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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 657 OF 2012

1. Bisun Singh, aged about 38 years, S/o Shri Turaram, occupation- Tractor Owner, R/o Village- Batauli, P.O. Patora, P.S. Dhaurpur, Tahsil- Lundra, Dhaurpur, District Surguja (C.G.)
2. Mahendra Ram, aged about 40 years, S/o Shri Pandu Ram, occupation- Driver, R/o Ramchandrapur, P.S. Ramchandrapur, Tahsil- Paal, District Sarguja (C.G.), through Bisun Singh, S/o Shri Turaram, aged about 38 years, occupation- Tractor Owner, R/o Village- Batauli, P.O. Patora, P.S. Dhaurpur, Tahsil- Lundra, Dhaurpur, District Surguja (C.G.)

... Appellants

Versus

1. Ratni Devi, Wd/o Late Ram Singh Ghansi, aged about 42 years, R/o Vill. Bhitwahi, PO Tatapani, P.S. Ramanujganj, Tahsil- Paal, District Surguja (C.G.), present resident- Kenabhandh, Bauripara, Ambikapur, P.S. & Tah. Ambikapur, District Sarguja (C.G.)
2. United India Insurance Company Limited, through- Branch Manager, near Ram Mandir, Ambikapur, P.S. and Tahsil- Ambikapur, District Sarguja (C.G.)

... Respondents

MISC. APPEAL (C) NO. 660 OF 2012

1. Bisun Singh, aged about 38 years, S/o Shri Turaram, occupation- Tractor Owner, R/o Village- Batauli, P.O. Patora, P.S. Dhaurpur, Tahsil- Lundra, Dhaurpur, District Surguja (C.G.)
2. Mahendra Ram, aged about 40 years, S/o Shri Pandu Ram, occupation- Driver, R/o Ramchandrapur, P.S. Ramchandrapur, Tahsil- Paal, District Sarguja (C.G.), through Bisun Singh, S/o Shri Turaram, aged about 38 years, occupation- Tractor Owner, R/o Village- Batauli, P.O. Patora, P.S. Dhaurpur, Tahsil- Lundra, Dhaurpur, District Surguja (C.G.)

... Appellants

Versus

1. Manohar Ram, S/o Shri Shankar Gond, aged about 18 years, R/o Village Bhitwahi, PO Tatapani, PS Ramanujganj, Tah. Paal, District Sarguja (C.G.), present address- near Pratappur Naka, Ambikapur, P.S. and Tahsil Ambikapur, District Sarguja (C.G.)
2. United India Insurance Company Limited, through- Branch Manager, near Ram Mandir, Ambikapur, P.S. and Tahsil- Ambikapur, District Sarguja (C.G.)

... Respondents

MISC. APPEAL (C) NO. 239 OF 2014

Bisun Singh, aged about 38 years, S/o Shri Turaram, occupation- Tractor Owner, R/o Village- Batauli, P.O. Patora, P.S. Dhaurpur, Tahsil- Lundra, Dhaurpur, District Surguja (C.G.)

... Appellants

Versus

1. Dirpal Gond, aged about 45 years, S/o Late Munsu Gond, R/o Village Bhitiahaee, Police Station- Ramanujganj, District Balrampur-Ramanujganj (C.G.)
2. Smt. Budhni Devi @ Budhiya Devi, aged about 40 years, W/o Shri Dirpal Gond, R/o Village Bhitiahaee, Police Station- Ramanujganj, District Balrampur-Ramanujganj (C.G.)
3. Mahendra Ram, aged about 40 years, S/o Shri Pandu Ram, occupation- Driver, R/o Village Ramchandrapur, Tahsil- Paal, District Balrampur-Ramanujganj (C.G.)
4. Branch Manager, United India Insurance Company Limited, near Ram Mandir, Ambikapur, P.S. and Tahsil- Ambikapur, District Surguja (C.G.)

... Respondents

Mr. Vivek Bhakta, Advocate, for the Appellants.

