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HIGH COURT OF CHHATTISGARH AT BILASPUR

MA No. 280 of 2006

Oriental Insurance Company Limited, through its Divisional Manager, Division Office, Opposite High Court, Bilaspur (CG)

---- Appellant

Versus

1. Smt. Pramila Bai, Wd/o. Late Gendram Shrivas, aged 24 years,
2. Ku. Seema D/o. Gendram Shrivas, aged 2 years.
3. Ku. Kanchan, D/o. Gendram Shrivas, aged 1 years,

   (Both respondents No. 2 and 3 minor through their natural guardian mother Smt. Pramila Bai W/o. Late Gendram Shrivas)
4. Durpati Bai, W/o. Santram Shrivas, aged 43 years.

   All above respondents are R/o. Village Salheghori, P.S. and Tahsil Lormi, District Bilaspur (CG).
5. Santram, S/o. Firauta Shrivas, aged 49 years, R/o. Village Salheghori, PS and Tahsil Lormi, District Bilaspur (CG)

---- Respondents

For Appellant	:	Mr. Abhishek Sinha and Mr. Ghanshyam Patel, Advocates
For respective Respondents	:	Mr. A.L. Singroul and Mr. Goutam Khetrapal, Advocates.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

18/08/2017

1. The present is an appeal by the Insurance Company assailing the award dated 30.06.2005, passed in Motor Accident Claims Tribunal No. 93/2004. Vide the said impugned award the Tribunal in a proceeding under Section 166 of the Motor Vehicle Act has awarded a compensation of Rs.2,25,400/- as compensation with the interest @ 9% per annum. It is this award which is under challenged by the Insurance Company.

2. The brief fact of the case is that the deceased namely Gendram Ram Shriwas, aged around 26 years when was sent to bring the fertilizers from Lormi by the owner of the Tractor i.e. respondent

No.5, who also happens to be the father of deceased on his Tractor belonging to the respondent No.5 bearing registration No. MP 26/3360 and the Trolley bearing registration No.26/3362 and while the deceases was returning after collecting the fertilizers, the Tractor because of the mechanical failure and technical fault lost control and fell into a river giving rise to grievous injuries to the deceased to which he had later succumb. The respondents No.1 to 3 are the wife and minor children of the deceased. They had filed the claim application along with the mother of the deceased, however the Tribunal while passing the impugned award held that only the claimants No. 1 to 3 i.e. the wife and minor children would be entitled for compensation and the mother i.e. the claimant No.4 would not be entitled for compensation.

3. The challenge is by the Insurance Company on two grounds, firstly accordingly the Insurance Company the accident arose because of the negligence on the part of the driver himself and therefore, the claim application itself would not had been maintainable under Section 166. He submits that it is not the dispute that the Tractor was being driven by the deceased since no other vehicle was involved in the case and there was no sufficient evidence to show that there was some mechanical failure. It has to be presumed that the accident arose because of the negligence of the driver. It was also the contention of the Insurance Company that it is not a case of the owner that due caution and reasonable care has been taken so far as the maintenance of the vehicle. It was also the contention of the Insurance Company that the driver as such would not fall within the ambit of third party being the son of the owner. Therefore the Insurance Company cannot be fastened with the liability, nor would the claim application would be maintainable.

4. The other ground which has been raised by the Insurance Company is that the income which has been pleaded by the claimants was in respect of the agriculture income and the agriculture land still being in the position of claimants, there would be no loss of income to the claimants, thus they would not be entitled for any compensation.

5. Mr. A.L. Singroul appearing for the claimants, however opposing the claim that all the contentions, which has been raised by the Insurance Company are not sustainable for reasons more than one. According to the claimants, it is a case where the Insurance Company has not led any evidence to substantiate any of their contentions. It was also the contention of the claimants that the Insurance Company has also taken an extra premium which would therefore cover the liability of the Insurance Company. It was also the contentions of the claimant that even without the extra premium since there is a policy and according to the Motor Vehicle Act. All the insurance policy would automatically cover the basic risk of the driver also and under the said facts and circumstances also the liability of the Insurance Company cannot be exonerated.

6. According to the claimants, it was the requirement of the policy itself to cover the risk of the driver of the vehicle. It was also the contention of the claimants that the Vehicle Inspection Report i.e. Exhibit A/12 attached with the record would show that there was a finding of the steering arm of the vehicle have got broken which was sufficiently proved that there was a mechanical failure and technical fault, which resulted in the accident. This would also establish that it was not the negligence on the part of the driver of the Tractor. It was further contended by the claimants that the deceased was in fact engaged by the respondent No.5 i.e. the owner of the Tractor as a driver and deceased was discharging the duties that of driver. Lastly it was contended that under the provisions of the Motor Vehicle Act, the standard of evidence required for proving the claim of the claimants, is preponderance of probabilities and the claimants have sufficiently established before the Court below establishing their case, thus there is no scope of interference with the findings of the Tribunal and the appeal deserves to be dismissed.

