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HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 259 of 2007

United India Insurance Co. Ltd. through its Divisional Manager, Divisional Office, Jail Road, Raipur (CG).

---- Appellant

Versus

1. Smt. Dukalhin Bai Wd/o Late Lalji @ Lalu Yadav, aged 27 years
2. Ku. Kamlesh D/o Late Lalji @ Lalu Yadav, aged 10 years
3. Virendra Kumar S/o Late Lalji @ Lalu Yadav, aged 8 years
4. Vishnu S/o Late Lalji @ Lalu Yadav, aged 5 years
   Respondents No.2 to 4 are minors through their mother Smt. Dukalhin Bai.
   All are R/o Village Kolyari, PS Gobara Navapara, Distt. Raipur (CG).
5. Gyaneshwar Sahu S/o DR Sahu, R/o Village & Post Mandlaur, PS Gobara Navapara, Distt. Raipur (CG). (Driver of Tractor No.CG-04-ZG-0792 & Trolley No. CG-04-ZG-0793)
6. Awadhram Sahu S/o Budhram Sahu, R/o Village Tarra, Post Kathiya No.2. Tehsil Abhanpur, Distt. Raipur (CG) (Owner of Tractor No.CG-04-ZG-0792 & Trolley No. CG-04-ZG-0793).

---- Respondents

MAC No. 582 of 2007

1. Smt. Dukalhin Bai Wd/o Late Lalji @ Lalu Yadav, aged 27 years
2. Ku. Kamlesh D/o Late Lalji @ Lalu Yadav, aged 10 years
3. Virendra Kumar S/o Late Lalji @ Lalu Yadav, aged 8 years
4. Vishnu S/o Late Lalji @ Lalu Yadav, aged 5 years
   Respondents No.2 to 4 are minors through their mother Smt. Dukalhin Bai.
   All are R/o Village Kolyari, PS Gobara Navapara, Distt. Raipur (CG).

---- Appellants

Versus

1. Gyaneshwar Sahu S/o DR Sahu, R/o Village & Post Mandlaur, PS Gobara Navapara, Distt. Raipur (CG). (Driver of Tractor No.CG-04-ZG-0792 & Trolley No. CG-04-ZG-0793)
2. Awadhram Sahu S/o Budhram Sahu, R/o Village Tarra, Post Kathiya No.2. Tehsil Abhanpur, Distt. Raipur (CG) (Owner of Tractor No.CG-04-ZG-0792 & Trolley No. CG-04-ZG-0793).
3. United India Insurance Co. Ltd. through its Divisional Manager, United India Insurance Co.Ltd., GE Road Raipur (CG).

---- Respondents

For Insurance Company	:	Shri Dashrath Gupta, Advocate.
For Claimants	:	Shri AL Singroul, Advocate.
For Owner and Driver	:	Shri Raja Sharma, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

06.10.2017

1. By this common judgment both the appeals are being disposed of as common facts & issues are involved in these appeals and arise out of the same accident.
2. Both the appeals under Section 173 of the Motor Vehicles Act have been filed against the award dated 12.12.2006 passed by the Chief Motor Accident Claims Tribunal Raipur, in Claim Case No.41/2006. Vide the said impugned award, the Tribunal has awarded a compensation of Rs.2,69,200/- alongwith interest @ 6 percent per annum from the date of application. While passing the award, the Tribunal has fastened the liability of payment of compensation upon the insurance company which had insured the Tractor involved in the accident.
3. MAC No. 259 of 2007 has been filed by the insurance company assailing the liability of payment of compensation fastened upon it whereas, MAC No.582 of 2007 has been filed by the claimants seeking enhancement of compensation. For the sake of convenience, this court is dealing with the appeal filed by the insurance company first.
4. Learned counsel for the insurance company submits that in the instant case the records which have come before the Tribunal as also the evidence brought by the parties, clearly reflect that there was breach of policy to the extent that the deceased was sitting beside

the driver on the body of Tractor whereas, the Tractor has a sitting capacity of only one i.e. driver. The accident had occurred in the course of travelling and sitting on the body of the Tractor resulting in death of deceased. Therefore, the insurance company cannot be fastened with the liability of payment of compensation. He further submits that admittedly the insurance company had issued policy but that policy would cover the risk of only driver and not those persons who were unauthorizedly sitting and travelling in the Tractor engine.

5. He further assails the award on the ground that the said Tractor was not being used for agricultural purpose for which it was registered and insured. The evidence shows that they have gone for a marriage function which itself shows that it was being used for a purpose other than that of agriculture purpose. Thus, for all the aforesaid reasons, the findings of the Tribunal deserves to be set aside/quashed by exonerating the insurance company of its liability and shifting the same upon the owner and driver of the Tractor.

6. So far as second ground is concerned, this court is of the opinion that the said ground is not tenable. Rule-97 of the Madhya Pradesh Motor Vehicles Rules, 1994 clearly envisages the fact that Tractor used for agricultural purpose can also be used for carrying persons to Mela, Markets, Religious functions, Marriages and at other ceremonial occasions. Thus, since the Rule itself provides permitting the Tractor to be used in marriage functions, the said ground raised by the insurance company is not sustainable and the same stands negated.

7. However, so far as the ground of deceased being permitted to travel

on the Tractor engine, there is evidence which have come on record particularly the FIR which was lodged by the brother of the deceased, marked Ex. D/3, wherein the lodger of the FIR has clearly stated that deceased was sitting along with other persons on the body of Tractor beside the driver when due to the negligence act on the part of the driver the accident had occurred resulting in to death of deceased.

