NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 68 OF 2013

IFFCO Tokio General Insurance Co. Limited, 3rd Floor, Shop No. 345-347 Ganga Shopping, Near Mata, G.E. Road, Raipur, Tehsil & District Raipur, Chhattisgarh.

---- Appellant

Versus

1. Smt. Vimla Bai Manikpuri, wife of Late Shri Pramod Das Manikpuri, aged about 26 years
2. Kumari Gayatri, daughter of Late Shri Pramod Das Manikpuri, aged about 07 years

   Respondent No.2 being minor is represented through her mother Smt. Vimla Bai.

   Smt. Sonarin Bai, wife of Late Shri Fagwadas Manikpuri, aged about 67 years **(Since Dead)**

   All are residents of Villlage Mordha, Thana Mahasamund, Tehsil and District Mahasamund, Chhattisgarh.

   Presently residing at Village Duttaiya, Thana Phingeshwar, Tehsil Rajim, District Raipur, Chhattisgarh.
3. Parmanand Sahu, son of Shri Kusharam Sahu, aged about 32 years, resident of Village Chingroadh, Thana, Tehsil and District Mahasamund, Chhattisgarh. (Driver)
4. Rajdheshyam Sainik, son of Shri Bharat Lal Sainik, aged about 38 years, resident of Ward No. 12, Purana Rawan Bhata, Mahasamund, Thana, Tehsil and District Mahasamund Chhattisgarh.

   (Owner)

---- Respondents

For Applicant	:	Mr. Amrito Das, Advocate.
For Respondents No. 1 & 2	:	None
for Respondent No. 3	:	Mr. Sunil Sahu, Advocate
For Respondent No. 4	:	Mr. Shivendu Pandya, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

18/07/2018

1. By the instant appeal, the appellant/Insurance Company has challenged the legality and propriety of the impugned award dated 25/08/2012 passed by the Additional Motor Accident Claims Tribunal, Gariyaband, District Raipur, Chhattisgarh (hereinafter referred to as the 'Claims Tribunal') in Claim Case

No.48/2010, whereby the learned Claims Tribunal has passed an award of Rs.3,27,200/- and fastened the liability on the Insurance Company.

2. Brief facts of the case, are that, on 21/04/2010, Tractor bearing registration No.CG04/DM/2663 and Trolley attached with it bearing registration No.CG04/DM/2664 (offending vehicle) was driven by respondent No.3 rashly and negligently, due to which, the Trolley attached to the tractor turned turtle and the deceased Pramod Das Manikpuri standing on road came under it. On account of the said accident, Pramod Das Manikpuri died on spot. The matter was reported to the concerned police station by one Sagar Das, on the basis of which, a criminal case bearing Crime No.164/2010 was registered against respondent No.3 under the provisions of Section 304A of IPC. The claimants i.e. respondent No. 1/wife of deceased and respondent No.2/minor daughter of the deceased filed a claim application claiming Rs.32,00,000/- in total as compensation against the accidental death of Pramod Das Manikpuri on the ground that the deceased on the date of accident was aged about 35 years and earning Rs.250/- per day.

3. The respondents No. 3 and 4 who are driver and owner of the offending vehicle submitted their reply and have denied the pleadings made in the claim application. They further pleaded that if it is proved that the accident occurred with the offending vehicle then the liability for payment of compensation is on the appellant/Insurance Company as on the date of accident, Tractor and Trolley was duly insured with the appellant/Insurance Company.

4. The appellant/Insurance Company submitted its reply to the claim application and pleaded that at the time of accident, the offending vehicle is being used for commercial purpose and the deceased was occupying the vehicle as passenger. It was further pleaded that on the date of accident, respondent No.3 (driver) was

not having a valid and effective driving licence with him to drive the vehicle, therefore, there was violation of conditions of insurance policy.

5. The learned Claims Tribunal on the basis of pleadings, evidence and material available on record passed the award in favour of respondents No.1 and 2 on 25/08/2012 vide Annexure A-1 by awarding a compensation of Rs.3,27,200/-. The said award was challenged by the appellant before this Hon'ble Court in M.A.(C) No.1007/2011, wherein the appellant/Insurance Company had submitted that in the First Information Report, it has been mentioned that at the time of accident, the deceased was travelling on the Tractor Trolley and therefore, there was breach of conditions of insurance policy. Looking to the facts and circumstances of the case and the grounds raised by the appellant/Insurance Company in an earlier appeal, the Hon'ble High Court vide its order dated 13/02/2012 has remanded the matter back to the learned Claims Tribunal for considering and deciding the claim application afresh after framing the issue with regard to violation of terms and conditions of the insurance policy and thereafter to provide liberty to the parties to adduce further evidence, if any, amend the pleadings and file documents.

6. The learned Claims Tribunal as per the directions issued by the Hon'ble High Court has framed additional issue on 03/04/2012 with regard to violation of the conditions of insurance policy and thereafter fixed the case for recording the evidence of respective parties on 28/04/2012.

7. Learned Claims Tribunal after considering the case afresh along with additional issue passed impugned award after hearing the parties on 25/08/2012, whereby the learned Claims Tribunal arrived at a conclusion that the appellant/Insurance Company not led any evidence with regard to the violation of conditions of insurance policy, therefore, in view of the existence of valid policy on the date of

accident issued by the appellant/Insurance Company, fastened the liability for payment of compensation of Rs.3,27,200/- upon it.