Mr. Shree Kumar Agrawal, Senior Advocate, assisted by Mr. Anand Kumar Gupta, Advocate, for Respondent-Insurance Company.

Mr. Rishi Rahul Soni, Advocate, for Respondent No.1 in MAC No. 657/2012.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

01/08/2017

1. These are the three appeals under Section 173 of the Motor Vehicles Act, 1988, preferred by the owner and driver of Tractor-Trolley, bearing registration No. CG15-A/1653-1654, assailing the awards dated 11.5.2012 in M.A.C. Case No. 235 of 2011, dated 11.5.2012 in M.A.C. Case No. 130 of 2011 and dated 28.11.2013 in M.A.C. Case No. 81 of 2012, passed by the Second Additional Motor Accident Claims Tribunal, Ambikapur, District Surguja and Additional Motor Accident Claims Tribunal, Ramanujganj, District Balrampur-Ramanujganj, respectively.

2. Deceased Ashok Ghasi, whose legal heir had filed M.A.C. Case No. 235 of 2011, the another deceased Shiv Prasad, whose legal heirs had filed M.A.C. Case No. 81 of 2012, and the injured Manohar Ram, who had filed M.A.C. Case No. 130 of 2011, were travelling in the offending Tractor-Trolley as 'Barati' on 21.4.2006. The said Tractor-Trolley dashed against a bauxite Truck from the back, as a result of which Ashok Ghasi and Shiv Prasad succumbed to the injuries and the Manohar Ram sustained injuries.

3. The aforementioned claim applications were filed and the Tribunals in the process of deciding these claim applications, vide impugned awards have granted a compensation of Rs. 4,44,000/- in favour of the legal heir of deceased Ashok Ghasi, Rs. 1,72,000/- in favour of the legal heirs of the deceased Shiv Prasad and Rs. 28,642/- in favour of the injured Manohar Ram, fastening the liability to pay the compensation jointly and severally upon the owner and driver of the offending Tractor-Trolley, while exonerating the Insurance Company of its liability to pay the compensation. These are the awards which are under challenge in the present three appeals by the owner of the offending Tractor-Trolley.

4. Learned Counsel for the Appellants submits that the offending Tractor-Trolley at the relevant point of time was duly insured. That since it was duly insured and that there being no sufficient proof which has come on record before the Tribunal to establish that the Tractor-Trolley was not being used for the marriage function for carrying the 'Barati' for a marriage procession, the liability could not have been fastened upon the owner and driver and it should have been duly fastened upon the Insurance Company. He further submits that the Tribunals have further not appreciated the fact that the FIR was lodged by one Dev Prasad but the said person was not examined before the Tribunals to prove the contents of the FIR and only relying upon the contents of the FIR, the Insurance Company has been discharged of its liability and the liability has been fastened upon the owner and driver. He thus prayed that the impugned awards may be modified accordingly.

5. Learned Counsel for the Insurance Company however submits that since there was evidence before the Tribunal so far as the FIR is concerned which shows that the offending Tractor-Trolley was being used for commercial purpose and not for agricultural purpose and that the

Insurance Company has also led the evidence of its administrative officer to establish this fact. He further submits that it is a case where on the offending Tractor-Trolley there were a large number of people travelling which itself shows that the vehicle was not being used for agricultural purpose. In addition, Counsel for the Insurance Company has also relied upon a decision of this Court in the case of *Rameshwar Kaushik & Others v. Smt. Pramila Bai Loniya & Others*, 2015 (3) C.G.L.J. 427.

6. Having considered the rival contentions put forth on either side and on perusal of the record, what is not in dispute is the fact that the accident did take place on 21.4.2016 as a result of which the deceased Ashok Ghasi and Shiv Prasad succumbed to the injuries and the injured Manohar Ram sustained grievous injuries. It is also not in dispute that the Claimants had filed their respective claim applications before the concerned Tribunals under Section 166 of the Motor Vehicles Act and the same were decided in favour of the Claimants.