8. Shri Raja Sharma, learned counsel appearing for the respondent-owner-cum-driver, opposing the appeal of the insurance company submits that the findings of Tribunal is well reasoned and speaking order and do not warrant any interference. He further submits that the findings of Tribunal are based upon the evidence which have come on record and are also supported by judicial pronouncements in this regard.

9. Having considered the rival contentions put forth on either side and on perusal of records, what is undisputed is the fact that from the evidence which have come on record, this court has no hesitation in reaching to the conclusion that there was sufficient material before the Tribunal which shows that the deceased at the time of accident was travelling in the Tractor and was sitting beside the driver in the engine. In addition, the contents of the FIR lodged by the brother of the deceased, marked Ex. D/3, also establishes the fact that apart from deceased, there were other persons sitting along with the driver on the body of the Tractor which otherwise was not permissible as the Tractor has a sitting capacity of only one i.e. driver. Further, in the claim application of the claimants, the claimants have mentioned that

while the deceased was returning in the Tractor after attending the marriage ceremony, he fell down from the said Tractor and received injuries. This all the more establishes the contention of the insurance company of persons travelling on the body of the Tractor.

10. At this juncture it would be relevant to refer to two decisions of this court in cases of United India Insurance Co. Ltd. Vs. Manohar & Ors. (MAC No.642 of 2006, decided on 14.03.2011 and Royal Sundaram Alliance Vs. Eshwar and Ors. 2009 (1) ACCD. 100 (CG) (MAC No.1372 of 2007, decided on 09.07.2008) wherein this court had in a very categorical terms held that when the deceased met with an accident while travelling sitting on the engine of Tractor, the insurance company would not be liable to pay compensation.

11. This court, in full agreement with the decision rendered by this court in these two judgments, holds that in the instant case also there is a breach of policy conditions on the part of the owner and driver inasmuch permitting the deceased and other persons to sit and travel on the body of Tractor. Thus, the impugned award so far as liability which has been fastened upon the insurance company deserves to be and is accordingly set aside and the liability of payment of compensation stands shifted upon the owner and driver of the Tractor i.e. respondents No.5&6 in the appeal preferred by the insurance company (in MAC No.259 of 2007).

12. Since there was no representation on behalf of the appellants-claimants in MAC No.582 of 2007 and considering the fact that this appeal is of the year 2007 i.e. more than 10 years old, this court

thought it fit of taking assistance of Shri AL Singroul, Advocate on behalf of the claimants, for disposal of this appeal and accordingly proceeded to decide the appeal.

13. Shri Singroul, Advocate, counsel for the claimants seeking enhancement of compensation submits that the deceased in the instant case was 27 years old boy and the claimants are widow, children and mother of the deceased. The income assessed by the Tribunal is unreasonable inasmuch as inspite of fact that accident is of the year, 2006, the Tribunal has taken the income of the deceased at only Rs.1800/-a month i.e. Rs.60/- a day. He further contends that the Tribunal should have taken into consideration the income towards future prospects while quantifying the compensation.

14. Considering the submissions put forth by the counsel for the claimants, if we take into consideration the year of death and age of the deceased, indisputably in the year, 2006 even an unskilled labour would be drawing more than Rs.100/- a day which would make it Rs.3000/- per month and Rs.36000/- yearly. Thus, it is ordered accordingly and the income of the deceased is assessed at Rs.3000/- per month.

15. So far as consideration of future prospects while quantifying the compensation is concerned, this issue has now become part and parcel of an award to be passed by the Tribunals in view of a catena of decisions of Supreme Court starting from landmark judgment in case of Sarla Verma and Ors. Vs. Delhi Transport Corporation & Anr. 2009 (6) SCC 121 and all subsequent decisions wherein it has been

reiterated that while compensation is quantified, the income under future prospects is also to be added.

16. Accordingly, considering the age of the deceased, if 50 percent of monthly income of Rs.3000/- is added, the total income would become Rs.4500/-a month. If 1/3rd of which is deducted towards personal expenses, the income would become Rs.3000/- a month i.e. Rs.36000/- yearly, which if multiplied by applying the multiplier of 18 as is reflected in IInd Schedule of the Motor Vehicles Act, the compensation would reach to Rs.6,48,000/-. Thus, it is ordered that the claimants shall be entitled for Rs.6,48,000/- for loss of dependency instead of Rs.2,59,200/-as assessed by the Tribunal. In addition, the claimants are also entitled for compensation under the conventional heads as awarded by the Tribunal i.e. Rs.10,000/-. Thus, the total compensation payable to the claimants would become Rs.6,58,000/-instead of Rs.2,69,200/-. It is ordered accordingly.

17. The said enhanced amount of compensation shall also carry interest at the same rate as awarded by the Tribunal.

18. It is made clear that as the insurance company stands exonerated of its liability, the entire liability of payment of compensation is shifted upon the owner-cum-driver of the offending vehicle i.e. respondents No.5&6 in MAC No.259 of 2007. However, whatever amount that has till now been deposited by the insurance company, the same may be disbursed to the claimants with the liberty to the insurance company to recover the same from the owner and driver. The liability of payment of remaining part will be upon the owner and driver.

19. Accordingly, both the appeals preferred by the insurance company as well as by the claimants stand allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

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