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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 927 of 2017

Shriram General Insurance Company Limited Plot No.1, E-8, EPIP, RIICO, Industrial Area, Sitapur, Jaipur, Rajasthan, 303022 ....(Insurer of Truck No. C.G.04 G 0551)

---- Appellant

Versus

1. Smt. Sonmati Bai Wd/o Late Raisingh, aged about 38 years, R/o Village Khaspara Sonpur, Thana Karpvand, District Bastar, Chhattisgarh
2. Hari S/o Late Raisingh, aged about 20 years, R/o Village Khaspara Sonpur, Thana Karpvand, District Bastar, Chhattisgarh
3. Gurubandhu S/o Late Raisingh, aged about 17 years, Minor through mother Smt. Sonmati Bai, R/o Village Khaspara Sonpur, Thana Karpvand, District Bastar, Chhattisgarh
4. Ku. Sonshila D/o Late Raisingh, aged about 15 years, Minor through mother Smt. Sonmati Bai, R/o Village Khaspara Sonpur, Thana Karpvand, District Bastar, Chhattisgarh ....(Claimants)
5. Premnath S/o Lakhinath, aged about 40 years, Caste Dhobi, R/o Village Sonpur, Thana and Post Karpavand, District Bastar, Chhattisgarh .... (Driver of Truck No. C.G.04 G 0551)
6. Budhram Dewangan S/o Bodkuram Dewangan, aged about 40 years, R/o Village Sonpur, Thana and Post Karpavand, District Bastar, Chhattisgarh ....(Owner of Truck No. C.G.04 G 0551)

---- Respondents

For Appellant : Shri S. S. Rajput, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

12/07/2017

Present is an appeal on behalf of the Insurance Company under Section 173 of the Motor Vehicles Act. The challenge is to the award dated

17.02.2017 passed by the 3rd Additional Motor Accidents Claims Tribunal, Bastar place Jagdalpur in Claim Case No.45 of 2016 whereby the Tribunal in a proceeding under Section 166 of the Motor Vehicles Act has allowed the claim application and awarded Rs.4,62,000/- as compensation to the claimants.

2. The facts of the case are that deceased Raisingh met with an accidental death on 23.05.2014 while he was travelling in a truck bearing registration No. CG 04G 0551. The said truck was being driven by respondent no.5 in a rash and negligent manner as a result, the offending vehicle turned turtle resulting in severe injuries to the deceased to which he succumbed to later. At the time of accident the deceased was working as a Hamal (Porter) and was earning an amount of Rs.4,000/- per month. The incident was reported to the Police Station Nagarnar where Crime no.140/14 was registered against respondent no.5 for the offence under Sections 279, 337 and 304A of IPC.

3. The Tribunal considering the evidences which have come on record vide impugned award dated 17.02.2017 granted compensation of Rs.4,62,000/- to the claimants.

4. It is this award which has been assailed by the Insurance Company in the present appeal.

5. The ground of challenge in the present appeal is the issue of liability. According to the counsel for the appellant, there is a clear breach of policy condition on which ground the liability could not have been fastened upon the Insurance Company. According to the counsel for the appellant, the first breach of policy condition was in respect of the deceased being a gratuitous passenger as the vehicle being a goods transport vehicle, he could not have travelled in the said vehicle. The second ground was that the driver of the offending vehicle at the relevant point of time did not have a valid driving licence to drive a goods carriage vehicle. According to the counsel for the appellant, the driver at the relevant time was only having a licence for driving LMV and it was the requirement of law that in the event the driver intends to operate a goods carrying vehicle, there should be an endorsement to that effect put by the concerned RTO granting him the said permission to drive the goods carrying vehicle which in the instant case was not available. Therefore the finding of the Court below is erroneous. Counsel for the appellant relied upon the decision of the Supreme Court in the case of Oriental Insurance Company Limited Vs. Angad Kol and others reported in (2009) 11 SCC 356, New India Assurance Company Limited Vs. Roshanben Rahemansha Fakir and another reported in (2008) 8 SCC 253 and Jabalpur Bus operators Association and Ors. Vs. State of M.P. And Anr. reported in 2003 (1) MPLJ 513.

6. It was further argued by the counsel for the Insurance Company that the Tribunal ought to have applied the principle of precedents while considering the judgments which had placed before it and should have ignored the subsequent judgments and applied the earlier view of the Supreme Court as the judgments which were placed before the Tribunal were of the quorum of the same strength and thereby the earlier judgment of the Supreme Court would have been binding upon the Tribunal.

7. A perusal of the records would clearly reflect that the driver of the offending vehicle at the relevant point of time did have a licence for driving a light motor vehicle. The vehicle which was involved in the accident was a light goods carriage vehicle i.e. Metadoor 709. According to the counsel for the appellant, the Tribunal has committed an error of law in not applying the ratio of the law laid down in the case of Oriental Insurance Company (supra). However, if we look into the evidence which has come on record, it reflects that so far as the deceased was a gratuitous passenger or not, is concerned, the same has not been established by leading any substantive evidence by the Insurance Company except for making a bald averment. The claimants had entered into the witness box and very categorically submitted that the deceased was working as a Hamal in the Metadoor owned by respondent no.6 and driven by respondent no.5. In view of the fact that there was no cogent evidence on the part of the Insurance Company to establish that the deceased was a gratuitous passenger and to disprove the contention of the claimants of the deceased being a worker of the respondent no.6, the said contention of the appellant stands rejected.

8. So far as the issue of the driver not having a valid driving licence is concerned, if we look into the judgments which have been relied upon by the Tribunal, one cannot fail to take note of the decision rendered by the Supreme Court in 2015 (1) SCC 156 in the case of Kulwant Singh and others Vs. Oriental Insurance Co. Ltd. The said judgment of the Hon'ble Supreme Court is based upon the decision passed in the case of S. Iyyapan Vs. United India Insurance Company Limited and another reported in (2013) 7 SCC 62.

9. The point of issue before this Court would be whether the finding of the Tribunal can be said to be a perverse finding or a contrary view than what has been laid down by the Supreme Court. Given the factual position what emerges apparently is that the Tribunal has relied upon the latest view of the Supreme Court rendered in the case of Kulwant Singh and in which again the Supreme Court has relied upon a decision rendered in the year 2013 that was much subsequent to the judgment of the Supreme Court passed in Oriental Insurance Company Vs. Angad Kol.

10. In the given circumstances this Court does not find any error on the part of the Tribunal in relying upon the judgment of Kulwant Singh fastening the liability upon the Insurance Company. So far as the law precedents in the case of Jabalpur Bus Operators Association and another are concerned the said principle of precedent would have applied to a case where the issue is before the same Coordinate Bench where there is already a law laid down by a Bench of the Quorum of the same strength of the same High Court. Hence, the said judgment relied upon by the counsel for the appellant would not be applicable in the facts of the present case.

11. In the given factual background of the case this Court does not find any strong material to interfere with the finding arrived at by the Tribunal on the issue of liability. The appeal thus fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE

Bhola