(05)

IN THE HIGH COURT OF CHHATISGARH AT BILASPUR

M.A.(C) No. 1387/2014

Single Bench

1387/14
24/12/14

APPELLANTNO- 1
RESPONDENT NO.3.

: The Oriental Insurance Company Ltd.
Through its Divisional Manager,
Divisional office, Rama Trade Center
Opposite Rajeev plaza, Near Bus Stand,
Bilaspur, Tahsil and District Bilaspur,
(C.G.)

- : VERSUS : -

RESPONDENT NO-1
CLAIMANT NO - 1

:Smt. Rannu Pannika w/o Late
Ram Manohar @ Lala
,Aged about 32 years.

NON – APPELLANT NO-2
CLAIMANT NO-2

: Kumari Neelu Pannika D/O Late
Ram Manohar Pannika
Aged about 10 years.

NON – APPELLANT NO-3
CLAIMANT NO-3

: Kumari Sheelu Pannika D/O Late
Ram Manohar Pannika
Aged about 08 years.

NON – APPELLANT NO-4
CLAIMANT NO-4

: Kumari Pari Pannika D/O Late
Ram Manohar Pannika
Aged about 06 years.

NON – APPELLANT NO-5
CLAIMANT NO-4

: Kumari Priya Pannika D/O Late
Ram Manohar Pannika
Aged about 04 years.
Respondent No 2 to 5 are through their
Natural guardian Mother Rannu Pannika
All are resident of Magardaha, Tola Kotma,

Zilla- Anuppur, Present Address Mangala, Thana Civil Lines, Tahsil and Zilla- Bilaspur, (C.G.)

RESPONDENT NO-6
NON – APPELLENT/NO- 1 : Anil Kumar Mandal s/o Dileshwar @ , Vindeshwari Mandal, 46 years, Resident Of F.C.I. Road, Near- Tarbahar Gate. Thana Tarbahar, Bilaspur, Zilla Bilaspur (Chhattisgarh),

RESPONDENT NO-7
NON – APPELLENT/NO- 2 : Smt. Preteepal Kaur, w/o Tavinder Pal Arora, Resident of Arora Fuels, Raipur Road, Bodri, Bilaspur, Tahsil & Zilla Bilaspur, (C.G.)

RESPONDENT NO-8
NON – APPELLENT/NO- 4 : Smt. Munni Bai, w/o Bhondal pannika, about-53 years, Resident of Magardaha Tola Kotma Zilla Anuppur MP

RESPONDENT NO-9
NON – APPELLENT/NO- 5 : Krishna Kumar Gahoi s/o Purushottam Gahoi, Resident of near Central Bank of India Kotma Tahsil- Kotma, Zilla Anuppur (M.P.).

MISC. APPEAL UNDER SECTION 173 OF THE MOTORS VEHICLES ACT - 1988

AFR / NFR

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HIGH COURT OF CHHATTISGARH AT BILASPUR

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

Misc. Appeal (C) No. 1387 of 2014

Appellant Oriental Insurance Company Limited

VERSUS

Respondents Smt Rannu Pannika and others

Present: Smt Chitra Shrivastava, counsel for the appellant.
Shri Goutam Khetrapal, counsel for respondents No.1 to 5.

Oral Order
(05.01.2015)

The present is an appeal by the Insurance Company challenging the award dated 30.10.2014 passed by the Motor Accidents Claims Tribunal, Bilaspur, (for short 'the Tribunal') in Claims Case No.169/2013.

2. Facts in brief are that the claimants/respondents No.1 to 5 had filed a claim application before the Tribunal under Section 166 of the Motor Vehicles Act (for short 'the Act') for granting compensation on account of death of Ram Manohar @ Lala, who is the husband of claimant/respondent No.1 and the father of claimants/respondents No.1 to 5. As per the claimants/respondents, on 23.5.2013 when deceased Ram Manohar was going on a Metador bearing registration No.CG 10 C 6401 to Vyapar Vihar, Bilaspur, en route, he met with a head on collision with a tanker bearing registration No. CG 10 C 4960 driven by respondent No.6 and owned by respondent No.7. According to the claimants/respondents, deceased Ram Manohar, at the relevant point of time, was aged around 42 years and was drawing a monthly income of Rs.8,000.

