NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 84 of 2008

The Oriental Insurance Company Limited, Through Divisional Manager, (Mandi No. 1), The Oriental Insurance Company Limited, Jail Road, Raipur, Tah. & Distt. Raipur (C.G.)

---- Appellant

Versus

1. Ranjit Sen, S/o. Late Neelkanth Sen, Age about 20 years.
2. Dharmendra Sen, S/o. Late Neelkanth Sen, Age about 18 years.

   All Resident of Village & P.O. Pathari, Thana Dharsiva, Distt. Raipur (C.G.)
3. Mehattar, S/o. Prabhu Dhruv, R/o. Village & Post - Pathari, Thana - Dharsiva, Disrict - Raipur (C.G.)
4. Yaman Singh Baghel, S/o. Raghunath Prasad Baghel, R/o. Village & Post - Pathari, Thana - Dharsiva, Disrict - Raipur (C.G.)

---- Respondents

For Appellant	:	Shri Sudhir Agrawal, Advocate
For Respondent No.1 & 2	:	Shri Amiyakant Tiwari, Advocate
For Respondent No. 3 & 4	:	Shri Raja Sharma, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

28/07/2015

Heard.

1. This is an appeal against the award dated 29/08/2007 passed in Claim Case No.32/2007 by the Court of 9th Additional Motor Accident Claims Tribunal (F.T.C.), Raipur.

2. Briefly stated facts are that a petition was filed by the sons of the deceased on the averments that on 03.10.2006, a Tractor bearing No.C.G.04/D-0982 & Trolley No.C.G.04/D-0983 was driven in rash and negligent manner

whereby the mother of the claimants namely Kalindri Sen fell down from the Tractor & Trolley; consequently, she sustained injuries and thereafter she succumbed to the injuries. It was stated that at the time of accident, the vehicle was driven by Mehattar, the original Non-applicant No.1 and was owned by Yaman Singh Baghel, the original Non-applicant No.2. It was further stated that at the time of accident, the deceased was aged about 55 years and was a labour and on the different heads, an amount of Rs.4,10,000/- was claimed.

3. The Non-applicant No.1 & 2, Driver & Owner of the vehicle, denied the averments of the claim petition and stated that the claimants are not entitled to any compensation whereas the Non-applicant No.3, Insurance Company, contended that the Tractor & Trolley was insured for the agricultural purpose and if the accident had happened other than for agricultural purpose, the Insurance Company cannot be held liable to make good the amount. It was also stated that at the time of accident, the Driver of the Tractor was not having valid license and since the deceased was traveling in the Tractor she herself was liable for the accident.

4. The learned Claims Tribunal after evaluating the facts and evidence passed an award of Rs.1,64,500/-. It was further held that the Non-applicants are liable to make good the amount i.e. Driver, Owner and the Insurance Company. No appeal is preferred by the claimants.

5. Mr. Sudhir Agrawal, learned counsel for the Appellant/ Insurance Company would submit that according to the evidence which is on record, the deceased Kalindri Sen was traveling in the Tractor itself and she fell down while Tractor was running and was on move. It is further contended that according to the registration certificate, the Tractor was not meant to carry any person other than the Driver and the seating capacity was only One. Therefore, for the deceased who was traveling in the Tractor, the Insurance

Company cannot be held liable. Further, it is also stated that the deceased since was traveling in the Tractor itself she cannot be held to be a third party and therefore the Insurance Company has to be exonerated from payment of liability.

6. Per contra, Mr. Amiyakant Tiwari, learned counsel for the Respondent No.1 and Mr. Raja Sharma, learned counsel for the Respondent No.3 & 4 would submit that when the accident had happened, the deceased since fell down from Tractor she would be within the scope of third party. Consequently, if the injury was caused to the third party then the Insurance Company is liable to make good the payment. It was further admitted that the status of the deceased changed from passenger to that of third party and according to the policy, the Insurance Company is liable to make good the amount to the third party.

7. I have heard learned counsel appearing for the parties, perused the pleadings and documents on record.

8. There is no appeal by the Claimants or Driver & Owner of the vehicle and the instant appeal is only by the Insurance Company. Therefore, whether the liability fastened over the Insurance Company is justified is being considered.

9. The claimants have examined the witness Niraj Kumar Verma as AW-2. He has stated that on the date of accident, he along with the deceased Kalindri Bai was traveling in the Trolley in the capacity of Labour. The other witness Ranjit Kumar Sen, AW-1, son of the deceased, stated that because of the rash and negligent driving, her mother fell down from the Tractor and consequently she died. He has proved the document of the criminal case. The FIR is marked as Ex.P-2 which was made by one Niraj Kumar Verma, wherein he has stated that at time of accident, the deceased was sitting in the Tractor by the side of driver and when the Tractor was driven in rash and

negligent manner, she fell down and came under the wheels of the Tractor. The said report was made on 03.10.2006 itself, after some-time of the accident. If the statement of Ranjit Kumar Sen is examined, he also admitted in the cross examination that at the time of the accident, her mother was traveling in the Tractor, which has categorically come at para 6. Therefore, the statement of Niraj Kumar Verma, AW-2, is negated by the document Ex.P-2, FIR. The merg intimation, Ex.P-4, also corroborated the fact that the accident had happened when the deceased was sitting in the Tractor. So on conjoint reading of the statement it has been establish that at the time of accident, the deceased was traveling in the Tractor.

10. The Insurance Company has proved the document of registration Ex.D-2C of the Tractor which shows that at para 19 of the registration, the seating capacity in the Tractor is only One. The insurance policy has proved the policy as Ex.D-5, which shows that it is a Kissan Package Policy. The terms of the policy has been marked as Ex.D-6. According to the evidence adduced by the Insurance Company, DW-3 has stated that apart from the driver, no separate premium has been paid for the labour. The evidence which has come that in the Tractor, apart from the driver, no other seating capacity was possible. Consequently, if the deceased was traveling in the Tractor then in such case certainly it would amount to breach of condition of policy. It is evident from the insurance policy that it was Kissan Package Policy and there was no seating capacity in the Tractor & Trolley and the deceased was not authorised to travel in the said vehicle. Therefore, in the facts of this case, there was a breach of policy committed by the owner and driver of the vehicle.

11. In the matter of ***National Insurance Company Ltd. Vs. Swarn Singh and others reported in 2004 (3) SCC 297*** Hon'ble the Supreme Court has held thus in paragraph 107 and 110(x) thereof:

"107. We may, however, hasten to add that the Tribunal and the Court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued, despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of Clause (a) of sub-section (2) of Section 149 of the Act, the insurance Company shall be entitled to realize the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 & 168 of the Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it had not been able to do so, the insurance company may initiate a separate action, therefore, against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given an opportunity to defend at all. Such a course of action may also be resorted to when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage."

"110. (x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the collector in the same manner under Section 174 of the Act as arrears of land revenue. The Certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within third days from the date of announcement of the award by the Tribunal."

(Emphasis supplied)

12. Therefore, following the aforesaid principles in the facts of this case, it is directed that the Insurance Company shall first satisfy the amount of compensation and thereafter shall recover the same from the Driver & Owner i.e. Respondent No.3 & 4.

13. In the result, the appeal is partly allowed. No order as to costs.

Sd/-
(Goutam Bhaduri)
JUDGE

Ashok