

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on 04/09/2018****Order Delivered on 08/10/2018****MAC No. 764 of 2013**

Budhiyaro W/o Shri Amal Sai Aged About 50 Years, Caste -Panika, Occupation-Housewife, R/o Village - Basen, P.S. & Tah. Rajpur, Distt. Surguja C.G.

---- Appellant**Versus**

1. Amal Sai S/o Birjhu Aged About 55 Years, Caste - Panika, R/o Basen, Post- Jigdi, Tahsil- Rajpur, Distt. Surguja C.G.
2. Sukhlal S/o Late Birjhu, Aged About 50 Years, Caste – Panika, R/o Basen, Post- Jigdi, Tahsil- Rajpur, Distt. Surguja C.G.
3. Smt. Pancho S/o Late Birjhu Aged About 70 Years, Caste – Panika, Occupation- Housewife, R/o Basen, Post- Jigdi, Tahsil- Rajpur, Distt. Surguja C.G.
4. Ram Das S/o Budheshwar Aged About 33 Years, Caste – Panika, Occupation- Driver, R/o Village- Bhelaikhurd, Police Chowki & Post- Bariyon, P.S. Dhaurpur, Distt. Surguja C.G.
5. United India Insurance Company Ltd., Through- The Branch Manager, United India Insurance Company Ltd., Branch- Bramharoad, Ambikapur, Distt. Surguja C.G.

---- Respondents

For Appellant : Mr. Vivek Bhakta, Advocate.

For Respondent No. 5 : Mr. Dashrath Gupta, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu**CAV Order**

1. By the instant appeal, the appellant/claimant is challenging the legality and validity of the impugned award dated 25.06.2013 passed by the 3rd Additional Motor Accident Claims Tribunal, Ambikapur, Surguja, (in short 'Claims Tribunal') in Claim Case No. 14 of 2012, whereby the Learned Claims Tribunal dismissed the claim application filed by the appellant.
2. Brief facts of the case for disposal of this appeal, are that on 26.3.2009 deceased Rajesh Panika, who was driving the tractor & trolley bearing

registration number CG15-A-4137 & CG15-A-4138 respectively loaded with stone ballast. Driver of the vehicle lost control over it and the vehicle dashed the house situated beside the road. As a result of which Rajesh Panika and other persons travelling in the said vehicle as labourers sustained injuries. Rajesh Panika driver of the offending vehicle succumbed to the injuries sustained by him in the accident.

3. Appellant/claimant, who is mother of the deceased, filed claim application under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act, 1988'), which was subsequently amended to Section 163 (A) of the Act, 1988. The appellant took the ground that she was totally dependent on the income of the deceased, who was earning about Rs.3,000/- per month. It has been further pleaded that at the time of accident, deceased was 26 years old and on account of his sudden demise, she suffered loss of income and therefore she is entitled to get compensation of Rs.28,00,000/- lakhs from the non-applicant.
4. Respondent No.1 is the owner of tractor trolley and also father of the deceased. Respondent Nos.1 to 4 remained ex-parte and they have not submitted their reply to the claim petition.
5. Respondent No.5/Insurance Company after service of notice filed its reply denying all the adverse facts pleaded in the claim application. It has been stated that the driver of tractor-trolley was not having valid and effective driving license on the date of accident. The tractor-trolley was being driven by the deceased in a rash & negligent manner, hence, the deceased himself was responsible for the accident. Though the tractor-trolley was registered and insured for agricultural purpose but on the date of accident it was being used for commercial purpose and thus there was violation of conditions of insurance policy. Under these

circumstances, insurance company is not liable for payment of any compensation.

6. On the basis of pleadings of the parties, the Claims Tribunal has framed as many as five issues for consideration including the issues with respect to rash and negligent act of deceased-Rajesh Panika (Driver) of the offending vehicle. After considering the pleadings, evidence and other material available on record, Claims Tribunal dismissed the claim petition by holding that deceased- (Driver) himself was responsible for the accident; he was not having valid and effective license to drive the offending vehicle on the date of accident and that the offending vehicle was being used for commercial purpose but registered and insured for Agricultural purpose.
7. Learned counsel appearing for the appellant submits that the claim application has been filed under Section 163(A) of the Act, 1988 and, therefore, there is no need of proving any rash and negligent act. He further submits that as on the date of accident the vehicle in question was insured with respondent No.5-Insurance Company, the learned Claims Tribunal ought to have awarded reasonable amount of compensation.
8. Per contra, the learned counsel appearing for respondent No.5/Insurance Company supporting the impugned award argued that the learned Claims Tribunal rightly dismissed the claim application as the deceased himself was driving the offending vehicle at the time of accident without having valid and effective license. He further argued that the deceased met with an accident due to his own negligence and the vehicle is being used for commercial purpose, therefore, learned Claims Tribunal have rightly dismissed the claim application.

9. I have heard the learned respective counsel appearing for the parties perused the records.
10. From perusal of the documents Ex. P-9 it is evident that during the course of investigation Police has seized the tractor-trolley from the place of accident. Though the registration papers of tractor-trolley have not been marked as Exhibit as also the Insurance Policy but they are part of the record. On perusal of registration certificate would show that the certificate bears an endorsement that the tractor-trolley was exempted from the tax as it is used for agricultural purpose only. From perusal of the Insurance policy also it is clear that the same has been issued for the period from 30.05.2008 to 29.05.2009 and that the policy was issued under the head of Farmer Package policy.
11. The appellant/claimant was examined as (AW-1) who in her cross-examination in para -11 had admitted that at the time of accident the trolley was loaded with stone ballast. From the pleadings in claim application itself it is evident that on the date of accident the deceased was driving the offending vehicle and met with an accident without involvement of any other vehicle nor it has been pleaded that accident took place due to mechanical fault of vehicle. The appellant/ claimant has also not placed on record Driving license of the deceased nor they pleaded that at the time of the accident deceased was not driving the vehicle.
12. From the aforementioned facts and material available on record it is evident that on the date of accident deceased himself was driving the tractor-trolley which was loaded with stone ballast and this shows that it was being used other than the purpose for which it was registered & insured. It is also evident that there is no involvement of any other motor

vehicle in the accident. It was not the case of claimant that deceased was engaged as driver in the vehicle or that he was having valid and effective driving license on the date of accident, therefore, the claimant cannot claim compensation from the insurance policy because on the date of accident the offending vehicle was being used in violation of the conditions of the insurance policy. The deceased was not a paid driver but son of the owner of the vehicle and therefore, he stepped into the shoes of insured, and as such, cannot claim any compensation.

13. In view of the above, learned Claims Tribunal has not committed any error while dismissing the claim application under circumstances as mentioned above.

14. In the result, this appeal has no merit the same is liable to be dismissed and is hereby dismissed.

Sd /-

(Parth Prateem Sahu)

Judge