8. Learned counsel appearing for the appellant submits that the documents with regard to the criminal case registered against respondent No.3 in relation to accident dated 21/04/2010, resulting death of Pramod Das Manikpuri was filed by the claimants including the First Information Report, *Merg* intimation, *Dehatinalishi* and Final Report and it is evident from the document i.e. Final Report that the deceased was travelling on a Tractor and there is no requirement of producing any additional evidence to prove those documents. He further submits that once the documents have been marked exhibited to show the accident then all its contents should also be admitted. He placed reliance on a judgment passed by Hon'ble Supreme Court in the matter of ***Oriental Insurance Co. Ltd. v. Premlata Shukla & Ors.*** reported in ***2007 AIR SCW 3591.***

9. Per contra, learned counsel appearing for respondents No.3 and 4 jointly submitted that the deceased was not travelling on Tractor, but he was trying to stop the Tractor by standing on road side and due to rash and negligent driving of respondent No.3, he came under the Trolley when it turned turtle. They further submitted that (NAW-2) Sagar Das on whose information *Dehatinalishi* was registered immediately after the accident has nowhere mentioned that the deceased was travelling on the offending vehicle i.e. Trolley, which is evident from Exhibit P-4 and he was not eyewitness. They further submitted that somehow in subsequent document of criminal case, it had been mentioned that the deceased Pramod Das Manikpuri was travelling on the Tractor Trolley, and therefore, looking to the conflicting documents of criminal case and the plea taken by the appellant/ Insurance Company with regard to violation of conditions of insurance policy is required to be proved by placing cogent material and evidence. They have lastly submitted that the appellant/Insurance Company even after remand of the case by the Hon'ble High Court has failed to produce

any evidence to prove the issue of violation of conditions of insurance policy and supported the impugned award.

10. I have heard learned counsels appearing for the respective parties and perused the records carefully.

11. From perusal of Exhibit P-4 (*Dehatinalishi),* which was reported on 21/04/2010 at 6.00 A.M. intimating with regard to the accident which took place on 21/04/2010 at 5.00 A.M., it reveals that in the said document, informant (Sagar Das) has not mentioned that the deceased was travelling on a Tractor.

12. The respondents No.1 and 2/claimants have examined three witnesses in their support to prove the case. Sagar Das, the informant of Exhibit P-4 was examined as NAW-2 who specifically denied the suggestion given by appellant with regard to the fact that he intimated in Police Station that deceased was travelling in Tractor in Paragraph-6 of his deposition. Another witness Shiv Kumar Dhruv (NAW-3) stated that one person tried to stop the Tractor and due to sudden application of breaks, the Tractor and Trolley turned turtle and the person who was stopping came under the Trolley. In the case in hand, in an accident, only one person died and from evidence also, it is clear that the person who was on road, died.

13. From perusal of the records, it is evident that Sagar Das (NAW-2) was not an eyewitness and there are two different reports one is *Dehatinalishi* and another is *Merg* intimation with different description and therefore, after considering all the materials including these documents, in my view, the appellant/Insurance Company was having burden to prove the fact that the deceased at the time of accident was travelling on a Tractor by producing cogent and reliable witnesses but the appellant/Insurance Company failed to do so even after remand of the case. In remand order, the Hon'ble High Court directed to frame an issue with regard to violation of conditions of insurance policy and thereafter to provide an

opportunity to the parties to lead evidence in respect of additional issue keeping in mind the facts and circumstances of the case and the documents and material available on record. From perusal of the order-sheets, it reveals that the case was thereafter fixed for recording of evidence of respective parties on 28/04/2012, 11/05/2012, 19/06/2012, 11/07/2012, 30/07/2012 and the next date was given as 16/08/2012. On 16/08/2012, the counsel representing the claimants as well as defendant No.3-appellant/Insurance Company has closed their evidence and thereafter, the case was fixed for final arguments on 21/08/2012.

14. But even after taking several dates for producing evidence to prove the issue of violation of conditions of insurance policy, the appellant/Insurance Company has not produced any witness or evidence in their support. The very purpose of remand of the case, was to enable the appellant to produce evidence or witness to prove the additional issue framed with respect to violation of conditions of insurance policy as the said issue was not framed earlier, but the appellant had not produced any material, evidence or witness to prove the additional issue.

15. The judgment relied on by the appellant/Insurance Company is not applicable to the facts and circumstances of the case as in the said case, First Information Report has been lodged by one of the occupant of the vehicle, in which, the deceased was travelling, but herein the case in hand, *Dehatinalishi* / First Information Report has been lodged by a person who was neither an occupant of the vehicle nor eyewitness to the incident and therefore, the case relied upon by the appellant/Insurance Company is distinguishable on facts and circumstances of the case in hand.

16. In view of above discussions, particularly, considering that even after providing an opportunity to the appellant/Insurance Company for producing witnesses and evidence to prove the fact of violation of conditions of insurance policy after

remand by this Hon'ble High Court, the appellant/Insurance Company failed to produce any witness or evidence to prove its case and further that informant neither an eyewitness nor occupant of offending vehicle, in my considered opinion, the learned Claims Tribunal was justified in passing the impugned award and fastened the liability on the appellant/Insurance Company for payment of compensation, which do not call for any interference.

17. As a result, the appeal filed by the appellant/Insurance Company is liable to be and is hereby dismissed.

18. No order as to costs.

Sd/-
(Parth Prateem Sahu))
Judge

Yogesh