7. Having considered the rival contentions put forth on either side some of the admitted facts as it reflects from the record are; the date of accident, the vehicle involved in the accident, the respondent No.5 being the owner of the offending vehicle, the deceased driving the Tractor at the relevant point of time, the deceased being the son of

the owner of the vehicle and the Tractor being dully insured with the appellant-Insurance Company. Having accepted an Act only policy, now so far as the first part of the argument as regards the negligence of the driver of the Tractor is concerned, when we peruse the record, it would reflect that the owner of the vehicle in his reply before the Tribunal has accepted the fact that the accident arose because of mechanical failure/fault. The said return of the owner stood corroborated by his deposition before the Court below wherein he has stated the accident to have arisen because of the steering arm and splendor lock got broken. This stand of the owner further gets strengthened by the evidence of applicant/witness No.3-Chhedilal Sahu, a Tractor mechanic, who had given vehicle investigation report immediately after the accident to the police authority. In his deposition he too has made a statement that before the accident, the steering arm and the splendor lock got broken resulting in the accident. There is not much which could be extracted by the Insurance Company from the evidences these two witnesses and thus the contention and the aspect of mechanical failure being the cause of the accident stands fully proved and established. These evidences and the report further establish the fact that there was no negligence on the part of the deceased in the accident. Thus, the evidence of the owner of the Tractor as also the evidence of Tractor mechanic AW/3 would meet the requirement of proving the mechanical failure being the reason for the accident to occur. Thus fully meeting the requirement as envisaged in the Supreme Court in AIR 1977 SC 1448 (Minu B. Mehta and others vs. Balkrishna Ramchandra Nayan & another) which was relied upon by the counsel for the appellant. It is also come in evidence that the owner was also getting the Tractor checked regularly as has also been deposed by the Mechanic which will establish that the owner was taking all necessary caution and precautions for the maintenance of the Tractor.

8. Now coming into the second issue whether the claim itself under Section 166 was maintainable or not. On the ground of the deceased stepping into the shoes of the owner and that there was no other

vehicle involved in the accident and that the deceased not being a third party coupled with the fact that there was no negligence attributed upon any other person involved for the accident to occur, the claim of the claimants would not be maintainable is concerned, on perusing the record it clearly reflects that the policy which was issued covered the risk of the driver and which is otherwise also the basic requirement of an insurance policy covering the driver of the insured. In the instant case, the policy which had been produced during the course of the evidence reflects that an extra premium has also been paid by the owner towards the legal liability of the employee/driver. Though under the normal circumstances, it is a requirement of law of the plea of rash and negligent driving to be established. However when we peruse the pleadings what clearly reflects that the Insurance Company has put a suggestion to the wife of the deceased in her cross examination as to whether the partition in the family of the respondent No.5 had taken place she had answered in the affirmative holding that the partition had taken place and the deceased and the claimants No. 1 to 3 were living separately. It was further contention of the claimants that the owner i.e. respondent No.5 had engaged the deceased as a driver of the vehicle for bringing the fertilizer from Lormi. This aspect has also being corroborated on the evidence of the respondent No.5, who too has accepted of engaging the deceased to drive the Tractor for bringing the fertilizer. These two evidences is sufficient to presume that the deceased and the owner of the Tractor was not staying together but living separately and that the deceased was engaged by the owner, though being the father, to drive the Tractor would prove the engagement of the deceased as the driver of the Tractor at the relevant point of time. Thus, even in the event of the deceased being son of the owner, but since he was discharging the duties as a driver of the Tractor as the relevant point of time he is covered under the policy as a driver.

9. In addition as has been stated earlier what also cannot be lost site of is that the Insurance Company has not led any evidence to substantiate their contentions. Neither has the Insurance Company

been able to, from the cross-examination of the witnesses examined during the course of evidence prove its case. Thus for the reasons in the preceding paragraph since there is evidence of the owner having engaged the deceased as a driver of the Tractor, the policy covering the risk of the driver and the accident arising because of the mechanical failure of the vehicle, this Court has no hesitation in reaching to the conclusion that the claim of the respondents No. 1 to 3 was maintainable.

10. So far as the reliance by the Insurance Company by the judgment of Supreme Court in the case of New India Assurance Co. Ltd. vs. Sadanand Mukhi and others, 2009 (2) SCC 417 is concerned, the facts of the said case and the pleadings raised in those cases were also entirely different than the present case and hence the said judgment and the ratio laid down therein is distinguishable on its facts alone.

11. So far as the challenge to the quantum of compensation is concerned, if we peruse the records, the statements of the claimants itself reveals that the deceased also had an Haller Mill which he was operating and though the claimants had claimed of an income of Rs.200/- to 300/- a day. But the Tribunal has only taken the income of the deceased to be at Rs.120/- a day, which under no circumstances can be said to be on a higher side, even if we if we would have been an agriculture income, if the deceased would have been working in his field, he would have been saving that much of amount of labour cost and this Court does not see any good reason for interfering with the award and the appeal thus deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved