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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 751 of 2011

1. Feku Jaiswal S/o Sri Baldeo Jaiswal, aged about 55 years, occupation agriculturist, R/o village Rajpur, Khutanpara, Police Station & Tahsil Rajpur, District Sarguja (CG) (owner)
2. Ranjit @ Munna S/o Sodhan, caste Gond, aged about 27 years, occupation driver, R/o village Sahanpur Bichpara, Police Station & Tahsil Lundra, District Sarguja (CG) (Driver)

---- Appellants

Versus

1. Shiv Bahadur S/o Jhagru, caste Uraon, aged about 48 years, occupation agriculturist
2. Bihani Bai W/o Shiv Bahadur, caste Uraon, aged about 40 years

Both resident of village Deori, PS & Tahsil Dhourpur, District Sarguja (CG) (Claimants)

3. United India Insurance Company Limited, through Branch Manager, Branch Office near Ram Mandir, Ambikapur, District Sarguja (CG) (Insurer)
4. Lal Rameshwar Sharan Singh S/o Shiv Bahadur Singh, aged about 60 years, caste Rajput, occupation agriculturist, R/o village Kakani, P.S. & Tahsil Dhourpur, District Sarguja (CG) (owner of trolley)

---- Respondents

For Appellants	:	Shri Shakti Raj Sinha, Advocate
For Respondents 1 &2	:	Shri Arun Shukla, Advocate
For Respondent no.3	:	Shri Dashrath Gupta, Advocate
For Respondent no.4	:	Shri A. K. Prasad along with Shri Rishi Mahobia, Advocate

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Misc. Appeal (C) No. 318 of 2012

Lal Rameshwar Sharan Singh S/o late Shiv Bahadur Singh, aged about 60 years, caste Rajput, occupation agriculturist, R/o village Kakani, P.S. & Tahsil Dhourpur, District Sarguja (CG) (Owner of trolley no. MKL 8234)

---- Appellant

Versus

1. Shiv Bahadur S/o Jhagru, caste Uraon, aged about 48 years, occupation agriculturist
2. Bihani Bai W/o Shiv Bahadur, caste Uraon, aged about 40 years

   Both resident of village Deori, PS & Tahsil Dhourpur, District Sarguja (CG) (Claimants)
3. Fenku Jaiswal S/o Sri Baldeo Jaiswal, aged about 55 years, occupation agriculturist, R/o village Rajpur, Khutanpara, Police Station & Tahsil Rajpur, District Sarguja (CG) (Owner of tractor no. CG 15 JG 0797)
4. Ranjeet @ Munna S/o Sodhan, caste Gond, aged about 27 years, occupation driver, R/o village Sahanpur Beechpara, Police Station & Tahsil Lundra, District Surguja (CG) (Driver of tractor no. CG 15 JG 0797)
5. United India Insurance Company Limited, through Branch Manager, United India Insurance Company Ltd. Branch Office near Ram Mandir, Ambikapur, Town Ambikapur, District Sarguja (CG) (Insurer of tractor no. CG 15 JG 0797)

---- Respondents

For Appellant	:	Shri A. K. Prasad, Advocate
For Respondents 1 & 2	:	Shri Arun Shukla, Advocate
For Respondents 3 & 4	:	Shri Shakti Raj Sinha, Advocate
For Respondent no.5	:	Shri Dashrath Gupta, Advocate

<u>Hon'ble Shri Justice P. Sam Koshy</u>

<u>Order On Board</u>

<u>24/01/2018</u>

These are two appeals arising out of an award dated 17.06.2011 passed by 1st Additional Motor Accident Claims Tribunal, Ambikapur, District Sarguja (CG) in Motor Accident Claim Case No. 15 of 2011. Vide the impugned award, the Tribunal, in a death case under Section 166 of MV Act, has awarded a compensation of Rs.2,25,000/- with interest @ 9% per annum from the date of application.

2. The death of a 8 years old child was from the use of a tractor bearing registration No. CG 15 ZG 0797 owned by Fenku and the trolley bearing registration No. MKL 8234 owned by Lal Rameshwar Sharan Singh. The tractor was duly insured with United India Insurance Company Ltd. However, the trolley was not insured.

3. MAC No.751/2011 is an appeal by the owner and the driver of the tractor and MAC No. 318/2012 is an appeal by the owner of the trolley.

4. Challenge to the impugned award is on the ground that the Tribunal has wrongly exonerated the Insurance Company of its liability and has fastened the liability of payment of compensation equally upon the owner the tractor as well as the owner of the trolley.

