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HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 881 of 2011

Satyendra Singh Kushwaha S/o Late Narsingpal Singh, R/o Kushwaha Gali, Shanti Nagar Ward, Jagdalpur, Dist. Bastar (CG).

---- Appellant

Versus

1. Smt. Surekha W/o late Shri Madeshankar @ Shankar Shaha Mandavi,
2. Vishal Shaha S/o Late Madeshankar @ Shanker Shaha Mandavi, aged 5 years, Minor Through Natural Guardian Respondent. No. 1, R/o Village Farsegarh, Dist. Bijapur Smt. Surekha, Both R/o Village Farsegarh, Distt. Bijapur (CG).
3. Mangal Singh S/o Ajit Singh, aged 34 years, R/o Maitguda Jagdalpur, Distt. Bastar (CG).
4. Oriental Insurance Company Ltd. Through Branch Manager, Jagdalpur, Distt. Bastar (CG).

---- Respondents

For Appellant	:	Shri Keshav Dewangan, Advocate.
For Respondents 1&2	:	Shri Anurag Singh, Advocate.
For respondent No.4	:	Shri Sudhir Agrawal, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

23.01.2018.

1. The present is owner's appeal under Section 173 of the Motor Vehicles Act (in short, the MV Act) against the award dated 30.06.2011 passed by the Additional Motor Accident Claims Tribunal South Bastar, Dantewada (for short, the Tribunal) in Claim Case No.06 of 2008. Vide the said impugned award, the Tribunal in a death case has awarded compensation of Rs.5,38,000/- along with interest @ 7 percent per annum from the date of application.
2. The brief facts relevant for adjudication of the case is that, the deceased in the instant case Madeshankar @ Shankar Shaha Mandavi, aged around 30 years, met with an accidental death on

26.02.2007. The accident occurred when he was travelling in Bus bearing registration No.CG-07-E-0144 belonging to the present appellant. The legal representatives of the deceased filed claim application under Section 166 of the MV Act which ultimately stood decided vide the impugned award. While passing the award, the Tribunal has exonerated the insurance company and has fastened the liability upon the present appellant-owner. The exoneration of the insurance company was on the ground that the deceased was alleged to have been sitting and travelling on the roof of the Bus when he met with an accident. Since the insurance company was not liable to indemnify the passenger travelling on the roof of the Bus, it was exonerated.

3. Learned counsel for the appellant assailing the award submits that the findings of the Tribunal is erroneous and is also contrary to the evidence which have come on record. The claimants have supported the case of the appellant-owner with the statement of eyewitness, yet the Tribunal has not appreciated the evidence properly. According to appellant, it was the specific claim of the claimants before the Tribunal and which stood supported by the statement of eyewitness which also has further been corroborated from the stand taken by the owner before the Tribunal substantiated the contention of the owner of the deceased not travelling on the roof, but the accident occurred when he had climbed the roof of the Bus at the Bus Stop for unloading the luggage belonging to him which was kept on the roof.

4. Per contra, learned counsel for the respondent-insurance company

opposing the appeal submits that there is no scope of interference with the findings of the Tribunal. According to him, there has been specific evidence brought on record before the Tribunal which could easily establish the fact that the deceased in the instant case was infact travelling on the roof of the Bus when the accident occurred. It was the further stand of the insurance company that the deceased was travelling on the roof of the Bus also stands proved from the FIR which was lodged immediately after the accident had occurred. So also the same is reflected from the Panchnama which was prepared. The insurance company also referred to the Postmortem report and also other documents connected to the criminal case to support his argument. He relied upon the decision of Supreme Court in case of National Insurance Company Limited Vs.Rattani and Others, 2009 (1) TAC 420 SC.

5. Having heard the counsel appearing on either side and on perusal of records, what is undisputed in the present case is, the accident which took place on 26.02.2007; the resultant death of deceased Shankar Shaha, aged around 30 years; the accident arose from the use of Bus bearing registration No.CG-07-C-0144 owned by the present appellant; the said Bus being dully insured with the respondent No.3-Oriental Insurance Co. Ltd.; immediately thereafter an FIR was lodged against the driver of the Bus belonging to the appellant and he was prosecuted for the offence under Section 304-A IPC.

