

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No.522 of 2009**

1. Indra Kumar S/o Motilal Kewat, aged about 30 years.
 2. Pyarelal S/o Khikhram Kaiwartya, aged about 37 years.
- Both are R/o Mudiyadih, P.S.& Tahsil Kasdol, District Raipur (C.G.).

---Appellants**Versus**

1. Gunuram S/o Rajaram Kewat, aged 42 years.
 2. Sunita W/o Gunuram Kewat, aged 36 years.
- Both are R/o Mudiyadih, P.S. & Tahsil Kasdol, District Raipur (C.G.).
3. The New India Insurance Company Ltd., Head Office, Baloda Bazaar, District Raipur (C.G.).

---Respondents

For appellants	:	Shri Palash Tiwari, Advocate.
For resp.No.3/Insurance Company	:	Shri Anand Gupta under instructions of Shri S.K.Agrawal, Advocate.

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

10/11/2017

1. Present is an appeal by the owner under Section 173 of the Motor Vehicles Act, 1988 assailing the award dated 30/12/2008 passed by the learned 1st Additional Motor Accident Claims Tribunal (F.T.C.), Baloda Bazaar, District Surguja in Motor Accident Claim Case No.30/2007.
2. Vide the said impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded the compensation of Rs.1,10,000/- along with interest @ 7% per annum.
3. The brief facts of the case is that, on 29/04/2007, the Tractor and Trolley belonging to the present appellant bearing registration No.CG-04-ZG-0930 and 0931 met with an accident when it fell in a canal and as a result of which the deceased in the instant case and another person namely Akshay Kumar had died.
4. The present appeal pertains to the death of Karan and the claimants in the instant case i.e. respondent Nos.1 & 2 are the parents.

5. Vide the said impugned award, the Tribunal had exonerated the Insurance Company of its liability and had fastened the liability of payment of compensation upon the present appellants. The ground for exonerating the Insurance Company was that, though the Tractor was insured for an agricultural purpose, but on the date of accident, the vehicle was being used for the purpose other than agriculture for which it was insured and registered. The counsel for the appellants assailing the award submits, that under the Chhattisgarh Motor Vehicles Rules, 1994, rule 97 permits the Tractor to be used for Mela, Markets, Religious Functions, Marriages and other ceremonial occasions. He further relies upon the decision passed by this court in MAC No.657/2012 decided on 01/08/2017 and prays for the impugned award to be modified to the extent of liability be shifted upon the Insurance Company.

6. The counsel for the Insurance Company however opposing the appeal submits that since, there is the finding of the Tribunal in as much as the Tractor and Trolley being used for non agricultural purpose, the liability cannot be shifted upon the Insurance Company and the Tribunal has rightly exonerated it and prayed for the rejection of the appeal.

7. Having considered the rival contentions put forth on either side and on perusal of record this court finds, that the Tribunal in paragraph 20 of the impugned award itself have in very categorical terms reached to the conclusion, that on the fateful day, the Tractor and the Trolley was being used for marriage purpose and the two deceased persons and the other persons were travelling in the Tractor as a baratis.

8. The issue involved in the case has already been decided by the division bench of the Madhya Pradesh High Court in the case of **National Insurance Co.Ltd. v. Sarvanlal, 2004 (4) M.P.H.T. 404 (DB)** wherein also in a similar circumstances, the Tractor while coming from marriage having met with an accident and the High Court has fastened the liability of payment of compensation upon the Insurance Company based on rule 97(7) of the rules of 1994. Similar decision have also been taken on an earlier occasion by the full

bench of the Madhya Pradesh High Court in the case of ***Jugal Kishore v. Ramlesh Devi, reported in 2003 (4) M.P.H.T. 574 (FB)***. This High Court also in a matter pertaining to ***Royal Sundaram Alliance Insurance Company Vs. Lakhan Lal & Ors., 2007 (3) C.G.L.J. 273*** has reiterated the same principles.

9. In the given factual matrix of the case this court is of the opinion, that once when there is a categorical finding of the Tractor being used for marriage purpose, provision of rule 97 of the Chhattisgarh Motor Vehicles Act, 1994 automatically comes into play and the Insurance Company thus cannot be absolved of its liability of payment of compensation.

10. Thus, the finding of the Tribunal in exonerating the Insurance company stands set aside and it is held, that the liability of payment of compensation shall be jointly and severally upon the owner, driver and the Insurance Company i.e. respondent No.3. It shall be the responsibility of the Insurance Company to deposit the entire amount awarded by the Tribunal. Any amount which the appellants have deposited shall be refunded by the Insurance Company to the appellants.

11. The appeal stands allowed and disposed off.

**Sd/-
(P. Sam Koshy)
Judge**

Sumit