NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 378 of 2013

Judgment Reserved on 24.08.2018

Judgment Delivered on 15.11. 2018

- Suresh Dewangan (Wrongly Mentioned As Sulesh Dewangan) S/o Dauwalal Dewangan Aged About 40 Years R/o Belar, Tahsil & P.S. Nagri, Distt. Dhamtari C.G.

---- Appellant

Versus

1. Kumari Anita Daughter of Late Baisakhu, Caste Gond, aged about 18 years, R/o Jhuranadi, Belar, P.S. Nagri, Distt. Dhamtari C.G.

2. Mehar Singh S/o Keshar Singh Aged About 45 Years, Caste Kashyap, R/o Belar, Awaspara, Tah. And P.S. Nagri, Distt. Dhamtari C.G.

3. I.C.I.C.I. Lumbard Insu.Co.Ltd, Thru- The Branch Manager, Lal Ganga Shopping Complex, Raipur, P.S. And Distt. Raipur C.G.

---- Respondents

For Appellant	Shri D.N. Prajapati, Advocate.
For Respondent Nos. 1 & 2	None.
For Respondent No.3	Shri P. Acharya, Advocate on behalf of Shri Amrito Das, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

C A V Judgment

1. The appellant/owner has filed the instant appeal under Section 173 of the Motor Vehicle Act against the award dated 16.01.2013 passed by the learned Additional Motor Accident Claims Tribunal, Dhamtari, C.G. in claim case No.49/12, whereby in an injury case the Tribunal has awarded a total sum of Rs. 2,06,745/- as

compensation with interest at the rate of 6% per annum from the date of application till its realization, fastening the liability upon the appellant/owner and respondent No.2 Driver jointly and severely.

2. As per claim petition on 23.04.2010 injured claimant Kumari Ankita Singh was sitting in the tractor trolley bearing registration No. CG05-C-3473 and CG05-ZG-1004 as a labour. However, due to rash and negligent driving of the said vehicle by respondent No.2 Mehar Singh, the vehicle turned turtle and the Kumari Anita sustained grievous injuries including the fracture of both the leg bones.

3. On claim petition being filed by the claimant under Section 166 and 140 of the Motor Vehicle Act, the Tribunal considering the material available on record by the impugned award granted compensation with interest as mentioned above. Learned Tribunal fastened the liability on the driver and owner of the vehicle, while exonerating the insurance company on the ground that the injured was sitting in the mudguard of the tractor whereas the tractor is only sitting capacity of one person i.e. for driver and as such the vehicle was being driven in contravention of the policy conditions.

4. Learned counsel for the appellant/owner submits that as per Insurance Company policy Ex.D-1, it is clear that premium was taken for cleaner, conductor & coolie and as the injured was travelling in the vehicle as a labour and the tractor was insured with the Insurance Company, the Tribunal was not justified in

exonerating the insurance company of its liability. He further submits that the Tribunal has also erred in awarding compensation on the higher side whereas the claimant has failed to prove that she suffered any permanent disability.

5. On the other hand, learned counsel for the respondent No.3/Insurance Company supports the impugned award and submits that learned Tribunal after considering the over all evidence available on record was fully justified in fastening the liability upon the driver and owner and such while exonerating the insurance company.

6. Heard learned counsel for the parties and perused the material available on record including impugned award.

7. As per the evidence of claimant, in her cross examination she has admitted that on the date of accident she was sitting in the mudguard of the tractor along Kuleshwar and Kumari Saurang. According to NAW-1 Sameer Babbar, Legal Manager, ICICI Lombard General Insurance Company, the tractor in question was insured for agriculture purposes and it had the sitting capacity of one person i.e. for driver (EX-D-1). He had further clarified that though premium was taken for cleaner, coolie & conductor but their risk is covered only at the time of loading and unloading. Further, as per insurance policy of Ex.D-2, only the tractor bearing No. CG05-C-3473 was insured and not the trolley.

8. Thus, from the evidence of the claimant, and the witnesses of the non-applicants, it is clear that on the date of accident the claimant

was sitting on the mudguard of the tractor whereas the sitting capacity of the tractor is only one person i.e. for driver as per insurance policy of Ex.D-2. As such the vehicle in question was being driven in contravention of the policy conditions. Even if the claimant was sitting on the tractor has averred by her in the claim petition, since it was only the tractor which was insured by the owner and there was no insurance taken by the owner for the trolley attached to the tractor neither, any extra premium was paid for covering the risk of the persons travelling in the trolley, the insurance company cannot be held liable for indemnify the owner. Therefore, the Tribunal was fully justified, in exonerating the insurance company of its liability on the ground of breach of policy conditions and fastening the same upon the driver and owner.

9. The appellant/owner has also challenged the quantum of compensation. However, from the perusal of the pleadings of the claimant, the medical documents produced by her, the nature of her job i.e. labour, the price index, the minimum wages at the relevant time, the age of the claimant i.e. 18 years as per MLC report Ex.P-4, the evidence of Dr. R.K. Soni AW-2 regarding permanent disability of the claimant to the extent of 45% and the resultant inconvenience to the claimant in performing her labour work, this Court is of the opinion that the Tribunal has not committed any illegality in awarding Rs.2,06,745/- as compensation and by no stretch of imagination it can be termed as excessive or exorbitant.

10. On the basis of aforesaid discussions, this Court is of the considered opinion that the Tribunal was fully justified in exonerating the insurance company of its liability and the fastening the same on the driver and owner of the offending vehicle on the ground of breach of policy conditions.

11. Accordingly, the appeal being merit less is liable to meet the fate of dismissal and is accordingly dismissed.

Sd/-
Gautam Chourdiya
Judge

Akhilesh