NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL NO. 634 OF 2006

The Oriental Insurance Company Limited, through the Divisional Manager, Division Office, Jail Road, Raipur, District Raipur (C.G.)

… Appellant

versus

1A. Thakur Singh, S/o Hanuman Singh, age 15 years
1B. Ujyar Singh, S/o Hanuman Singh, age 13 years
Through their natural guardian Uncle Radhelal, S/o Late Sudhiyar Singh, age 50 years, R/o Village- Namna, P.S. Premnagar, Tahsil- Surajpur, District Sarguja (C.G.)
2. Naresh *alias* Chatlu, S/o Samlu, Uraon by caste, occupation- Driver, aged about 20 years, R/o Village Lakshmipur, P.S. Premnagar, Tehsil Surajpur, District Sarguja (C.G.)
3. Suresh Kumar Sahu, S/o Ramlallu Sahu, aged about 28 years, R/o Village Namna, P.S. Premnagar, Tehsil- Surajpur, District Sarguja (C.G.)

… Respondents

For Appellant	:	Mr. G.S. Patel, Advocate, under instructions of Mr. Abhishek Sinha, Adv.
For Respondents No.1A & 1B	:	Mr. A.N. Pandey, Advocate.
For Respondent No.3	:	Mr. D.N. Prajapati, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

20/11/2017

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, filed by the appellant-insurance company, assailing the award dated 7.1.2006 passed by the First Additional Motor Accident Claims Tribunal, Surajpur, in Motor Accident Claim Case No. 52/2004.

2. Vide the impugned award, the learned Tribunal, in a death case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.1,62,000/- to the claimant with interest thereon at the rate of 6% per annum from the date of application and has fastened the liability for payment of compensation upon the insurance company indemnifying the owner and driver.

3. Challenge to the impugned award by the insurance company is that the liability has been wrongly fastened upon the insurance company as the owner of the vehicle had not paid any extra premium covering the risk of labour engaged in the tractor. Learned counsel for the insurance company submits that it is a case where the deceased could not have been an employee of the owner, as at the time of accident he was only aged around 16 years and thus he had not attained the age of employment. Therefore, the fact that he was employed by the owner of the tractor also is difficult to be accepted and thus prayed for the award to be suitably modified and the insurance company be exonerated of its liability.

4. Learned counsel for the owner submits that the deceased in the instant case was working on the tractor as a labour for the owner and that since the policy issued being a Kissan Package Policy, the insurance company was duty bound to indemnify the owner and thus the award does not warrant any interference.

5. Learned counsel appearing for the claimants also opposing the appeal submits that the stand taken by the claimants before the Tribunal was that the deceased was aged around 19 years though the Tribunal has accepted his age as 16 years as per the post-mortem report, and thus prayed for the rejection of the appeal.

6. Having heard the contentions put forth by the counsel appearing for the respective parties and on perusal of record, the admitted factual position is that the accident had occurred on 6.6.2004, the deceased in the instant case being Suraj *alias* Suraj Narayan and the finding of the Tribunal is that his age was 16 years at the time of accident.

7. The finding of the Tribunal has been questioned only by the insurance company and none of the other respondents have challenge such finding. The policy was also a Kissan Package Policy. But, the fact that the deceased was a minor and the finding to this effect has not been challenged by any of the parties, therefore, it has to be presumed that the deceased at the time of the accident was aged around 16 years and as such he could not have been engaged as a labour even for agriculture work.

8. Under the given factual circumstances of the case that the owner taking the deceased for his work when the accident occurred, the owner paying no extra premium while issuing the policy, the insurance company cannot be directed to indemnify the owner on a risk of such a person. Thus, this Court is of the opinion that there is sufficient force on the part of the insurance company while opposing the appeal and the finding arrived at by the Tribunal. Given the factual circumstances, since the breach is only in respect of the deceased being a minor aged about 16 years being employed by the owner, this Court is of the opinion that it is fit case where the principle of 'pay and recovery' can be applied in favour of the insurance company.

9. So far as the challenge to the quantum part is concerned, considering the age of the deceased, the number of claimants and the amount awarded by the Tribunal, this Court is of the opinion that at this juncture no strong case has been made out calling for interference with the amount awarded by the Tribunal.

10. As a result, the appeal is partly allowed and the impugned award stands modified to the extent that the responsibility of payment of compensation shall be that on the appellant-insurance company with a liberty to recover the same from the owner.

Sd/-
(P. Sam Koshy)
Judge

/sharad/