7. The only issue which is being agitated is, that the liability of payment of compensation has been wrongly fastened upon the owner and driver of the offending Tractor-Trolley.

8. What is to be seen is the evidence which have come on record. True it is that the FIR lodged by one Dev Prasad on the date of accident states that there were some persons who were going to attend a marriage travelling in the Tractor-Trolley at the time of accident, but the same has not been proved before the Tribunal. The said person Dev Prasad, the lodger of the FIR, himself has not been examined before the Court below. Further, what is also to be taken note of is the fact that Dev Prasad himself was not an eye-witness to the accident or the information that he had given to the police. He had only passed on a message as per the information that he had gathered from one Ramvriksha, as reflected from para 17 of

the impugned award dated 11.5.2012 passed in M.A.C. Case No. 235 of 2011. Apart from the aforesaid facts, the Insurance Company has not led any evidence to prove that the offending Tractor-Trolley was being used for commercial purpose except for the oral statement made by its administrative officer.

9. What is relevant at this juncture to take note is Rule 97(7) of the Chhattisgarh Motor Vehicle Rules, 1994, which reads as follows:

“97. Carriage of person in Goods Carriage. –

xxx xxx xxx

(7) Notwithstanding anything contained in sub-rules (1) and (2) but subject to the provisions of sub-rule (5) such tractor-trailer other than those registered in the name of industrial organization, Municipal Institutions, water supply institution and non-agricultural cooperative societies, and the unladen weight of which does not exceed 7300 Kgs. may be used for the following purposes–

- (i) for carrying labourers and the member of the family of agriculturist for the purpose of agriculture or any purpose connected with agriculture including sale and purchase of articles or agriculture.
- (ii) for carrying persons at the time of Mela, Markets, Religious Functions, Marriages and at other ceremonial occasions provided that the number of persons so carried shall not exceed 20 at a time.”

10. Referring to the aforesaid provisions of the Rules of 1994, a Division Bench of the Madhya Pradesh in the case of *National Insurance Co. Ltd. v. Sarvanlal & Others*, 2004 (4) M.P.H.T. 404 (DB), under similar circumstances, wherein the tractor carrying persons to attend the marriage met with an accident, has fastened the liability upon the Insurance Company to pay compensation, taking aid of the aforesaid Rule 97(7) of the Rules of 1994. The said judgment of the Division Bench is based upon the earlier Full Bench decision of the Madhya Pradesh High Court in the case of *Jugal Kishore and others Vs. Ramlesh Devi and others*, reported in 2003 (4) M.P.H.T. 574 (FB), wherein it was categorically held that even if the deceased was travelling as a member of a marriage party in a tractor-

trolley which was used otherwise than for agricultural purpose for which it was insured, the insurer is liable to pay compensation to the claimants on account of the aforesaid clause 7 of Rule 97 of the Rules of 1994.

11. In view of the aforesaid facts and circumstances of the case and also the aforementioned legal pronouncements made, this Court has no hesitation in holding that the finding of the Tribunals in exonerating the Insurance Company was not proper and therefore it is held that the liability of the payment of compensation shall be upon the Insurance Company, the owner and driver of the offending Tractor-Trolley applying the principles of 'jointly and severally' being liable for the accident and for payment of compensation thereafter. It is thus ordered.

12. In the event that if the Appellants herein have already deposited any amount before the Tribunal and the said amount has not been disbursed to the Claimants then the same shall be refunded back to the Appellants and the Insurance Company shall forthwith pay the entire amount of compensation before the Tribunal for disbursement. In the event if any amount has already been deposited by the Appellants herein and the same has been disbursed to the Claimants then the Insurance Company shall release that much of amount to the Appellants and shall pay the balance amount of compensation before the Tribunal.

13. With the aforesaid observations, the appeals stand allowed.

Sd/-
(P. Sam Koshy)
Judge