

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 404 of 2014

- Iffco Tokio General Insu. Co. Ltd. Thru- The Divisional Manager, 3rd Floor, Shop No. 345-347, Ganga Shopping, G.E. Road, Raipur, Tah. And Distt. Raipur C.G.

---- Appellant

Versus

1. Smt. Durga Bai W/o Late Mahesh Sahu Aged About 37 Years
2. Shitlesh S/o Late Mahesh Sahu Aged About 17 Years
3. Ku. Sharda D/o Late Mahesh Sahu Aged About 15 Years
4. Bhishm S/o Late Mahesh Sahu Aged About 13 Years
5. Jhumuklal S/o Late Rajva Sahu Aged About 73 Years
6. Smt. Jagoti Bai W/o Jhumuklal Sahu Aged About 68 Years

Respondents No. 2 to 4 through their legal guardian mother Durga Bai Sahu.

Respondents No. 1 to 6 R/o Kariyatola, Ward No. 15, Tah. Dongargaon, Distt. Rajnandgaon C.G. - **Claimants**

7. Sanjay Thakur S/o Kunj Singh Thakur Aged About 36 Years R/o Kariyatola, Ward No. 15, Tah. Dongargaon, Distt. Rajnandgaon C.G. -**Owner**
8. Meghnath S/o Chaituram Patel Aged About 30 Years R/o Salhedudhwa, Tah. Dongargaon, Distt. Rajnandgaon C.G. -**Driver**

---- Respondents

For Appellant	:	Shri P. Acharya, Advocate.
For Respondents No. 1 to 6	:	Shri Shashi Bhushan, Advocate.
For Respondent No.7 & 8	:	Shri Rakesh Thakur, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

29/11/2018

This appeal has been filed by the appellant/insurance company under Section 173 of the Motor Vehicles Act, 1988 against the award dated 23.1.2014 passed by II Additional Motor Accidents Claims Tribunal, Rajnandgaon in Claim Case No.11/2012.

02. As per averments made in the claim petition, on 15.4.2010 deceased Mahesh Sahu along with his colleagues had gone in the tractor-trolley bearing registration No. CG 07D/1013 & CG 07D/1014, owned by non-applicant No.1 and driven by non-applicant No.2, as labourers for bringing bricks. However, due to rash and negligent act of non-applicant No.2, while loading bricks in the trolley, the said trolley overturned as a result of which deceased Mahesh Sahu suffered grievous injuries and died on the spot.

03. On claim petition being filed under Section 166 of the Motor Vehicles Act by the claimants, the Tribunal considering the evidence led by both the parties by the impugned award granted compensation of Rs.3.70 lacs in favour of the claimants with interest @ 6% pa from the date of application till realization fastening liability on the insurance company, jointly and severally, along with driver and owner of the offending vehicle.

04. Learned counsel for the appellant submits that there was no negligence on the part of non-applicant No.2/driver; the trolley is not insured with the insurance company and that no premium was taken for the labourers and as such, the Tribunal has wrongly fastened liability on the insurance company.

05. On the other hand, learned counsel for the respondents support the impugned award and submit that the Tribunal considering all the aspects of the case has rightly passed the impugned award which needs no interference by this Court.

06. Heard learned counsel for the parties and perused the material available on record.

07. As per Ex.D/1 i.e. cover note and D/4 i.e. insurance policy, it is

clear that package policy was issued in favour of the owner of the offending vehicle and basic premium for 3rd party for tractor and trolley was taken by the insurance company. Therefore, contention of the appellant/insurance company that no premium was taken for covering risk of the deceased is not acceptable.

08. So far as negligence part is concerned, from the evidence on record it is seen that non-applicant No.2/driver had gone for another work at the time of accident, when the bricks were being loaded in the trolley, the trolley overturned and as such, proper care was not taken by the driver while the bricks were being loaded in the trolley. Since the tractor and trolley were duly insured with the appellant, therefore, the insurance company is liable for indemnifying the owner of the vehicle.

09. On the basis of aforesaid discussions, this Court finds no illegality in the finding recorded by the Tribunal and as such, the appeal being without any substance is hereby dismissed. The appellant/insurance company to deposit the awarded amount within a period of one month from today with the concerned Tribunal.

Sd/

(Gautam Chourdiya)

Judge