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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1122 OF 2011

Bajaj Allianz General Insurance Company Limited, Ashok Plaza, Second Floor Bank, Filed Company, 32/2 Nagar Road, Puna

… Appellant

Versus

1. Balkeshari, Widow of Sagunath Singh, aged about 19 years, Caste Gond, Village Chantrang, Thana Aaongadhi, Tehsil Surajpur, District Surguja (C.G.)
2. Suresh Singh, S/o Late Sagunath Singh, aged about 02 years, minor child, through Respondent No.1 Balee Mata Balkeshwari, Caste Gond, Village Chantrang, Thana Aaongadhi, Tehsil Surajpur, Distt. Surguja (C.G.)
3. Bachan Singh @ Bani Singh @ Badan Singh, S/o Matiraj Singh, aged about 45 years, Caste Gond, Village Chantrang, Thana Aaongadhi, Tehsil Surajpur, District Surguja (C.G.)
4. Sukhman, W/o Bachan Singh, aged about 42 years, Caste Gond, Village Chantrang, Thana Aaongadhi, Tehsil Surajpur, Distt. Surguja (C.G.)
5. Budhiman, S/o Gavtiya, aged about 40 years, Caste Khairwar, R/o Village Jogiya, Thana & Tahsil Sonhat, District Korea (C.G.)
6. Haribhajan Singh, S/o Gavtiya, aged about 42 years, Caste Khairwar, R/o Village Jogiya, Thana & Tahsil Sonhat, District Korea (C.G.)
7. Rambhajan, S/o Gavtiya, aged about 45 years, Caste Khairwar, R/o Village Jogiya, Thana & Tahsil Sonhat, District Korea (C.G.)
8. Laxman, S/o Bandhu, aged about 40 years, Caste Nayi, R/o Village Jogiya, Thana & Tahsil Sonhat, District Korea (C.G.)

… Respondents

For Appellant	:	Mr. Sangeet Kumar Kushwaha, Advocate, under instructions of Mr. Sachin Singh Rajput, Advocate.
For Respondents No. 1 to 4	:	Mr. D.N. Prajapati, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06/07/2017

1. The instant appeal under Section 173 of the Motor Vehicles Act, 1988, has been filed by the Appellant-Insurance Company against the award dated 14.12.2010 passed by the First Additional Motor Accident Claims Tribunal, Manendragarh, Baikunthpur, in Motor Accident Claim Case No. 2 of 2010. Vide the impugned award, the Claims Tribunal has allowed the claim application of the claimants (Respondents No. 1 to 4 herein) filed under Section 166 of the Motor Vehicles Act and ordered for payment of compensation of Rs. 4,00,000/- in favour of the claimants.

2. Brief facts of the case are that the deceased Sagunath, aged around 20 years at the relevant point of time, while travelling on a tractor, bearing Registration No. CG16-E/0167, owned by Respondent No.7 and driven by Respondent No.8 at the relevant point of time, met with an accident on 15.2.2009. As a result, he succumbed to the injuries sustained by him. The claimants, who are the widow, son and parents of the deceased Sagunath, filed a claim application before the Claims Tribunal. After considering the evidence which have come on record, the Claims Tribunal finally vide award dated 14.12.2010 allowed the claim application of the claimants and ordered for payment of Rs.4,00,000/- as compensation to the claimants, fastening the liability upon the Appellant-Insurance Company and Respondents No. 5, 6, 7 & 8 herein to pay the compensation jointly and severally.

3. It is this award which has been put to challenge by the Appellant-Insurance Company by way of the present appeal.

4. The sole ground of challenge by the Appellant-Insurance Company in the present appeal is that there is a breach of policy condition at the hands of the owner of the tractor involved in the accident in question. According to the Appellant, though the use of tractor was to be done for the agricultural purpose but in the instant case the accident took place when the tractor was being used for a marriage ceremony carrying 35-40 persons at the relevant point of time. Thus, the Appellant-Insurance Company cannot be fastened with the liability to pay the amount of compensation awarded by the Claims Tribunal. It is further contended by the Insurance Company that it is a case where the tractor once when it is being used for marriage purpose, the same automatically becomes a commercial vehicle and therefore it would be a clear violation of the policy conditions and for this the Insurance Company ought to have been discharged of its liability for payment of compensation awarded and the liability should be fastened upon the owner and driver of the tractor. Further contention of the Insurance Company is that even otherwise the tractor could not have taken more than 20 persons on the trolley, whereas in the instant case it is alleged that there were about 35-40 persons who were travelling in the tractor at the time of accident and which again is a breach of policy conditions and the impugned judgement is liable to be modified to that extent.

5. Learned Counsel for the claimants however opposing the appeal submits that though the impugned judgment was passed in December, 2010 and since then almost about 6½ years have lapsed but the Insurance Company has till date not paid a single penny to the claimants. He further submits that since the amount of compensation has not been disbursed, the claimants are facing acute financial crisis having lost the earning member of their family.

6. Taking into consideration the contentions put forth on behalf of either side and on perusal of the records, what clearly reflects is that the policy under which the offending vehicle was covered was exhibited before the Claims Tribunal as Exhibit D-1 and in the said policy, the risk covered was a farmers package policy. The farmers package policy also had been produced before the Claims Tribunal and which forms part of the record. A perusal of the conditions involved in it, shows that the use of the tractor is also covered under the said policy and it also reflects that the coverage for the use of tractor has been to the extent of the tractor being treated in the same terms as if they were vehicles covered under the company's standard commercial vehicle package policy. If that be so, the contention of the Insurance Company of the tractor when used for marriage purpose would become a commercial vehicle and it therefore would be a breach of policy conditions, is not sustainable and the same deserves to be and is accordingly rejected.

7. Further, if we look into the impugned judgment, the Tribunal itself in paragraph 23 has held that it cannot be said to be a breach of policy conditions on account of Rule 97 of the Madhya Pradesh Motor Vehicles Act, 1994 which clearly envisages the fact that the tractor which is purchased for the agriculture purposes can also be used for religious purpose and also for marriage and other social activities including going to the market, fair and also permits taking passengers on the said vehicle.

8. In view of the aforesaid findings of the Tribunal and also taking note of the coverage extended under the farmers package policy, this Court does not find any strong case made out by the Appellant-Insurance Company to interfere with the impugned judgment.

9. The appeal thus fails and the same is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

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