6. With the aforesaid factual matrix of the case, we now proceed to peruse the evidence which has been led by the disputing parties. The

claimants in the instant case led the evidence of the widow herself of the deceased and also that of one Ram Chandra Mandavi. In addition, AW-3, Antram Yadav was also examined to prove the age and the wage of the deceased.

7. Now if we look first at the claim application under Section 166 filed by the claimants, the stand of the claimants was that when the Bus stopped at Gudma Bazar Para on the evening of 26.02.2007, the deceased alighted from the Bus and in order to unload the luggage which was kept on the roof of the Bus, he climbed over the roof and suddenly the driver negligently moved the vehicle resulting in the deceased falling head on to the ground and received grievous injuries to which he later on succumbed. The same stand was reiterated by the widow while giving evidence before the Tribunal.
8. AW-2, Ram Chandra Mandavi, is another person who has been examined on behalf of the claimants who apart from being an eyewitness to the accident was also one of the passenger who was travelling in the Bus along with the deceased. This witness corroborates the claim of the claimants of the deceased travelling inside the Bus and only at the Bus Stop i.e. the place of incident he had climbed upon the roof of the Bus and fell to the ground. From the cross examination of said AW-2, the respondent does not seem to have been able to extract much in order to either disbelieve his version or to doubt his contentions.
9. Now if we look at the evidence which has been adduced by the insurance company, it would reflect that there are two witnesses

examined on behalf of the insurance company. One being Vikram Pal Singh, an officer from the insurance company itself and one Ram Karan, an employee from the RTO. If we peruse the evidence of both these witnesses, it appears that both these witnesses have been examined on the same point that of the permit which was issued in respect of the said Bus belonging to the appellant would not permit passengers to travel on the roof and thus there was a breach of permit conditions. These two witnesses were not eyewitnesses. Neither have they deposed before the Tribunal relying upon the statement of any of the eyewitness. At the same time, what cannot be lost sight of is the evidence of the appellant himself who has again reiterated the stand that he has taken in his written statement deposed before the Tribunal of the accident to have occurred when the deceased got down from the Bus and climbed on the roof of the Bus for unloading his luggage that was stored on the roof of the Bus.

10. Now with the aforesaid evidence if we look into the contents of the FIR, it would reveal that the FIR also reflects the name of AW-2, Ram Chandra Mandavi, to be a person who was travelling along with the deceased. He has deposed before the Tribunal. On the contrary, the lodger of FIR or the person or the police person who has recorded the FIR have not been examined before the Tribunal so as to prove the contents of the FIR. What further has to be borne in mind is that the Driver of the Bus was prosecuted for the offence punishable under Section 304-A IPC. The insurance company has not led evidence of the police person to prove the FIR. At the same time, the claimants

have, in addition to the stand that they have taken in the claim and the same statement being made by the widow of the deceased, have also examined the eyewitness Ram Chandra Mandavi.

11. Thus, in the given factual matrix of the case, this court is of the opinion that the findings of the Tribunal in exonerating the insurance company of its liability does not seem to be proper, legal and justified with the evidence which have come on record and the same therefore deserves to be and is accordingly set aside and it is held that the amount awarded by the Tribunal shall be paid by the respondent-Oriental Insurance Company Limited instead of present appellant-owner.

12. So far as the judgment which have been cited by the appellant in case of Rattani (Supra) is concerned, in that case the claimants themselves were relying upon the FIR and it was the claimants who had brought the FIR on record. However, in the instant case, it was the insurance company which was trying to take advantage from the criminal records but the lodger of the FIR so also the person who has recorded FIR both have not been examined before the Tribunal and at the same time there is eyewitness Ram Chandra Mandavi examined. Thus, this court is of the opinion that the said judgment is distinguishable on its facts itself.

13. In view of the above, this court is of the opinion that the present appellant had discharged his burden so far as his part is concerned whereas, the respondent-insurance company has not been able to discharge its burden by leading any concrete and cogent evidence to

substantiate its stand.

14. Accordingly, the appeal stands allowed. The liability of payment of compensation now stands shifted upon the respondent-Oriental Insurance Company.

Sd/-
(P.Sam Koshy)
Judge

inder