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HIGH COURT OF CHHATTISGARH, BILASPUR**M.A.(C) No.236 of 2018**

L And T Insurance Company Ltd. Through Officer In- Charge, L And T Insurance Company Limited, 1st Floor, Chawla Complex, Devendra Nagar Road, Raipur, Tahsil And District Raipur Chhattisgarh.....(Now Merged With H D F C Ergo General Insurance Company Limited).....Insurer Of Vehicle Tractor Registration No. C G-06-E- 6225., District : Raipur, Chhattisgarh

---- Appellant**Versus**

1. Smt. Amleshwari Wd/o Dasru Dhruv Aged About 30 Years R/o Achanakpur, Thana Bhatapara, District Balodabazar Chhattisgarh.
2. Ku. Kamini D/o Late Dasru Dhruv Aged About 12 Years Through Their Mother Smt. Amleshwari Dhruv, R/o Achanakpur, Thana Bhatapara, District Balodabazar Chhattisgarh.
3. Kishan Dhruv S/o Late Dasru Dhruv Aged About 9 Years Through Their Mother Smt. Amleshwari Dhruv, R/o Achanakpur, Thana Bhatapara, District Balodabazar Chhattisgarh.
4. Kanhaiyya Dhruv S/o Late Dasru Dhruv Aged About 5 Years Through Their Mother Smt. Amleshwari Dhruv, R/o Achanakpur, Thana Bhatapara, District Balodabazar Chhattisgarh.
5. Shatruhan Dhruv S/o Faguram Dhruv R/o Village Bijradih, Thana Bhatapara Gramin District Balodabazar Chhattisgarh.....Driver Of Vehicle Tractor Registration No. C G -06-E-6225.

Lakheshwar Patel S/o Ravishankar Patel R/o Village Girsa P O Jaund Saraipali, Thana Saraipali, District Mahasamund Chhattisgarh.....Owner Of Vehicle Tractor Registration No. C G-06-E-6225.

---- Respondents

For Appellant: Shri NK Thakur along with Shri Rohitashwa Singh, Advocates.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Order On Board

20.09.2019

1. This Miscellaneous Appeal has been preferred by Non-Applicant No.3-L & T Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') questioning the legality and propriety of the award dated 28.09.2018 passed by the 2nd Additional Motor Accidents

Claims Tribunal to the Court of 1st Additional Motor Accidents Claims Tribunal, Raipur (for short 'the Claims Tribunal') in Claim Case No.325/2016 by which, the learned Claims Tribunal, while allowing the claim in part, has awarded a total amount of compensation to the tune of Rs.12,79,600/- with 7.5% interest p.a. from the date of filing of the Claim Petition till its realization. The parties to this Appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated, the facts of the case are that on 13.12.2014, at 4.30 p.m, deceased Dasru Ram was standing near *shamshanghat* of village Kumhari when he was dashed vehemently by the offending vehicle (tractor) bearing its registration No.CG 6E 6225, which was owned by Non-Applicant No.2- Lakheshwar Patel and was insured with Non-Applicant No.3-L & T Insurance Company Limited. According to the Claim Petition, the vehicle in question was being driven in a rash and negligent manner by its driver Shatruhan Dhruv and owing to which, the alleged accident occurred in which, deceased received multiple injuries and expired during the course of his treatment in the hospital.

3. On account of the aforesaid accident, the Claimants being the legal representatives, instituted a Claim Petition enumerated under Section 166 of the Act of 1988 by submitting *inter alia* that the deceased who was 32 years old, was a labourer and used to earn Rs.9,000/- per month and thus total amount of compensation to the tune of Rs.22,86,000/- has been claimed under various heads.

4. Non-Applicants No.1 & 2, the driver and owner of the vehicle in question contested the aforesaid claim by saying that the deceased himself was responsible for the alleged accident as he abruptly came in front of the alleged vehicle in a drunken condition, whereas, the vehicle in question was

being driven cautiously by its driver. It is pleaded further that since the alleged vehicle was insured with the Non-Applicant No.3-Insurance Company, therefore, in case of any liability being fastened, the same could be indemnified by the said Insurance Company. While Non-Applicant No.3/Insurance Company contested the claim mainly on the ground that the deceased was in fact travelling in the alleged vehicle which does not come within the purview of the third party. It is contested further on the ground that the driver of the offending vehicle was not holding the valid and effective driving license, as such, it was being driven in violation of the insurance policy, therefore, no liability could be fastened upon it.

5. After considering the evidence led by the parties, the Claims Tribunal arrived at a conclusion that the alleged accident occurred on 13.12.2014 at 4.30 p.m on account of the rash and negligent driving of the driver of the alleged offending vehicle resulting into the sad demise of the deceased, who was standing nearby the road at village Kumhari. It held further that the vehicle in question was not being used in violation of the insurance policy and in consequence, while fastening the liability upon the Insurance Company, awarded a total amount of compensation to the tune of Rs.12,79,600/- with 7.5% interest p.a. from the date of filing of the Claim Petition till its realization.

6. Being aggrieved, Non-Applicant No.3-Insurance Company has preferred this Appeal. Shri NK Thakur, learned Counsel for the Appellant submits that the award impugned as passed by the Claims Tribunal holding that the deceased was not travelling in the alleged vehicle is apparently contrary to law. While inviting attention to the criminal record marked as Ex.P-1 to P-5, it is submitted that the deceased was one of the occupants in the alleged vehicle and without considering the said material facts in its proper

manner, the Claims Tribunal has committed an illegality in fastening the liability upon the Insurance Company while holding that the deceased was standing nearby the road at the time of the accident.

7. I have heard learned Counsel for the Appellant and perused the relevant papers annexed with the memo of Appeal carefully.

8. The main contention of the Appellant herein is that the deceased was one of the occupants in the alleged offending vehicle, therefore, no liability could be fastened upon it. In order to consider the said contention, I examined the pleadings as well as the evidence led by the parties as reflected from the award impugned. According to the Claim Petition, deceased was standing near the *shamshanghat* at village *Kumhari* and this fact was not disputed by Non-Applicants No.1 & 2 in their written statements. What has been pleaded by them was that the deceased was in a drunken condition at the relevant time and came abruptly in front of the alleged vehicle. Although, Non-Applicant No.3, while disputing this fact based upon the criminal records, has pleaded that he was one of the occupants of the alleged vehicle, however, no evidence in order to substantiate the said fact was produced. It however, appears that the Claimants, in order to substantiate the said fact, have examined one Manharan Sonwani (AW-2), who has deposed in his evidence that the deceased was dashed vehemently by the offending vehicle when he was with him along with one Ramdayal. According to him, they were passing nearby the said *shamshanghat* at the relevant time. The evidence of this witness could not have been rebutted. In absence of its rebuttal coupled with the non-examination of the author of the F.I.R namely Sagar Nishad, it cannot be held merely on the basis of those criminal records that the deceased was travelling in the alleged vehicle, as contended by learned Counsel for the Appellant.

Pertinently to be noted here further that the driver, who could have thrown some light on the factum of alleged accident, has not entered into the witness box and therefore, in absence of any cogent and reliable evidence, it is difficult to hold that the deceased was travelling in the alleged vehicle. The Claims Tribunal has therefore not committed any illegality in holding that the alleged accident occurred when the deceased was standing nearby the road.

9. In view of the foregoing discussions, I do not find any substance in this Appeal. Accordingly, the Appeal being devoid of merits is hereby dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
Judge

Priya