3. The Tribunal, after the pleadings were complete and the evidence was recorded, vide impugned award dated 30.10.14, held that the claimants/respondents are entitled for compensation of Rs.10,30,000 along with interest @ 7 ½% from the date of application till the date of realization.

4. It is this award dated 30.10.2014 which is under challenge by the Insurance Company by way of the present appeal.

5. The sole ground raised by counsel for the appellant/Insurance Company challenging the impugned award is that on the date of accident, the driver of the offending vehicle i.e. the tanker was not having proper endorsement for driving the vehicle carrying explosive materials and therefore, the same amounted to breach of policy condition. She submits that while operating the tanker, the driver ought to have taken endorsement from the concerned Transport Authority for permission to operate the same. In support of her contentions, she also relies upon a decision rendered by Allahabad High Court in the matter of ***United India Insurance Company Ltd vs. Sanjay Kumar and Another*** reported in ***1 (2012) ACC 780 (DB)*** whereby, it has been held that since the driver and the owner have not led any evidence, even if the Insurance Company is made to pay the compensation part, the Insurance Company shall have a liberty to recover the same from the owner and driver for a breach of policy condition. She further submits that the admitted position in the instant case is that the accident arose because of a head on collision met with the tanker which was being driven by respondent No.6 and owned by respondent No.7 and that the license of the driver of the tanker truck involved in the accident was not having the endorsement of permission to drive the explosive vehicle and therefore, the Insurance Company should be exonerated from its liability to pay the compensation.

6. However, on perusal of the impugned award as well as the findings arrived at by the Tribunal, it clearly reflects that the driver of the offending vehicle i.e the tractor namely Anil Kumar Mandal, S/o Dileshwar @ Vindeshwari Mandal was having the license initially to drive a motorcycle and a Light Motor Vehicle (LMV) from 7.3.2001 till 31.8.2020. However, in between, the driver of the offending vehicle has also got an endorsement for permission to drive the Heavy Goods Vehicle (HGV) on 27.4.2002 and later on another endorsement was obtained with permission to drive the Public Service Vehicle (PSV) which was valid from 2.6.2011 to 01.06.2014 as such on the date of accident, i.e. on 23.5.2013, the driver of the offending vehicle was having a license to drive a PSV as well as HGV which is not disputed and is also a finding of fact on the basis of evidence which has come before the Tribunal.

7. Another admitted fact which has been established before the Tribunal on the basis of the evidence is that the offending vehicle i.e the

tanker was that as per the RC book issued by the concerned Transport Department reflected as the HGV and the driver having proper license for driving HGV, it cannot be said that the driver was not having proper license at the time of the accident. Further, from the record, there is no evidence on record which has been led by either on behalf of the Insurance Company or for that matter, on behalf of any of the interested parties establishing that the offending vehicle, at the relevant point of time, was carrying explosive substances and that it was mandatorily required that the driver should have had an endorsement in his driving license for operating the explosive vehicle and in the absence of any such evidence, it cannot be said that the Tribunal has committed an error of law or the findings arrived at are contrary to the evidence on record.

8. If we peruse the record, particularly para-14 and 15 of the award, it clearly reflects that the Tribunal in fact has duly considered the aspect put forth by the Insurance Company. From the evidence which has come on record, particularly taking into consideration, the license of the driver as well as the RC book of the offending vehicle, the finding of the Tribunal appears to be proper, legal and justified.

9. So far as the judgment cited by learned counsel for the appellant is concerned, the facts of the case are entirely different from the facts of the instant case. In the instant case, the ground raised by the Insurance Company is pertaining to not having proper endorsement for the use of explosive vehicle whereas in the said case, it was a case where in the absence of proper evidence by the owner and driver regarding breach of policy condition whether the Insurance Company would have the responsibility of payment of compensation part. Thus, the said judgment is distinguishable.

10. For the foregoing reasons, the instant appeal of the Insurance Company, being devoid of merits, the same is rejected. No order as to costs.

Sd/-
P. Sam Koshy
Judge

Priya