

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 974 of 2011**

Divisional Manager, Oriental Insurance Co. Ltd. Parmanand Building
Rajendra Park Chowk, Durg (CG).

---- Appellant**Versus**

1. Smt. Yogeshwari W/o late Rijendra Sahu, age about 30 years.
 2. Manish Kumar S/o Late Rijendra Sahu, age 7 years.
 3. Ku. Ankita D/o Late Rijendra Sahu, age 5 years.
 4. Smt. Kumari Bai W/o Vednath Sahu, aged 55 years.
 5. Vednath Sahu S/o Late Heeralal Sahu, age 59 years.
- Respondents No. 2 & 3 are minors through mother Smt. Yogeshwari-
Respondent No.1.
All R/o Village Khamharia, P.O. Purai, Thana Uatai, District Durg (CG).

---- Respondents

For Appellant	:	Shri Sudhir Agrawal, Advocate.
For Claimants	:	Shri Amiyakant Tiwari, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Judgment on Board****18.01.2018**

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the insurance company assailing the award dated 10.05.2011 passed by the 4th Additional Motor Accident Claims Tribunal, Durg (in short, the Tribunal) in Claim Case No.63 of 2011. Vide the said impugned award, the Tribunal in a death case has awarded a compensation of Rs.4,51,900/- with interest @ 6 percent per annum from the date of application.
2. Rijendra Sahu, aged about 36 years, met with an accidental death on 16.01.2008. The accident arose when the deceased was driving Maruti Van bearing registration No.CG-04-ZD-3667 which belonged to respondent No.6 (who has since been deleted on getting expired). The legal representatives of the deceased Rijendra Sahu filed a claim

application under Section 163-A of the Motor Vehicles Act claiming compensation. The Tribunal had vide impugned award allowed the claim application giving rise to present appeal by the insurance company.

3. Learned counsel for the appellant-insurance company challenges the award on three grounds. Firstly, the offending vehicle was being used for commercial purpose whereas the vehicle was registered and insured for private use. He submits that there is an evidence on record which shows that the deceased was driving Maruti Van attached to a School and that it was being used for carrying children of the School from their residence to School and back. Further, since there is evidence on record which reflects that the vehicle was being used for transportation of children of the School, it would establish the fact that it was being used for commercial purpose.
4. The second ground raised by the appellant was that, the deceased was not the driver of the owner of the vehicle and therefore for the death of said driver, the insurance company should have been absolved of its liability. He further submits that the evidence of the Principal of the School reflects that the respondent No.6, the owner of the vehicle, had handed over the vehicle to the Principal and it was the Principal of the School who was managing and operating the vehicle. Therefore, since the deceased was not the driver of the owner, he cannot be indemnified by the insurance company on behalf of the owner.
5. The third ground raised by the appellant-insurance company is that,

the vehicle was not in possession of the registered owner at the time of accident and that he cannot be fastened with the liability of payment of compensation when the vehicle was in possession of the different person and that the liability, if any, should have been that upon the possessive owner of the vehicle i.e. School management and not the present appellant.

6. So far as the evidence in respect of the vehicle being used for commercial purpose is concerned, except for FIR, Ex. P/7, there does not seem to be any conclusive or concrete evidence led by the insurance company to substantiate the fact that the vehicle was being used for commercial purpose. However, at the same time, it cannot be ignored that the Principal of the School where the vehicle was attached, NAW-2, Daya Ram Sahu, was examined and who has stated that the vehicle belonged to respondent No.6-Manoharlal (since deceased on his death) and that it was being used and operated in possession of the School. There does not seem to be any strong case made out to disbelieve the statement of the Principal- Daya Ram Sahu so far as the vehicle not being attached to the School and the accident to have occurred while the vehicle was being used for transporting school children after school hours.
7. Though there is no written agreement entered into between the parties, but the oral statement of the Principal of the School sufficiently proves that the vehicle was attached to the School and it was being used for transporting children.
8. Given the facts and circumstances of the case, this court is of the

opinion that there appears sufficient material to draw an inference that the vehicle was being used for commercial purpose and not for private use when the accident occurred.

9. So far as the ground of the driver not being an employee of the registered owner is concerned, this court is of the opinion that there is no sufficient evidence available on record with which it can be stated that the driver in-fact was engaged by the school authorities. Rather, there is evidence of the Principal that the deceased himself had brought the vehicle from the owner-Manoharlal to the School. From the records it also reflects that the vehicle was being attached to the institution along with the driver on monthly rent of Rs.6500/-. Thus, the ground so raised by the appellant-insurance company is not sustainable.
10. So far as the vehicle not being in possession of the owner is concerned, this court is of the opinion that even if the entire version of the evidence which have come on record is accepted even then it does not reflect that the vehicle had been permanently handed over by the registered owner to the school authorities. Rather, it is a case where there is specific pleading of the authorities that the oral agreement for the operation of the vehicle on monthly rental basis was only for 11 months. Thus, even if the vehicle was not in possession of the registered owner, even then, he continued to be the owner as he was receiving the monthly rent payable by the school management.
11. The appellant in the instant case relied upon the decision in case of

National Insurance Co. Ltd. Vs. Deepa Devi & Ors. 2007 AIR SCW 7882, however, the said judgment cannot be made applicable and is distinguishable on facts of the present case. In that case, the vehicle was attached by the State Government for election purpose whereas, in the instant case there was only an oral agreement between the owner and the school management for a period of 11 months that too on payment of monthly rent to the respondent No.6-registered owner for the operation of the vehicle.

12. It was lastly contended by the appellant-insurance company that if the claimants in the instant case are entitled for compensation, the same would be under the provisions of Workmen's Compensation Act and not under the Motor Vehicles Act and the claim should be restricted to the amount that would be as per the calculation under the provisions of Workmen's Compensation Act. He relies upon the judgment of Supreme Court in case of Ramchandra Vs. Regional Manager, United India Insurance Co. Ltd., 2013 (3) TAC 737.
13. A perusal of records would show that the original claim application which was filed before the Tribunal was under Section 163-A of the Motor Vehicle Act. Under Section 163-A of the Motor Vehicles Act, the evidence to prove negligence is not required. Further, the option is always available to the claimants to either move an application under the Workmen's Compensation Act or to initiate proceedings under under the Motor Vehicles Act.
14. Since the claimants have exercised their option of seeking compensation under Section 163-A of the Motor Vehicles Act, this

court is of the opinion that it is not a case where the liability of insurance company could be restricted to that of claim payable under the provisions of the Workmen's Compensation Act.

15. Given the entire facts and circumstances of the case, particularly on the findings of the vehicle being used for commercial purpose, this court is of the opinion that it is a fit case where the doctrine of "Pay and Recover" could be applied. It is ordered accordingly that the appellant-insurance company shall deposit the entire awarded amount before the Tribunal with liberty to recover the same from the owner of the offending vehicle.

16. Accordingly, the appeal is partly allowed and disposed off.

Sd/-
(P.Sam Koshy)
Judge

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