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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No. 1237 of 2008

Jawahar Lal Chouhan S/o Chhatanki Chouhan, aged about 60 years, R/o Baradih, Kalika Dham, PS Kaspeti, Tahsil and District Varanasi (Uttar Pradesh)

---- Appellant

VERSUS

1. Ramesh Sahu S/o Heera Lal Sahu Aged about 25 years, R/o village Biharpur, PS Chandni, Tahsi Surajpur, District Surguja, Chhattisgarh (Driver)
2. The Oriental Insurance Company Ltd. Office Banaras Chowk, Ambikapur, District Surguja, Chhattisgarh (Insurer)
3. Prakash Singh S/o Ram Narayan Aged about 40 years. (Claimant)
4. Heerman W/o Ram Prakash Aged about 36 years (Claimant)
   Respondents 3 and 4 by caste Gond, R/o village Khaira, PS Chandin (Biharpur) Tahsil Surajpur, District Surguja (Chhattisgarh.

---- Respondents

For Appellants	:	None.
For Respondent No.2	:	Shri Sudhir Agrawal and Shri P. Dutta, Advocates.
For Respondents 1, 3, 4:		None.

Hon'ble Shri Deepak Gupta, Chief Justice

Judgment on Board

27/01/2017

1. This appeal by the owner is directed against the award dated 09.05.2008 passed by the 1st Additional Motor Accident Claims Tribunal, Surajpur, District Surguja (*hereinafter called 'the Tribunal'*) in Motor Accident Claims Case No. 116 of 2006 whereby the learned Tribunal allowed the claim petition filed by the Claimants and awarded compensation of Rs. 2,44,120/- alongwith interest at the rate of 6% per annum but held only the owner and driver of the vehicle liable to pay compensation and exonerated the Insurance Company of its liability to pay the same.

2. The claim petition was filed on the allegation that on 21.10.2005, the daughter of the Claimant namely Ku. Sonamati was travelling in the Tractor bearing registration No. UP-65-S/1409 owned by the Appellant-Jawahar Lal Chouhan and driven by Respondent No. 1-Ramesh Sahu. In the claim petition, it was alleged that Ku. Sonamati was travelling in the tractor alongwith other labourers. The driver of the tractor lost control of the vehicle as a result of which she fell down and came under the wheel of the Tractor and died. These facts have been proved on record and virtually there is no dispute with regard to the same. The learned Tribunal exonerated the Insurance Company on the ground that as per the terms of the insurance policy, no passenger could be carried in the vehicle which was a Tractor and since there was violation of the provisions of the Motor Vehilces Act, 1988, and terms of the insurance policy, the Insurance Company could not be held liable.

3. At the outset, it may be stated that as far as Tractor or Tractor-Trolley is concerned, no passenger could be carried in the same. A Tractor by itself has only sitting capacity of one *i.e.* the Driver and no other person can be carried. When a Trolley is attached to the Tractor, it still does not become a passenger vehicle. A Trolley is attached to it only for the purpose of carrying some produce. In case of agriculturist, it is expected that in the Trolley, agricultural produce or goods which are related to agriculture are carried. No passenger could be carried as per the provisions of the Motor Vehicles Act. In this behalf reference may be made to the judgment of the Apex Court in Oriental Insurance Company Ltd. v. Brij Mohan & Others {(2007) 7 SCC 56}.

4. However, there is no doubt that the Insurance Company can issue insurance policy even agreeing to indemnify those liabilities which it is not liable to be indemnify under the terms of the Motor Vehicles Act. I have gone through the insurance policy in this case and I do not find any additional premium for any passengers being charged. There is no premium charged for labourers also. Therefore, the Insurance Company could not have been held liable. Merely because the policy was an agricultural policy, does not mean that the Insurance Company is liable in respect of the passengers.

5. Therefore, I find no merit in the appeal. It is accordingly dismissed.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

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