5. So far as the appeal by the owner of the tractor i.e. MAC No. 751/2011 is concerned, Shri Shakti Raj Sinha, counsel appearing for the appellants submits that the tractor was duly insured with respondent no.3 Insurance Company and that the driver of the vehicle Ranjit had a valid licence to drive a light motor vehicle on the date of accident. Therefore, the liability in respect of the owner of the tractor should have been indemnified by the Insurance Company and the finding to that extent is erroneous. He refers to the evidence of the witness from RTO in this regard and prayed for the award to be suitably modified.

6. So far as the appeal by the owner of the trolley i.e. MAC No. 318/12 is concerned, Shri A. K. Prasad, counsel appearing for the appellant submits that there is an evidence led by the owner of the trolley to the extent that he had not given permission for taking the trolley and attaching it to the tractor on the date of accident. He submits that in the absence of the owner of the trolley, the trolley was being used by the owner of the tractor without permission, therefore, he was not responsible for use of the trolley on the date of accident.

The owner of the trolley had also promptly lodged a police report in this regard which is also available on record though not marked. The owner of the trolley has also led evidence in this regard before the Tribunal but the Tribunal has erroneously reached to a finding that the owner of the trolley had not taken any prompt step for lodging a report before the Police Authority which is not correct as there are documents available on record to show that a complaint was lodged immediately.

7. To this submission, counsel appearing for the owner of the tractor submits that it is other way round that his tractor was ignorantly taken by the owner of the trolley for transportation of his sugarcane and he was under the bonafide impression that the trolley was duly insured and he was not responsible for use of the trolley without insurance.

8. Counsel for the Insurance Company, however, opposing both the appeals submits that it is a case where there is a specific evidence brought on record by the witness from RTO to show that the driver, on the date of accident, did not have a valid licence. According to the counsel for Insurance Company, though initially a licence for motorcycle/LMV was issued for the period from 09.06.2000 to 08.06.2020, subsequently, the validity till 2020 was reduced effective till 29.12.2005 when the endorsement for heavy goods vehicle was made w.e.f. 30.12.2002. Thereafter it was renewed only on 16.03.2007 during which period there was no licence.

9. This submission of the counsel for the Insurance Company may not be acceptable for the simple reason that admittedly as per the statement of the witness from RTO, the driver Ranjit had a valid licence of motorcycle/LMV for 20 years starting from 09.06.2000 to 08.06.2020. Once when this is an admitted fact, even if the licence for a heavy goods vehicle stood cancelled or non-renewed beyond 2005, the validity of driving licence for motorcycle/LMV would still have been operative. Thus, it cannot be said that there was any fault on the part of the owner in engaging Ranjit as a driver for the tractor. The Insurance Company thus is liable to indemnify the owner under such circumstances.

10. The said issue also stands squarely covered by the decision of the Supreme Court in the case of **Sant Lal Vs. Rajesh and Ors.** reported in **AIR 2017 SC 4054** wherein relying upon the recent larger Bench decision of the Supreme Court in the case of **Mukund Dewangan Vs. Oriental Insurance Company Limited** reported in **AIR 2017 SC 3668,** the tractor and the trolley was brought under the coverage of Light Motor Vehicle.

11. So far as the quantum part is concerned, taking into consideration the judgment of the Supreme Court in the cases of **Lata Wadhwa and Ors. Vs. State of Bihar and Ors.** reported in **(2001) 8 SCC 197** and **Kishan Gopal and another Vs. Lala and others** reported in (**2014) 1 SCC 244** and also considering the fact that the impugned award under challenge was passed in the year 2011 and the award being only rupees 2.25 lakhs, this Court does not find the quantum of compensation to be on the higher side nor can it be said excessive under any circumstance. Thus, the quantum part also does not call for any interference.

12. As regards the liability of payment of compensation, considering the fact that admittedly the tractor involved in the accident was duly insured and the tractor being a light motor vehicle and also keeping in view the principles laid down by the Supreme Court in the case of Sant Lal (supra), this Court is of the opinion that the liability of indemnifying the owner of the tractor would be that of the Insurance Company.

13. Thus, 50% of the awarded amount i.e. Rs.1,12,500/- shall be paid by the Respondent no.3 Insurance Company and the balance of 50% of the awarded amount shall be equally borne by the owner of the tractor as well as by the owner of the trolley. Since it is informed that the owner of the tractor has already deposited Rs.1,25,000/- before the Tribunal, it is directed that the Insurance Company while indemnifying the owner shall refund an amount of Rs.56,250/- to the owner of the tractor and the balance amount of Rs.56,250/- shall be deposited before the Tribunal, at the same time, the owner of the trolley shall also pay and deposit an amount of Rs.56,250/- before the Tribunal.

14. Both the appeals thus stand allowed in part.

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

Bhola