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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 372 of 2014

1. Lokesh Kumar Nag S/o Shivprasad, aged about 18 years, R/o Gangoli Rice Mill, Balod, District Balod (C.G.)
   (Dirver of vehicle Scooty No. C.G.-04/D.Y.-2260)
2. Binda Devi W/o Shivprasad Nag, R/o Amapara, Balod, District Balod (C.G.)
   (Owner of vehicle Scooty No. C.G.-04/D.Y.-2260)

---- Appellants

Versus

1. Lagmaybai W/o Dhansuram, aged about 38 years
2. Champa Lal S/o Dhansuram, aged about 17 years
3. Sitaram S/o Dhansuram, aged about 14 years
4. Siyaram S/o Dhansuram, aged about 10 years
5. Ku. Reshma D/o Dhansuram, aged about 7 years
6. Ku. Sukarita D/o Dhasuram, aged about 4 years
   No.2 to 6 are minor through legal guardian mother
   All R/o village Bamhani, Tahsil Dondi, District Balod (C.G.)
   (Claimants)
7. Insurance Company, Bajaj Alliance, Raipur, District Raipur (C.G.)
   (Insurer of vehicle Scooty No. C.G.-04/D.Y.-2260)

---- Respondents

For Appellants	:	Shri B.P. Singh, Advocate
For Respondents 1 to 6	:	None
For Respondent No.7 / Insurance Company (Wrongly mentioned Respondent No.6 in cause-title of the Appeal)	:	Shri Rohitashav Singh, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

12.12.2018

1. This appeal has been preferred by the Appellants/rider & owner of the offending vehicle under Section 173 of the Motor Vehicles Act, 1988 against the award dated 18.02.2014 passed by the Second Additional Motor Accident Claims Tribunal, Balod, District Balod (C.G.) in Claim Case No. 76/2013.

2. The facts of the case in brief are that on 18.10.2011 at 04:00 PM deceased-Dhansuram alongwith his relative was going on a bicycle to visit Ganga Maiya Temple and the deceased was pillion rider of the said bicycle and when they reached near Sinha Furniture Shop, Appellant No.1, who was riding the Scooty bearing registration No. C.G.-04/D.Y.-2260, owned by Appellant No.2, in a rash and negligent manner dashed the bicycle from back side as a result of which the deceased and rider of bicycle fell down on the road. The deceased sustained grievous injuries on right leg, waist, thigh and other parts of the body. The deceased was hospitalized in Sahid Hospital Daalirajhara. Thereafter, the deceased was discharged from Hospital and his treatment was continuing and later on, he died on 07.11.2011.

3. As against the compensation of Rs.11,50,000/- claimed by Claimants/Respondents 1 to 6 by filing application under Section 166 of the Motor Vehicles Act, 1998 for the death of deceased-Dhansuram in the motor accident on 18.10.2011, the Tribunal awarded a total sum of Rs.3,80,000/- as compensation alongwith simple interest @ 6% per annum from the date of application till its realization. The Tribunal has also directed that Appellants 1 and 2 are jointly and severally liable for payment of compensation to the Claimants/Respondents 1 to 6 and exonerated the Insurance Company to pay compensation.

4. I have heard the learned counsel for the parties and with their assistance have gone through the record of this case.

5. The proved facts in this case are that the accident took place on 18.10.2011 in which Dhansuram, aged about 45 years, died. It is also proved from the record that Appellant No.1 – Lokesh Kumar Nag, who was riding the vehicle-Scooty at the relevant time, was aged about 17 years. The point for determination is whether Binda Devi, the present Appellant No.2/owner of the vehicle, committed breach of the contract with the Insurance Company by handing over the vehicle to Appellant No.1, who had no valid and effective driving licence at the time of accident.

6. The learned counsel appearing on behalf of the Appellants submits that Appellant No.2, owner of the vehicle, on the date of accident was discharging her duties in the office of C.S.P.D.C.L., Chhattisgarh State Electricity Board, Balod from 10:30 AM to 05:30 PM and the vehicle was kept in her house. Appellant No.2 does not know as to when Appellant No. 1 took away the vehicle-Scooty. In support of her (Appellant No.2) contention, she has produced her attendance register- Ex.-D/1. He further submits that since Appellant No.2 has not committed any breach of the contract with the Insurance Company/Respondent No.7 and Appellant No.2 is not responsible for the same, therefore, the Insurance Company cannot be exonerated of its liability to pay compensation. In support of his contention, Shri B.P. Singh, learned counsel for the Appellants relied upon the decision of Hon'ble Supreme Court in the matter of ***Skandia Insurance Co. Ltd.*** Vs. ***Kokilaben Chandravadan and Others, 1987 (1) T.A.C. 471*** and ***United India Insurance Co. Ltd.*** Vs. ***Lehru and Others, (2003) 3 SCC 338***.

