NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 535 of 2009

Kanshi Ram Sahu, S/o Pardesi Ram Sahu, aged about 65 years, R/o village Lamidih, PO Sonasilli, PS Pithora, Teh. And Distt. Mahasamund (CG).

---- Appellant

Versus

1. Brijlal Vishvakarma S/o Ram Prasad, aged about 45 years,
2. Mahendra Kumar S/o Brijlal, aged about 17 years.
3. Ku. Ghasnin D/o Brijlal, aged about 13 years.
4. Ku. Rajni D/o Brijlal, aged about 11 years.
5. Ransai Vishwakarma, S/o Brijlal, aged about 9 years
   Respondents No.2 to 5 are minors through natural guardian, father Brijlal Vishwakarma.
6. Amrit Bai W/o Ram Prasad, aged about 65 years.
7. Thakur Ram Sahu S/o Kanshi Ram Sahu, aged about 40 years,
   All R/o Village Lamidih, P.O. Sonasilli, P.S. Pithoura, Tahsil And Distt.- Mahasamund (CG).
8. Reliance General Insurance Co. Ltd. Through Divisional Office, (Shop No. 412,413), Ravi Bhawan, Jaistambh Chowk, Raipur (CG).

---- Respondents

For Appellant	:	Shri RK Pali, Advocate.
For respondent No.8	:	Shri Tarkeshwar Nande, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

14.11.2017

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the owner against the award dated 20.08.2008 passed by the 1st Additional Motor Accident Claims Tribunal Mahasamund, in Claim Case No.16/2008. Vide the said impugned award, the Tribunal in a death case has awarded a compensation of Rs.1,77,000/- along with interest @ 8 percent per annum from the date of application. While passing the award, the Tribunal has exonerated the insurance company of its liability and have fastened

the liability of payment of compensation upon the appellant-owner and driver of the Tractor and Trolley involved in the accident.

2. Counsel for the appellant-owner submits that the findings of the Tribunal in exonerating the insurance company and fastening the liability upon the owner is erroneous both under the facts as well in law. It is a case where the claimants have made out a claim for compensation stating to be a labour working in the Tractor at the time of accident. The claimants have led evidence of AW-2, an eyewitness to the incident but the Tribunal has not believed the said statement. There is no evidence sufficiently proved by the insurance company to disbelieve the statement of an eyewitness or for that matter the claimants. Even if the claimants story is disbelieved, even then the finding arrived at by the Tribunal would also not absolve the insurance company of its liability as in the present case the MP Motor Vehicle Rules, 1994 (in short, the Rules, 1994) which is also adopted by the State of Chhattisgarh is applicable. In Rule 97 of Rules, 1994, it has been provided that tractor and trolley can be used for carrying persons at the time of Mela, Markets, Religious Functions, Marriages and at other ceremonial occasions provided the number of persons so carried shall not exceed 20 at a time. He further relied upon the decision of MP High Court in National Insurance Co.Ltd. Mahila Bhoga and Others, 1996(2) Vidhi Bhasvar-48 as well as recent decision passed by this court in case of Bajaj Allianz General Insurance Co.Ltd. Vs. Balkeshwari & Ors.(MAC No.1122 of 2011, decided on 06.07.2017). He submits that when the rule itself provides

for the tractor to be used for marriage and other religious purpose and there being an evidence on record that the accident occurred when the tractor was returning from the chhati function in the family, the insurance company cannot be absolved of its liabilities and thus the impugned award deserves to be modified suitably and the liability be fastened upon the insurance company.

3. Learned counsel appearing for the respondent-insurance company opposing the appeal submits that in the instant case there is a clear breach of policy conditions inasmuch as the vehicle was being used for other than agriculture purpose for which it was insured and registered and therefore, the Tribunal has rightly exonerated the insurance company and the appeal deserves to be rejected. He further submits that another appeal by the owner arising out of the same accident i.e. MAC No.481 of 2009 has been dismissed by the co-ordinate Bench of this court on 08.02.2013, and therefore, the present appeal also should be dismissed.

4. Having heard the rival contentions put forth on either side and on perusal of records, the undisputed facts as is reflected from the evidence of the owner and the insurance company is that the accident occurred on 29.12.2007 while the tractor and trolley bearing registration Nos. CG-06-ZD-1245 and CG-04-ZC-5160 owned by the appellant and driven by respondent No.7 were returning from a Chhati function in family. The tractor and trolley indisputably were insured with the respondent No.8. The policy issued was a package policy for agriculture purpose. For ready reference Sub-rule 7 of Rule

97 of the Rules, 1994 provides as under :

> "7. Notwithstanding anything contained in sub-rules (1) and (2) but subject to the provisions of sub-rule(5) such tractor-trailer other than those registered in the name of industrial organization, Municipal Institutions, water supply institution and non-agricultural co-operative societies and the unladen weight of which does not exceed 7300 kg may be used for the following purpose:-
> (i) xxx xxx xxx
> (ii) for carrying persons at the time of Mela, Markets, Religious Functions, Marriages and at other ceremonial occasions provided the number of persons so carried shall not exceed 20 at a time."

5. The above rule specifically envisages the fact that Tractor insured for agricultural purpose can also be used for carrying persons to Mela, Markets, Religious functions, Marriages and at other ceremonial occasions. Thus, since the Rule itself provides permitting the Tractor to be used in religious and ceremonial functions, the said ground raised by the insurance company is not sustainable and the same stands negated.

6. The Division Bench of MP High Court in case of National Insurance Co. Ltd. Vs. Sarvanlal & Ors.2004(4)MPHT 404 (DB) dealing with the similar issue had dismissed the appeal of the insurance company. The view of the Division Bench was based on an earlier Division Bench decision of MP High Court in case of Pushpa Devi & Ors. Vs. Kamal Singh & Ors. 2001(3) MPLJ 548 wherein also it was held that once when it is found that the deceased were travelling as members of the marriage party in the tractor trolley which was being used otherwise than for agriculture purpose for which it was insured, the insurer is liable to pay compensation to the claimants on account of clause 7 of Rule 97 of the Rules, 1994. Similar view has also been

taken by this court in case of Bisun Singh & Anr. Vs. Ratni Devi & Anr. (MAC No.657 of 2012 and another connected matter, decided on 01.08.2017).

7. For the aforesaid reasons, this court is of the opinion that the impugned award inasmuch as exonerating the insurance company was not proper, legal or justified. The same deserves to be and is accordingly modified holding that the amount of compensation shall be jointly and severally payable by the owner, driver and the insurance company which had insured the tractor as well as trolley.

8. Any amount which the appellant has deposited, the same shall be entitled to be refunded by the insurance company and the balance amount shall be deposited with the Tribunal by the respondent No.8-Insurance Company.

9. So far as the decision passed by the co-ordinate bench in the appeal arising out of same accident is concerned, a perusal of record shows that the said appeal was not decided on merits, but was simply disposed of in the light of entire award getting executed.

10. The present appeal thus stands allowed.

Sd/-
(P. Sam Koshy)
Judge

inder