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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 787 of 2017

Shriram General Insurance Company Limited through Shri Ram Transport Finance Co. Ltd. Mahoba Bazar G.E.Road Raipur, District Raipur, Chhattisgarh ....(Non-Applicant No.3)

---- Appellant

Versus

1. Smt Anjana Mandal W/o Late Sushant Mandal, aged about 28 years, R/o Gram P.V.71 (Chandanpur) Thana & Tehsil Pakhanjur Distt. North Bastar Kanker, Chhattisgarh
2. Ku. Banita Mandal D/o Late Sushant Mandal, aged about 8 years, Minor through Natural Guardian Mother Smt. Anjana Mandal, R/o Gram P.V.71 (Chandanpur) Thana & Tehsil Pakhanjur Distt. North Bastar Kanker, Chhattisgarh
3. Suman Mandal D/o Late Sushant Mandal, aged about 6 years, Minor through Natural Guardian Mother Smt. Anjana Mandal, R/o Gram P.V.71 (Chandanpur) Thana & Tehsil Pakhanjur Distt. North Bastar Kanker, Chhattisgarh
4. Anima Mandal D/o Late Sushant Mandal, aged about 4 years, Minor through Natural Guardian Mother Smt. Anjana Mandal, R/o Gram P.V.71 (Chandanpur) Thana & Tehsil Pakhanjur Distt. North Bastar Kanker, Chhattisgarh
5. Janardan S/o Late Panchu Mandal, aged about 61 years, R/o Gram P.V.71 (Chandanpur) Thana & Tehsil Pakhanjur Distt. North Bastar Kanker, Chhattisgarh
6. Smt. Shubhadra W/o Janaradan Mandal, aged about 56 years, R/o Gram P.V.71 (Chandanpur) Thana & Tehsil Pakhanjur Distt. North Bastar Kanker, Chhattisgarh ....(Applicants)
7. Shri Ramji Sahu S/o Ved Ram Sahu, aged about 35 years, R/o Gram Navagaon Bharia, Thana Baloud, Distt. Durg, Chhattisgarh, Hall Amardeep Tyre Shop, Old Market Pakhanjur, Distt. North Bastar Kanker, Chhattisgarh ....(Non-Applicant No.1/ Driver of Tractor No. C.G.07 D 7728)
8. Anil Kumar Dubey S/o Jageshwar Dubey, aged about 51 years, R/o Gram H. No. 56 Shastri Chauk Naya Bazaar Dalli Rajhara, District Durg, Chhattisgarh ....(Non-Applicant No.2/ Owner of Tractor No. C.G.07 D 7728)

---- Respondents

For Appellant : Shri Deepak Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

19/07/2017

Present is an appeal under Section 173 of the Motor Vehicles Act preferred by the Insurance Company assailing the award dated 25.01.2017 passed by the Additional Motor Accident Claims Tribunal, Bhanupratappur, North Bastar, Kanker in Claim Case No. 35 of 2013 whereby the Tribunal in a proceeding under Section 166 of the MV Act has awarded compensation of Rs.5,07,000/- to the claimants.

2. The fact in nutshell is that on 26.06.2010 the deceased Sushant was travelling in a tractor bearing registration no. CG07D 7728 belonging to the respondent no.8 and which was being driven by respondent no.7. When the said tractor reached near the bridge Bhatipar, it got unbalanced as a result of which Sushant fell down from the tractor and received grievous injuries to which he later succumbed. The widow, children and parents of the deceased moved an application seeking for compensation.

3. The Tribunal considering the evidences which have come on record vide impugned award reached to the conclusion that the claimants are entitled for compensation and accordingly granted an amount of Rs.5,07,000/- to the claimants as compensation. Since the tractor was duly insured, the liability of payment of compensation was fastened upon the Insurance Company.

4. It is this award which is under challenge in the present appeal.

5. The ground of challenge which has been submitted by the counsel for the appellant is that there was a breach of policy condition and therefore, the Insurance Company could not have been fastened with the liability. Counsel for the appellant submits that the deceased was travelling on the body of the tractor and since on the body of the tractor only the driver is permissible, the Insurance Company should be discharged and the liability, if any, could have been fastened upon the owner. The further contention of the counsel for the Insurance Company is that the deceased was a gratuitous passenger which again was not permissible in the use of the tractor and therefore the liability which has been fastened upon the Insurance Company is bad. It is also the contention of the counsel for the appellant that there is no evidence on record to show that the deceased was an employee of respondent no.8 and for this reason also, the fastening of liability upon the Insurance Company seems to be bad calling for interference. Counsel for the appellant relies upon the decision of the Supreme Court in the case of United India Insurance Company Limited Vs. …... reported in 2008 (3) CGLJ 22 (SC) showing that the Insurance Company cannot be held liable for payment of compensation when there is a breach of policy condition.

6. So far as the contention of the Insurance Company that the deceased was not an employee of respondent no.8 and that the Insurance Company had insured the vehicle only for the risk of the driver of the tractor and not for any other person, the same cannot be accepted for the reason that there is no evidence with which it can be said that the contention so raised by the appellant has been established. On the contrary, there is evidence of the criminal case which was registered against the driver of the tractor wherein it was the finding in the course of the investigation that the deceased along with the driver and two more persons were going to the agricultural field of respondent no.8 for agricultural work. Similar statement has also been made by the claimants which stand un-rebutted and uncontroverted. What also reflects from perusal of the award is that the driver, the owner and the Insurance Company in their respective written statements filed before the Tribunal this ground of the deceased not being an employee of respondent no.8 was not taken. The contention of the owner of the tractor before the Tribunal in his evidence was that the deceased unauthorizedly without any permission forcefully climbed the tractor when it was moving when he met with an accident is also not acceptable for the reason that this was not the stand that they were taken in their written statement and therefore the same may also not be worth acceptable. In the course of evidence it has also come on record that the owner of the tractor in addition to a comprehensive policy had also paid an extra premium also is not in dispute which is evident from the policy itself. The acceptance of an extra premium in respect of the employees having been taken by the Insurance Company and the finding of the deceased and the other workers going to the field for performing the agricultural work prove that the deceased was engaged in the agricultural work by respondent no.8. The criminal case in respect of the driver of the offending vehicle also reflects this aspect.

7. In view of the same, the finding of the Tribunal cannot be said to be bad in law or contrary to the evidence which has come on record. So far as the judgment of the Supreme Court which has been cited by the counsel for the appellant is concerned, the facts of the said case clearly shows that the ratio and law laid down therein were under an entirely different contextual background which may not be applicable in the facts of the present case and is thus distinguishable.

8. The appeal thus being devoid of merits deserves to be and is accordingly dismissed.

Sd/-
(**P. Sam Koshy)**
JUDGE

Bhola