7. Learned counsel appearing on behalf of Respondent No.7/Insurance Company, contended that at the time of accident, the offending vehicle-Scooty was being ridden in breach of the terms and conditions of the insurance policy and, accordingly, the Insurance Company could not be held liable for making payment of the compensation awarded by the Tribunal.

Apart from the fact that Appellant No.1- Lokesh Kumar Nag, who was riding the Scooty, did not have a valid driving license, it had also been established that he was aged about 17 years at the time of the accident and consequently the Insurance Company had been rightly relieved of the liability of payment of compensation to the Claimants/Respondents 1 to 6 and such liability had been correctly fixed on the Appellants i.e. rider and owner of the Scooty by the Tribunal. In support of his contention, Shri Rohitashav Singh, learned counsel for the Insurance Company relied upon the decision of Hon'ble Supreme Court in the matter of ***Jawahar Singh*** Vs. ***BalaJain and Others, (2011) 6 SCC 425***. Therefore, as per Sections 3 and 4 of the Motor Vehicles Act, 1998, Appellant No.2 – Binda Devi, owner of the vehicle, is liable and responsible for the act of Appellant No.1- Lokesh Kumar Nag.

8. I have heard the learned counsel appearing for the parties and perused the impugned award including the records of the Claims Tribunal.

9. As per Ex.-D/1, Appellant No.2- Binda Devi Nag is a Peon in the office of the CSEB, Balod and on the date of accident i.e. 18.10.2011, she was discharging her duties. Therefore, there is no evidence adduced by the Insurance Company/Respondent No.7 that the owner of vehicle parted or handed over the keys of the vehicle to her son deliberately or knowingly. Further, AW-1 – Binda Devi stated in her statement that on the date of accident, she was on her duties from 10:30 AM to 05:30 PM in CSEB Office, Balod and she was not aware about the accident. She further stated that she never permitted her son for riding the Scooty in question. She also stated that when she came back from her duty after the office hours, she came to know about the unfortunate accident.

10. In the matter of *Skandia Insurance Co. Ltd.* (supra), the Hon'ble Supreme Court while interpreting the expression “breach” observed that if it is proved on the record that the owner of the vehicle had done everything in his power to keep, honour, and fulfill the promise, in such a situation he cannot be held guilty of a deliberate breach. There is no evidence on the record to indicate that the owner of the vehicle parted the keys of the vehicle to his son deliberately or knowingly. If in the absence of the father, son takes the keys of the vehicle and drives the vehicle for a fun and caused accident, it cannot be said that there was an express or implied consent on the part of the owner.

11. In the matter of *Lehru* (supra), the Hon'ble Supreme Court while considering the liability of the Insurance Company in the case of fake driving license observed as under:

> “In order to avoid liability under Section 149(2)(a)(ii) it must be shown that there was a “breach” on the part of the insured. To hold otherwise would lead to absurd results. The aim and purpose of the provision for compulsory third-party risk is that an insurance company would be available to pay. The business of the company is insurance. In all businesses there is an element of risk. All persons carrying on business must take risks associated with that business. Thus it is equitable that the business which is run for making profits also bears the risk associated with it. At the same time innocent parties must not be made to suffer loss. These provisions meet these requirements. Therefore, it has to be held that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The Insurance company must establish that the breach was on the part of insured.”

12. In the instant appeal, the Insurance Company has not proved that Appellant No.2 had deliberately given the custody or keys of the vehicle to her minor son aged 17 years. Rather evidence on record goes to show that on 18.10.2011 when Appellant No.2 came back from her duty after the office hours, she came to know about the accident caused by her Scooty. Therefore, the judgment which has been relied upon by the learned counsel for the Insurance Company is not of any assistance to him as the Insurance Company has utterly failed to prove that there was any willful or deliberate breach on the part of owner of the vehicle.

13. When the matter is examined in its totality, in my opinion, the Tribunal has certainly fallen in error in exonerating respondent No. 7/Insurance Company of its liability of payment of compensation and the same is not sustainable in the present case.

14. For the reasons mentioned hereinabove, the appeal is allowed. The award insofar as it relates to exoneration of respondent No.7/Insurance Company of its liability of payment of compensation of Rs.3,80,000/- is set aside. Instead, it is held that Respondent No.7/Insurance Company is liable for payment of compensation to Respondents 1 to 6/Claimants. The award is modified to the above extent. Rest of the conditions of the award shall remain intact.

15. If any amount has been deposited by the Appellants 1 and 2 (rider and owner of offending vehicle) and disbursed to the Claimants/Respondents 1 to 6, they are entitled to recover the same from Respondent No.7/Insurance Company.

16. No order as to cost.

Sd/-

(Gautam Chourdiya)
Judge

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