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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1218 of 2009

Reserved on 10.07.2017

Delivered on 21 .07.2017

Prakash Agrawal S/o Chhatthu Lal Agrawal, vehicle owner, R/o Kharsia Road, Navagarh, Ambikapur, PS and Tahsil Ambikapur, District Surguja (CG)

---- Appellant

Versus

1. Dhananjay Sahu S/o Shobha Shau, R/o Mohalla Manipur, near Bilaspur Chowk, Ambikapur, PS and Tahsil Ambikapur, District Surguja (CG)
2. Devanti Sahu W/o Dhananjay Sahu R/o Mohalla Manipur, near Bilaspur Chowk, Ambikapur, P.S. and Tahsil Ambikapur, Distt.-Surguja (CG)
3. Mohd. Moksal Khan @ Mokseed Khan S/o Nasaph Khan, Occupation-Driver, R/o Village Baheradih, P.S. and Tahsil Lundra, Distt.-Surguja (CG)
4. The Oriental Insurance Co. Ltd. Branch Ambikapur, Banaras Chowk, Distt.-Surguja (CG)

---- Respondents

For Appellant	:	Shri Raghvendra Verma, Advocate
For respondents 1 & 2	:	Shri Sunil Tripathi, Advocate

Hon'ble Shri Justice P. Sam Koshy

C A V J U D G E M E N T

The present is an owner's appeal under Section 173 of the Motor Vehicles Act assailing the award dated 14.07.2008 passed by the Motor Accident Claims Tribunal, Sarguja (Ambikapur) (CG) in Motor Accident Claim Case No.70/2007. Vide the impugned award, the Court below in an application under Section 166 of the Motor Vehicles Act filed on behalf of the claimants who are the respondents 1 & 2 in the instant appeal in respect of the accidental death of their daughter Sanjana Sahu aged about 9 years which took place on 18.10.2007 has awarded compensation of Rs.2,25,000/- along with interest @ 9% per annum from the date of application.

2. The brief facts of the case relevant for consideration of the present appeal are that deceased Sanjana Sahu, aged about 9 years, the daughter of the claimants while returning home on 18.10.2007 was dashed by a Mahindra Pickup bearing registration No. CG 15A 5713 which was being driven by respondent no.3 in a rash and negligent manner. The owner of the offending vehicle was the present appellant. As a result of the said accident, the daughter of the claimants died on the spot. The claim application was filed before the Motor Accident Claims Tribunal, Sarguja (CG) where the case was registered as Motor Accident Claim Case No.70/2007.

3. After considering the evidences which have come on record and the pleadings of the parties, the Tribunal finally vide its impugned award dated 14.07.2008 allowed the application awarding compensation of Rs.2,25,000/- to the claimants with interest @ 9% per annum from the date of application. While passing the impugned award, the Court below discharged the Insurance Company of its liability of payment of compensation as there was a clear breach of policy condition and saddled the liability of payment of compensation upon the owner and driver of the offending vehicle.

4. It is this award which is under challenge in the present appeal.

5. The contention of the counsel for the appellant is that the finding of the Tribunal of there being a breach of policy condition is not proper, legal and justified as the driver of the said vehicle did have a valid driving licence at the time of accident. He submits that it is a case where the driver had a licence for driving motorcycle with light motor vehicles and the vehicle involved in the present case is that of a Mahindra pickup which is a light motor vehicle as the unladen weight of the said vehicle is 1690 Kgs. The insurance policy which the appellant had taken was for a vehicle of whose weight up to 7,000 Kg.

Therefore it cannot be said that there was a breach of policy condition. Counsel for the appellant relying upon the definition of the light motor vehicles Act as has been defined under Section 2 (21) of the Motor Vehicles Act, 1988 submits that the Pickup is also a light motor vehicle and is of the same category. Therefore, the discharge of liability from the Insurance Company was bad in law and the impugned award deserves to be interfered with accordingly.

6. Counsel for the claimants however opposing the appeal submits that the finding of the Tribunal is based upon the evidences which have come on record and therefore it cannot be said to be either perverse or contrary to the evidences which have come on record. Thus, prayed for dismissal of the appeal

7. Having considered the rival contentions put forth on either side and on perusal of the record some of the admitted position or the facts which are undisputed are: (a) the accident took place on 18.10.2007 (b) the vehicle i.e. Mahindra Pickup bearing registration No. CG15A 5713 involved in the accident was belonging to the appellant (c) as a result of the accident, deceased Ku. Sanjana Sahu aged about 9 years died on the spot (d) the claimants are the parents of the deceased (e) the vehicle was insured with respondent no.4, (f) the driver of the offending vehicle had a licence for driving motorcycle as well as light motor vehicles and (g) the vehicle belonging to the appellant was a transport vehicle.

8. Now when we look into the dispute which has been raised by the appellant as to whether the driver of the offending vehicle belonging to the appellant was having a valid licence or not, it would be necessary to refer to Section 3 (1) of the Motor Vehicles Act which for ready reference is reproduced herein under:

> "3.(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than [a motor cab or motor cycle] hired for his own use or rented under any scheme made under sub-section (2) of Section 75] unless his driving licence specifically entitles him so to do."

Further it would also be relevant to take note of the restrictions put under the Act for the purpose of grant of licence and for this reason sub section 1 of Section 7 also is very relevant which for ready reference is reproduced hereunder:

> "7. (1) No person shall be granted a learner's licence to drive a transport vehicle unless he has held a driving licence to drive a light motor vehicle for at least one year."

9. Now when we compare to the aforesaid two provisions of law with the facts of the present case, it would reveal that the driving licence for driving motorcycle and LMV issued to the driver was effective from 25.09.2007 for a period of 20 years. As per the statute itself, the driver could have applied for a licence for driving a transport vehicle only after he had held a driving licence to drive a LMV for at least one year. In the instant case, the accident took place on 18.10.2007 i.e. less than one month time from the date of issuance of licence of the LMV to the driver. This fact clearly spells out the disqualification of the driver on the date of accident to have a licence to drive a transport vehicle.

10. In view of the aforesaid factual matrix of the case, when we peruse the award which has been granted by the Tribunal and the grounds which were raised by the owner for shifting the responsibility of liability upon the Insurance Company, it would reflect that the Tribunal took into consideration the legal position as it stands both as per the statute as well on the basis of the judicial pronouncements and precedents while holding that it is the owner's responsibility for payment of compensation. There was a clear breach of policy condition dis-entitling the liability of payment of compensation upon the Insurance Company. Considering the reasons and the justifications given for discharging the Insurance Company of its liability, this Court does not find any error to have been committed by the Tribunal in the course of reaching to the aforesaid conclusion and passing the award.

11. Thus, the grounds raised by the appellant being devoid of merits and without substance coupled with there being no proof or evidence to hold that the finding of the Tribunal is bad in law, the appeal deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE

Bhola