

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No.1060 of 2010**

Suresh Singh S/o Narayan Singh, aged about 48 years, Owner of Tractor No.CG 15 ZF 0946 and Trolley No.CG ZF 0947, R/o village Jarhadeeh, Udaypur, Post Udaypur, P.S. and Tahsil Udaypur, District Surguja (C.G.).

---Appellant

Versus

1. Tularam S/o Mangalsai, aged about 30 years.
2. Phul Sundari W/o Shri Tularam, aged about 26 years.
Both are by caste Gond, Occupation Agriculturist, R/o Village Sanibarra, P.S. and Tahsil Udaypur, District Surguja (C.G.).
3. Mohar Sai S/o Preamsai, Agariya, aged about 21 years, Occupation Driver, R/o Village Mohanpur (Upka), P.S.Lakhanpur, Tahsil Udaypur, District Surguja (C.G.).
4. Bajaj Allianz General Insurance Co.Ltd., Through : Branch Manager, Branch Office Shiv Mohan Bhawan Vidhan Sabha Road, Pandri, Raipur (C.G.)

---Respondents

For the appellant	:	Shri Sunil Tripathi, Advocate.
For respondent No.4/ Insurance Company	:	Shri S.S.Rajput, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board**

01/11/2017

1. Present is an appeal under Section 173 of the Motor Vehicle Act by the owner assailing the award dated 09/07/2010 passed by the 4th Additional Motor Accidents Claims Tribunal (F.T.C.), Ambikapur, District Surguja (C.G.) in Motor Accident Claim Case No.02/2009.
2. Vide the said impugned award, the Tribunal in a death case of a minor, aged around three years under Section 166 of the Motor Vehicles Act has awarded the compensation of Rs.51,500/- with interest @ 9% per annum from the date of application.
3. In the present appeal, the owner was challenging the liability which has been fastened upon him and exonerating the Insurance Company by the Tribunal.

4. The counsel for the appellant submits, that the Insurance Company has been exonerated on two grounds. Firstly, the driver of the offending vehicle i.e. respondent No.3 not having proper endorsement in the license to drive the Transport Vehicle and the second ground is that the Tractor and the Trolley are being used other than the purpose for which it was insured i.e. for agricultural purpose. He further submits, that the Insurance Company has not led any sufficient material to show, that the vehicle was being used for any commercial purpose at the time of the accident and in the absence of any evidence to this effect by the Insurance Company, the liability could not have been fastened upon the owner as the vehicle undisputedly was duly insured.

5. So far as the ground of the driver not having a proper endorsement in his license is concerned, according to the counsel for the appellant, this issue is no longer res-integra as it stands concluded by the larger bench decision of the Hon'ble Supreme Court in the case of ***Mukund Dewangan Vs. Oriental Insurance Company Limited [AIR 2017 SC 3668]***.

6. Having heard the contentions of the counsel for the appellant and from the record what clearly reflects is that, so far as the driver not having a proper endorsement is concerned, the contention of the counsel for the appellant does not have much force in it as the matter stands concluded by the Supreme Court in the case of Mukund Dewangan (Supra). However as regards the second ground is concerned, that the Tractor being used for the purpose other than the agricultural purpose, the record show, that neither the driver nor the owner have entered appearance before the Tribunal to disown the contention of the Insurance Company as regards the beach.

7. In the absence of any substantive evidence led by the driver and the owner before the Tribunal, the conclusion reached to, by the Tribunal is based on the evidence which have been led by the Insurance Company, cannot be faulted with nor can it be said to be either perverse or contrary. The driver nor the owner have pleaded and proved that the stone mettle loaded in the Tractor was not for commercial purpose but was for his personal Agricultural purpose.

8. In the given factual matrix of the case this court is of the opinion, that no any sufficient force has been made out by the counsel for the appellant/owner to interfere with the impugned award and the appeal thus being devoid of merit deserves to be and is accordingly dismissed.

9. The interim order if any, would also stands merged with the present order and the appellant is directed to forthwith deposit the balance of the amount.

Sd/-
(P. Sam Koshy)
Judge

Sumit