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HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No.274 of 2011

1. Kailash Yadu S/o Shyamlal Yadu, aged about 18 years, R/o village & Post Nistiguda, Police Station – Devbhog Chouki, Tahsil – Gariyaband, District Raipur (C.G.) (Non-applicant No.1). (Driver of Tractor).
2. Kuman Singh Netam S/o Dhansingh Netam, aged about 38 years, R/o village Dongriguda, Post Kadlimuda, Police Station Devbhog, Tahsil Gariyaband, District Raipur (C.G.) (Non-applicant No.2). (Owner of Tractor).

---Appellants

Versus

1. Ku.Padmini Pradhan D/o Late Banshilal Pradhan, aged about 20 years (Applicant No.1).
2. Ku.Dirjay Pradhan D/o Late Banshilal Pradhan, aged about 18 years (Applicant No.2).
3. Ramprasad Prasad S/o Late Banshilal Pradhan, aged about 15 years, Minor on behalf of through his legal guardian sister Ku.Padmini Pradhan. (Applicant No.3)

   All are R/o village Dongriguda, Post Kadlimuda, Police Station Devbhog, Tahsil Gariyaband, District Raipur (C.G.)
4. The Bajaj Allianz General Insurance Company Limited, through Branch Manager, Branch Officer, Shiv Mohan Bhawan, Vidhan Sabha Road, Pandri, Raipur, Tahsil & District Raipur (C.G.). (Non-applicant No.3) (Insurer of Tractor).
5. Chirounji Lal Nishad S/o Munna Lal Nishad, aged about 50 years, R/o village Kalinagar, Pandri, Raipur, Tahsil & District Raipur (C.G.). (Non-applicant No.4) (Driver of Truck).
6. Dilip Chand Jain S/o Rekhab Jain, R/o village Urmal, Police Station Devbhog, Tahsil Gariyaband, District Raipur (C.G.) (Non-applicant No.5) (Owner of Truck).
7. The Oriental Insurance Company Limited, through Divisional Manager, Divisional Office, Branch No.2, Madina Manjil, Jail Road, Kutchery Chowk, Raipur, Tahsil & District Raipur (C.G.) (Insurer of Truck).

---Respondents

For the appellants	:	Shri Shivendu Pandya, Advocate.
For resp. No.4/The Bajaj Allianz General Insurance Co. Ltd.	:	Shri Ghanshyam Patel, Advocate.
For resp. No.7/The Oriental Insurance Co. Ltd.	:	Ms.Chitra Shrivastava, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

12/01/2018

1. Present is an appeal filed by the owner and driver of a Tractor under Secion 173 of the Motor Vehicles Act assailing the award dated 24/07/2010 passed by the learned Additional Motor Accident Claims Tribunal, Gariyaband, District Raipur (C.G.) in Motor Accident Claim Case No.36/2007.

2. Vide the said impugned award, the Tribunal in a death case has awarded a compensation of Rs.2,35,000/- with interest @ 7.5% per annum from the date of application.

3. While passing the impugned award, the Tribunal has exonerated the Insurance Company of the Tractor involved in the accident, owned and driven by the present appellants and the liability was equally distributed between the Insurance Company of the Truck involved in the accident and the present appellants that is the owner of the Tractor of 50% of the awarded amount i.e. Rs.1,17,500/- each.

4. The counsel for the appellants submits that, it is a case where the accident took place on 05/07/2007 and that the accident occured because of

the head on collision between the Truck and the Tractor bearing registration Nos. CG-04-J-7461 and N.Y.T.7663 respectively. He further contended that, the Tractor belonging to the present appellants were duly insured with the Bajaj Allianz General Insurance Company Limited (In short Bajaj Allianz) and therefore the liability which has been fastened upon the present appellants should had been shifted upon the Bajaj Allianz. He further submits that, the Tractor was not being operated beyond the sitting capacity and that the Tractor was duly insured by the Bajaj Allianz is not in dispute as the Insurance Company themselves had in their written statement admitted this aspect as is reflected from the impugned judgment. It was further contended by the counsel for the appellants that, since, there was a valid policy and that there was no sufficient evidence led by the Bajaj Allianz to prove any breach of policy condition, the Tribunal ought to have fastened the liability upon the Bajaj Allianz so far as the share which has fallen to be paid by the present appellants.

5. The counsel appearing for the respondent No.4/Bajaj Allianz opposing the appeal submits that, it is a case where there was a categorical finding of contributory negligence. He further submits that, if the contributory negligence factor goes, even then there appears to be a definite case of composite negligence on part of the appellant No.1 for which the entire liability of payment of compensation should had been shifted upon the present appellants. It was further argued that, there was a clear breach of policy condition as the claimants themselves has not been able to establish their case that, the vehicle was being used for an agricultural purpose. It was

further contended that, the owner himself has not produced before the Tribunal the nature of policy issued where the deceased in the instant case was covered under the risk of the policy.

6. Perusal of record would show that, there is a categorical finding of there being a head on collision between the two vehicles i.e. the Truck and the Tractor. The Tribunal has therefore taken the view of there being an apparent contributory negligence between the two vehicles.

7. The Oriental Insurance Company Limited (In short Oriental Insurance) has not challenged the judgment. As such, the liability which has been fallen upon them stands affirmed.

8. So far as the Insurance Company of the Tractor is concerned, if we look into the record, the Bajaj Allianz has not led any evidence to substantiate any breach of policy condition. On the contrary, there is a categorical admission by them in their Written Statement before the Tribunal that, the Tractor and Trolley was duly insured.

9. Further from perusal of record it appears that, the deceased in the instant case was traveling sitting in the Trolley of the Tractor when the accident occurred.

10. Considering the facts and circumstances of the case, particularly taking note of the Written Statement and the admission on part of the Bajaj Allianz of having duly insured the vehicle and there being no evidence led by the Bajaj Allianz to prove the breach of policy condition on part of the appellants this Court is of the opinion that, the liability which has fallen upon the present

appellants ought to have been shifted upon the Bajaj Allianz i.e. the Insurance Company which had insured the Tractor.

11. Accordingly, the appeal stands allowed and the portion of share which the appellants have to pay i.e. of Rs.1,17,500/- is now ordered to be paid by the respondent No.4/Bajaj Allianz. If any amount has been deposited by the present appellants, they shall be entitled for refund of the same from the Bajaj Allianz.

12. However, it is made clear that the Bajaj Allianz shall deposit only the balance of amount left after the amount which has been deposited by the present appellants before the Tribunal.

13. The appeal stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit