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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 430 OF 2017

Santosh Jaiswal, S/o Purushottam Jaiswal, aged about 45 years, R/o Ward No.03, Korbi, Tah. Katghora, (Revenue & Civil) District Korba (C.G.)

(Owner of the Vehicle No. CG12-S-0237)

... Appellant

versus

1. Harikrishna, S/o Late Shivnarayan, Caste-Ahir, aged about 45 years
2. Balram, S/o Late Shivnarayan, Caste-Ahir, aged about 28 years
Both R/o Village- Jampara (Ujiyarpur), Police Station- Pondi, Tah. Manendragrah, District (Revenue & Civil) Korea (C.G.)
3. Vijay Kumar, S/o Kartik Ram, aged about 35 years, Caste-Gond, R/o Village- Dhanpur (Bodemuda), P.S. & Tah. Khadgawan, District (Revenue & Civil) Korea (C.G.) **(Driver of the Vehicle No. CG12-S-0237)**
4. IFCCO TOKYA General Insurance Company Limited, through Branch Office, 3rd Floor, Lalganga Shopping Mal, G.E. Road, Raipur, District (Revenue & Civil) Raipur (C.G.) **(Insurer of the Vehicle No. CG12-S-0237)**

... Respondents

MISC. APPEAL (C) NO. 1046 OF 2016

1. Harikrishna, S/o Late Shivnarayan, Caste-Ahir, aged about 45 years
2. Balram, S/o Late Shivnarayan, Caste-Ahir, aged about 28 years
Both R/o Village- Jampara (Ujiyarpur), Police Station- Pondi, Tah. Manendragrah, District (Revenue & Civil) Korea (C.G.)

... Appellants

versus

1. Vijay Kumar, S/o Kartik Ram, aged about 35 years, Caste-Gond, R/o Village- Dhanpur (Bodemuda), P.S. & Tah. Khadgawan, District (Revenue & Civil) Korea (C.G.)
2. Santosh Jaiswal, S/o Purushottam Jaiswal, aged 45 years, R/o Ward No.03, Korbi, Tah. Katghora, (Revenue & Civil) District Korba (C.G.)
3. IFCCO TOKYA General Insurance Company Limited, through Branch Office, 3rd Floor, Lalganga Shopping Mal, G.E. Road, Raipur, District (Revenue & Civil) Raipur (C.G.)

... Respondents

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- Mr. Ravindra Sharma, Advocate, for the Owner.
 - Mr. Anand Kesharwani, Advocate, for the Claimants.
 - Mr. Utkal Pradhan, Advocate, under instructions of Mr. P.R. Patankar, Advocate, for the Insurance Company.
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Hon'ble Shri Justice P. Sam Koshy

Order on Board

04/09/2017

1. The present two appeals under Section 173 of the Motor Vehicles Act, 1988, have been filed assailing the award dated 16.12.2015 passed by the First Additional Motor Accident Claims Tribunal, Manendragarh, District Koriya, in Motor Accident Claim Case No. 60/2014.

2. MAC No. 430/2017 is an appeal by the owner challenging the liability of payment of compensation which has been fastened upon it after exonerating the Insurance Company. MAC No. 1046/2016 is an appeal preferred by the claimants seeking enhancement of compensation awarded by the Tribunal.

3. Vide the impugned award dated 16.12.2015, the Tribunal, on an application under Section 166 of the Motor Vehicles Act moved by the claimants for compensation, has awarded a compensation of Rs. 25,000/- to the claimants with interest thereon at the rate of 7% per annum from the date of filing of claim application, fastening the liability for payment of the same jointly and severally upon the owner and driver of the pickup van involved in the accident, after exonerating the Insurance Company from its liability.

4. It is a case when on 30.5.2012 the mother of claimants, namely, Sukhmat, died in a vehicular accident when the pickup van, bearing registration no. CG12-S/0237, in which she was travelling overturned due to rash and negligent driving of its driver-Santosh Jaiswal. The said pickup van was owned by owner-Vijay Kumar and was insured with Iffco Tokyo General Insurance Company at the relevant time.

5. The said pickup van undisputedly registered as a goods transport vehicle. The policy also was issued accepting the vehicle to be used as a goods transport vehicle. On the fateful day, i.e., on 30.5.2012, the deceased was travelling in the said pickup van and it thus proves that the deceased was travelling in the vehicle which was otherwise meant as goods transport vehicle and accepting this as a breach of policy condition, the Insurance Company has been exonerated and the liability has been fastened upon the owner of the vehicle, i.e., the appellant in MAC No. 430/2017.

6. The appellant-owner in MAC No. 430 of 2017 has challenged the liability being imposed upon it, on the ground that the finding of the Tribunal is erroneous in view of Section 147 of the Motor Vehicles Act, which categorically holds that in the given situation as is envisaged under Section 147, the Insurance Company was liable to indemnify the appellant-owner.

7. However, the perusal of the records would show that the admitted fact is that the pickup van belonging to the appellant-owner was meant for transport of goods, but, in the process, the appellant-owner was found to be carrying passengers on the said vehicle by permitting the deceased and other similarly placed persons to travel on the said pickup van. Thus, the finding of the Tribunal of there being breach of policy conditions does not warrant any interference and the appeal of the appellant-owner fails and is accordingly dismissed.

8. So far as the appeal of the appellants-claimants, i.e., MAC No. 1046 of 2016, seeking enhancement of compensation is concerned, the fact which cannot be brushed aside is that, the claimants were aged around 45 years and 28 years respectively on the date of filing of claim application. From the said fact it can be safely inferred that both the claimants were not in any manner dependant upon the income of the deceased and on the contrary they were independent and capable of sustaining themselves. The only compensation which the claimants are entitled for, would be that of love and affection and also for incidental expenses that they had incurred. Accordingly, this Court is of the opinion that ends of justice would meet if the claimants are ordered to be further paid an amount of Rs.25,000/- in addition to what has already been granted, in the same proportion as has been granted by the Tribunal and it is ordered accordingly. The enhanced amount of Rs.25,000/- shall also carry the

interest at the same rate as has been awarded by the Tribunal. Rest of the award shall remain intact.

9. In the result, the appeal of the appellant-owner, i.e., MAC No. 430/2017 is dismissed and the appeal of the appellants-claimants, i.e., MAC No. 1046/2016 stands allowed in part to the aforesaid extent.

Sd/-
(P. Sam Koshy)
Judge

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