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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 897 OF 2008

1. Gopal Jaiswal, S/o Manbodhi Jaiswal, aged about 32 years, R/o Village- Bhatgaon, Thana & Tahsil Bilaigarh, District Raipur (C.G.)
2. Manbodhi Ram Jaiswal, S/o Dasru Ram Jaiswal, aged about 50 years, R/o Village- Bhatgaon, Tehsil & Thana Bilaigarh, District Raipur (CG)

… Appellants

versus

1. Daras Ram, S/o Visram Bharti, aged about 48 years
2. Arun Kumar, S/o Daras Ram Bharti, aged about 23 years
3. Suresh Kumar, S/o Daras Ram, aged about 14 years
4. Ku. Sitala Bharti, S/o Daras Ram, aged about 14 years
Respondent No. 3 and 4 minor Darasram Bharti, S/o Visram Bharti
All above residents of Gram Barbhatha, Thana & Tehsil Bilaigarh, District Raigarh (C.G.)
5. National Insurance Company Ltd., Regional Officer, Kachehari Chowk, District Raipur (C.G.)

… Respondents

For Appellants	:	Mr. Vivek Shrivastava, Advocate.
For Respondent No.5	:	Mr. Qamrul Aziz, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

02/11/2017

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, assailing the award dated 23.4.2008 passed by the Second Additional Motor Accident Claims Tribunal, Balodabazar, in Claim Case No. 15/2007.

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. 3,67,000/- to the claimants with interest thereon at the rate of 6% per annum from the date of presentation of claim application. While passing the award, the learned Tribunal has fastened the liability of payment of compensation upon the driver and owner of the offending vehicle, exonerating the insurance company of its liability. However, the learned Tribunal has also held that it shall be the responsibility of the insurance company to pay the compensation first and to get the amount recovered subsequently from the owner of the vehicle, applying the principle of 'pay and recovery'.

3. The offending vehicle in the instant case is tractor-trolley, bearing registration no. CG04-DA-0710 and CG04-DA-6308. The said vehicle at the relevant point of time was driven by appellant no.1-Gopal Jaiswal, owned by appellant no.2-Manbodhi Ram Jaiswal and was duly insured with respondent no.5-National Insurance Company Limited.

4. The ground of exonerating the insurance company of its liability is that the offending vehicle at the relevant point of time was not being used for agriculture purposes and therefore the liability has been fastened upon the driver and owner.

5. The present appeal has been filed by the driver and owner of the offending vehicle. Contention of the learned counsel for the appellants is that firstly the deceased-Kanchan Bai in the instant case was a third party as it was not the offending vehicle which had hit the deceased at the time of accident and that she was not travelling on the said vehicle when the accident occurred. Further, there is also evidence which has come on record particularly that of the driver and the owner who have stated that the offending vehicle which was loaded with sand was being taken for the construction of a pump house in his agriculture field. Therefore, it cannot be said that there was any breach of policy condition or that the vehicle was being used for a purpose other than that for which it was registered and insured.

6. Learned counsel for respondent no.5-insurance company however opposing the appeal submits that it is a case where the finding of the learned Tribunal was based on the evidence which have come on record and therefore the award does not warrant any interference and the appeal deserves to be rejected.

7. Having heard the contentions put forth on either side and on perusal of record, admittedly, the insurance company has not led any evidence whatsoever. The deceased undisputedly was a person travelling on a bicycle which was hit by the offending vehicle and thus the deceased was a third party. The driver and the owner have led evidence showing that offending vehicle was being used for transporting sand to be taken to the agriculture field for construction of a pump house.

8. Both these facts clearly show that there was no sufficient material to reach to a conclusion that the offending vehicle was not being used for agriculture purposes or that the sand which was loaded in the vehicle was for commercial purpose, in the absence of which the finding of the learned Tribunal to the extent of exonerating the insurance company is not proper, legal and justified and the same deserves to be and is accordingly modified holding that the liability of payment of compensation shall be jointly and severally upon the driver, owner and insurer of the offending vehicle.

9. The impugned award stands accordingly modified. The liability of payment of compensation shall be upon the insurance company.

10. In compliance of the direction of the learned Tribunal, the insurance company has already deposited the entire amount before the Tribunal. Pendency of the present appeal, the appellant-owner was also directed to deposit an amount of Rs.1,00,000/- before the Tribunal. In the given facts and circumstances, the amount deposited by the appellant-owner is directed to be refunded back to him upon his moving a suitable application.

11. The appeal stands allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

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