. Newra, tahsil/district
Raipur (C.G.)

(non-applicant/owner)

VERSUS

RESPONDENTS:

(1) Premudas Rai, aged 50 years, son of late Dhanau Rai,

(2) Smt Minu Bai, aged 45 years, wife of Shri Premudas Rai,

Both are residents of village Tohda, P.S./P.O. Newra, district
Raipur (Chhattisgarh)

(3) Smt Kirti Bai, wife of Kalicharan Verma, resident of village
Kumhari, P.O./P.S. Newra, tahsil Tilda, district Raipur (C.G.)

(Non-applicant)

(4) Manager, IFFCO AND TOKIO GENERAL INSURANCE CO.
LTD, Raipur, Third Floor, Shop No. 345, 347 Lal Ganga
Shopping Mall, G. E. road, Raipur (C.G.)

(Insurer)

[Signature]

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APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLES

ACT, 1988.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Shri Justice P. Sam Koshy

Misc. Appeal (C) No. 1377 of 2014

Appellant Deendayal Verma and another

VERSUS

Respondents Premudas Rai and others

Present: Shri Somnath Verma, counsel for the appellants.

Oral Order
(05.01.2015)

By way of the instant appeal under Section 173 of the Motor Vehicles Act (for short 'the Act'), the appellants intend to challenge the award dated 30.10.2014 passed by the Additional Motor Accidents Claims Tribunal, Raipur (for short 'the Tribunal') in Claim Case No.68/2009.

2. Facts in brief are that respondents No.1 & 2, who are the parents of the deceased Deepak Kumar Rai had filed a claim application on the ground that on 7.6.2008, around 11.00 p.m, when the deceased along with one Bhagwani Gendre was traveling in the tractor owned by respondent No.2 for bringing the timber from the saw mill, en route, the said tractor met with an accident and the deceased who was sitting on the tractor fell down and succumbed to the injuries that he had sustained in the course of the accident.

3. The claimants had filed a suit before the Tribunal stating that the deceased was working as a labourer engaged by appellant No.1 and that he was earning roughly Rs.3,500 per month and that at the relevant point of time, he was aged about 22 years.

4. The Tribunal has, after the pleadings were complete and the evidence was recorded, vide impugned award dated 30.10.14, allowed the claim application of the claimants/respondents and awarded compensation of Rs.3,34,500/- to them along with interest @ 6% p.a from the date of filing of the application till its realization. The Tribunal while deciding the award, has also held that since the driver was not having proper license, the Insurance Company is exonerated from the liability of

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payment of compensation and the liability shall be shifted upon the owner i.e. appellant No.2 and driver i.e. appellant No.1.

5. Counsel for the appellants submits that the instant appeal has been preferred challenging the award on two grounds firstly, since the driver of the tractor namely Deendayal Verma i.e. appellant No.1 has been acquitted from the criminal charge leveled against him under the provisions of Section 304-A IPC and as such it has not been established that the accident occurred because of the rash and negligent driving of the driver and since the finding is that the accident was caused not because of the rash and negligent driving of appellant No.1, the claimants would not be entitled for payment of compensation because as per the provisions of the Act, the compensation would be payable by a person on whose rash and negligent act, the accident arises. Under the said circumstances, the impugned award passed by the Tribunal deserves to be set aside and the appellants are liable to be exonerated from the payment of compensation. The second ground which the appellants raise is that from the evidence which has come before the court below, it is reflected that the deceased at the time of the accident was sitting on the body of the tractor and that the accident arose because of his own negligent act in as much as the Bhagwani Gendre, who was accompanying the deceased at the time of the accident had asked the deceased not to sit on the body of the tractor but to sit on the trolley and therefore, the accident arose because of the act of the deceased himself for which appellant No.1 was not responsible and therefore, on this ground also, the appellants i.e. driver and owner of the tractor should be exonerated from the payment of compensation.

6. Having considered the contentions put forth by counsel for the appellants and on perusal of the record, it is clearly established that the admitted position from the facts of the case is that on 7.6.2008 i.e. the date of accident, the tractor was being driven by appellant No.1 himself who was also the owner of the said tractor. It is also an admitted fact that he had taken the tractor on the said fateful day for bringing timber from the saw mill and that he had also taken along with him the deceased and Bhagwani Gendre. Now, from the perusal of the record, it is clear that when the owner himself was driving the tractor, he ought to have made the deceased not to sit on the body of the tractor and should have asked the deceased to sit in the trolley. Having driven the tractor permitting the



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deceased to sit in the tractor itself gives a clear indication that appellant No.1 himself might have asked the deceased to sit on the body of the tractor and not in the trolley.

7. Thus, the stand taken by the counsel for the appellants cannot be accepted and is not sustainable. Similarly, so far as the ground of having getting the order of acquittal in the criminal case under Section 304-A IPC is concerned, the same may not have any relevance while deciding the claim case for the reason that for conviction under Section 304-A IPC or for that matter, any offence under the provisions of IPC, the case has to be proved beyond all reasonable doubts so far as the intention of the alleged accused persons for having committed the offence whereas for deciding the claim case under the provisions of the Act, this is not the criteria and the criteria is to establish the fact whether on admitted facts, the accident has taken place or not and whether in the light of the said factual background, the owner of the offending vehicle would be entitled for compensation or not for the alleged offence which took place from the offending vehicle.

8. In the instant case, this aspect has been clearly proved and established that the accident did occur in the course of the use of the offending vehicle belonging to appellant No.1 and which was being driven by appellant No.1 himself at the time of accident.

9. Thus, the finding of the Tribunal while passing the impugned award appears to be proper, legal and justified and the two grounds raised by the appellants being not sustainable in the eye of law the appeal being devoid of merits, the same deserves to be and is accordingly rejected.

No order as to costs.

Sd/-
P. Sam Koshy
Judge

Priya