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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 298 of 2008

The Divisional Manager, New India Assurance Company Ltd. Jail Road, Raipur through the Branch Manager, New India Assurance Company Ltd. Opposite Rajiv Plaza, near Bus Stand, Bilaspur (CG)

---- Appellant

Versus

1. Dharamdas, aged 20 years, S/o Bisahu Das, Bisahudas, R/o Khapradih, Tehsil & District Raipur (CG)
2. Virendra S/o Rajeshwar Baghmar, R/o village Khapradih, Post Guma, P.S. Suhela, District Raipur (CG) (Driver of tractor No. CG 04D/3928)
3. Rajeshwar S/o Salikram Baghmar, R/o village Khapradih, Post Guma, P.S. Suhela, District Raipur (CG) (Owner of tractor No. CG 04D/3928)

---- Respondents

For Appellant : Shri Dashrath Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

27/09/2017

None appears for the claimants as also for the driver and the owner of the offending vehicle.

2. Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 30.11.2007 passed by the 7th Additional Motor Accident Claims Tribunal, Raipur (CG) in Claim Case No. 25 of 2006. Vide the impugned award, the Tribunal in a claim case under Section 166 of the MV Act has awarded a compensation of Rs.1,29,250/- with interest @ 6% per annum. There was also an order of penal interest in case the amount is not deposited within the stipulated period.

3. According to the counsel for the appellant, the vehicle involved in the accident was a tractor, the sitting capacity of which was only one. The Injured

Dharamdas was travelling on the body of the tractor when the accident occurred and therefore there being a breach of policy condition as the injured could not have been permitted to sit on the body of the tractor, the Insurance company cannot be fastened with the liability of payment of compensation. Thus, prayed for exoneration of the Insurance Company of its liability and shifting the liability of payment of compensation upon the owner. Counsel for the appellant relied upon the decision of this Court in MA(C) No.1372 of 2007 in the case of Royal Sundaram Alliance Vs. Eshwar and others reported in 2009 (1) ACCD 100 (CG) wherein under similar circumstances the Insurance Company was exonerated of its liability and shifted the burden of payment of compensation upon the owner.

4. Having considered the contention put forth by the counsel for the appellant and on perusal of the record, this Court finds that the policy which was issued by the Insurance Company covered the risk of the driver in addition to the risk of 5 employees under the provisions of Workmen's Compensation Act. This fact has been proved by the witness of the Insurance Company namely Sunil Paredkar. What is now to be seen is whether the injured had suffered the injuries in the course of employment or not?

5. The claim petition filed by the claimant itself reflects that while he was going to the field for ploughing sitting on the body of the tractor the accident occurred resulting in his injuries. A perusal of the deposition of the claimant itself shows that he was going on the tractor driven by the son of the owner for ploughing his field when the accident occurred. From the cross examination of the claimant also it reveals that he had hired the tractor from the owner and was taking the same to his field for ploughing on the charge of Rs.300/- per hour. This deposition of the claimant itself establishes the fact that he was travelling on the tractor not as a labourer but as a hirer of the tractor whose status then would be that of a passenger. Further he has also admitted of travelling sitting on the body of the tractor.

6. In view of the aforesaid evidence, this Court is of the opinion that the contention of the Insurance Company does have force as regards there being breach of policy condition. Taking into consideration the peculiar facts and circumstances of the case and also the fact that the Insurance Company has indemnified the driver as also 5 employees, this Court is of the opinion that ends of justice would meet if the Insurance Company is directed to deposit the entire amount awarded before the Tribunal with a liberty to recover the same from respondents 2 & 3. It is ordered accordingly. Since there is no representation on behalf of the respondents 2 & 3, the cross objection filed by them stands dismissed.

7. At this juncture, counsel for the appellant requested that the interest may be confined to 6% per annum as has been decided by the Tribunal and the condition of penal interest may be waived. Given the factual matrix of the case, the award to the extent of imposition of penal interest stands set aside and it is directed that the amount of compensation awarded shall carry interest @ 6% per annum from the date of application till it is deposited.

Sd/-

(**P. Sam Koshy)**
JUDGE

Bhola