

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 15 of 2013

1. The Oriental Insurance Company Limited, Through - Branch Manager, Parmanand Bhawan, Near Rajendra Park Chowk, G.E. Road, Durg, Distt. Durg (C.G.)

---- Appellant

Versus

1. Dwarika, S/o. Kejaw Nishad, Aged About 44 Years,
2. Taran, S/o. Dwarika Nishad, Aged About 16 Years (Minor),
3. Maheshwar, S/o. Dwarika Nishad, Aged About 15 Years (Minor),
4. Shivcharan, S/o. Dwarika Nishad, Aged About 13 Years (Minor)

No. 2 to 4 are minor, Thru- natural guardian, father- Dwarika Nishad, R/o Village- Beladi Kala, Tah. Berla, Distt. Durg (C.G.)

5. Tirath Ram Nirmalkar, S/o. Sukhiram, Aged About 32 Years, Occupation-Driver, Village Telga, P.S. and Tah. Berla, Distt. Durg (C.G.)
6. Ashwani Kumar, S/o. Netram Nayak, Aged About 46 Years, R/o. Village Telga, Tahsil- Berla, Distt. Durg (C.G.)

---- Respondents

For Appellant	: Mr. Pankaj Agrawal, Advocate
For Respondent No.5 & 6	: Mr. R.K. Pali, Advocate
For Respondent No. 1 to 4	: None present.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

13/10/2015

1. Challenge in this appeal is to the award dated 28.09.2012, passed in Claim Case No.184/2011, passed by the Additional Motor Accident Claims Tribunal, Bemetara, District Durg (C.G.).

2. Briefly stated facts of the case are that a claim petition was filed by the husband and three minor children of the deceased, Smt. Vimla Bai with the pleadings that on 21.10.2011, the deceased, Vimla Bai had went to work for harvesting Soyabin in the harvester, which belonged to one Ashwani Kumar, the original non-applicant No.2. While such harvester was being used to reap the Soyabin through a tractor at that time, the harvester and the tractor was used in rash and negligent manner, whereby sari of the deceased, Vimla Bai came in contact with the Thresher and she was dragged in the field and in a result of that she died. It was contended that at the time of the accident, deceased, Vimla Bai was aged about 43 years and was hail and hearty and used to earn Rs.156/- per day. It was stated that because of such death, the applicants are deprived of her income and an amount of Rs.9,00,000/- was claimed.
3. The original non-applicant No.1 and 2, namely Tirathram Nirmalkar and Ashwani Kumar, denied the averments made in the claim petition and it was contended that tractor harvester bearing No. C.G.-07-N-4499 was not being used in rash and negligent manner by Tirathram Nirmalkar and the accident had happened due to the negligence of the deceased herself. It was further stated that at the time of the accident, the non-applicant No.1, driver of the tractor was having valid driving license, therefore, the insurance company is liable to make good the compensation.
4. The original non-applicant No.3, the insurance company in its reply has stated that the accident had happened with the harvester and the harvester was not covered under the insurance. It was further

stated that the tractor was insured and the accident had happened with the harvester and not with the tractor, therefore, since the accident had caused by the harvester, the insurance company can not be directed to pay the compensation. It was further stated that dead body of the deceased was not subjected to postmortem so as to know the cause of death, therefore, it can not be stated that the deceased, Vimla Bai died due to any injury.

5. Learned Claims Tribunal after evaluating the evidence and the facts held that at the relevant time, the harvester was attached with the tractor and by use of tractor, the accident had happened, consequently, the compensation was directed to be paid including that of insurance company.
6. Learned counsel for the appellant submits that the award can not be sustained as it leads to illegality since admittedly, the accident did not happen with the tractor. He would further submit that since the harvester was not insured, therefore, the accident caused by the harvester, the insurance company can not be held liable.
7. Per contra, learned counsel appearing on behalf of the respondent No.5 & 6 would submit that the harvester has no different identity and by use of the tractor the accident has happened, therefore, the award is well merited which do not call for any interference. He placed his reliance in case law reported in **2010 (1) ACCD 463 (Raj), National Insurance Co. Ltd. Vs. Meera**, wherein under the similar circumstances, when the accident had happened with the harvester, it was held that the insurance company could not avoid its liability.

8. I have heard the learned counsel for the parties, perused the documents and the evidence on record.
9. The appeal is by the insurance company.
10. According to the eye-witness, Dwarika Nishad, AW-1, the husband of the deceased, this witness has stated at para -3 of his deposition that on the date of accident, while his wife, Vimla Bai was threshing Soyabin in thresher machine, which was attached with the tractor, her sari came in contact with the thresher machine and because of that, she was dragged into the field with tractor and harvester and died at the field itself. In cross-examination of this witness, nothing has come to rebut such statement. This witness has further stated that at the time of the accident he was working in the field and tractor and machine was attached together and while tractor was on move, with attached machine, the accident had happened.
11. In the Motor Vehicle Act, the tractor has been defined in Sub-section 44 of Section 2, which reads as under :-

“(44) “tractor” means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller;”
12. Here in this case, admittedly, the thresher was used alongwith the tractor, therefore, the definition itself used that tractor means any machine used for the purpose of propulsion. The thresher which was being propelled/operated by the tractor, therefore, can not be read separately as the tractor itself takes within the definition, the machine used or propelled. It is also obvious that thresher can not

work independently unless and until it is attached with the tractor. The matter can be looked into from other angle that if the tractor was not being used, the thresher would have been idle and consequently when the tractor was in use, the accident happened with the attached thresher. Therefore, the thresher can not be considered independently and it can not be held that the accident had happened because of thresher alone. Thresher do not have any separate registration and carrying agriculture operations with the tractor would be a part of the job. Therefore, the finding of the Tribunal can not be faulted where in the liability has been fastened on the insurance company being the insurer of the tractor.

13. Now coming to the other part of submission that the postmortem was not carried out of deceased as such death can not be said to be attributed to the accident, it can not be given much weightage in view of the statement of the eye-witness as he himself has stated that how the accident had happened. Dwarika Nishad, AW-1 had stated that sari of the deceased came in contact with the thresher, the same fact is also corroborated by the document Ex.P/2, the F.I.R., which was made immediately after the accident and the mourge intimation, Ex.P/3. Reading the documents of the criminal case would show the manner in which the accident had happened. As a result, the postmortem which was not carried out would not be fatal for the claimants and the claimants can not be non-suited on that ground.
14. The appellant is further not able to substantiate the fact that the equipment used for the purpose of propulsion by the tractor, does

require independent insurance cover. Consequently, the tractor in this case was insured, this argument can not be appreciated that thresher has a different identity and since it was not covered under the insurance, the insurance company would not be liable to pay the compensation. In absence of any provisions in the Motor Vehicles Act requiring separate insurance cover with respect to any one or more such equipments in addition to the insurance cover of the tractor, in order to attract liability of the insurer in the event of accident, it cannot be said that where the tractor was insured can not be separately assessed, since the victim would become third party for the purpose of insurance.

15. So after careful consideration of the facts and evidence I am of the opinion that the award is well merited and no grounds are made out for any intervention in appeal. In a result the appeal is dismissed.
16. No order as to costs.

Sd/-
(Goutam Bhaduri)
Judge