

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on : 27/09/2018****Judgment delivered on : 14/12/2018****MAC No. 514 of 2013**

- Mahendra Kumar Kesharwani S/o Krishnapal Kesharwani Aged About 44 Years R/o Venkat Nagar, P.S. And Tah. Jaithari, Distt. Anuppur M.P. - Owner of offending vehicle Tractor No. MP 18-8302 and Trolley No. 18-8303.

---- Appellant**Versus**

1. Smt. Itwarabai W/o Ram Singh Gond Aged About 45 Years R/o Kapariya, Tah. And P.S. Jaithari, Distt. Anuppur M.P., (claimant)
2. Ramdulare @ Baba Kol S/o Gokul Kol Aged About 25 Years R/o Khairjhiti, Tah. Pendra, P.S. Marwahi, Distt. Bilaspur C.G., (Driver of offending vehicle Tractor No. MP 18-8302 and Trolley No. 18-8303)
3. ICICI Lombard General Insu.Co.Ltd. Branch Office- Shahdol, Tah. Sohagpur, Distt. Shahdol M.P., (Insurer of offending vehicle Tractor No. MP 18-8302 and Trolley No. 18-8303.)

---- Respondents

For Appellant	:	Shri Ashok Soni, Advocate.
For Respondent No.1 & 2	:	None though served.
For Respondent No.3	:	Shri Amrito Das, Advocate.

Hon'ble Shri Gautam Chourdiya, J**CAV Judgment**

This appeal is by the owner under Section 173 of the Motor Vehicles Act (in short "the Act") against the award 18.3.2013 passed by Additional Motor Accident Claims Tribunal, Pendra Road, Distt. Bilaspur (CG) in Claim Case No.03/2012 awarding total compensation of Rs.3.85 lacs with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants No. 1 & 2 jointly and severely while exonerating non-applicant No.3/insurance company on the ground of breach of policy conditions.

02. As per claim petition, on 11.11.2011 at 6.30 pm Rakesh Singh was travelling in the offending vehicle Tractor No. MP 18-8302 and Trolley No. 18-8303 as a labour for unloading the sand being carried by the

said vehicle. However, due to rash and negligent driving of the said vehicle by non-applicant No.1 Ramdulare @ Baba Kol, the vehicle overturned, Rakesh fell down from the vehicle, suffered grievous injuries and died during treatment in the hospital. At the time of accident, the deceased was 18 years of age, earning Rs.6000/- per month as a Mason and Rs.50,000/- per annum from agriculture, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.

03. On claim petition being filed by the claimant, mother of the deceased, under Section 166 of the Act for compensation to the tune of Rs.33.29 lacs, the Tribunal considering the evidence led by both the parties, awarded compensation as mentioned above. Hence this appeal by the owner. No appeal has been filed by the insurance company or the claimant.

04. Learned counsel for the appellant submits that the Tribunal has exonerated the insurance company on the ground of breach of policy as the deceased was sitting in the vehicle as a gratuitous passenger and the vehicle was being used for the purpose other than agriculture purpose whereas at the time of accident, the driver/non-applicant No.1 was having a valid and effective driving licence; the vehicle was being used for transporting sand for domestic purpose from river to the home of the owner as one hut was under construction in the field. This fact has not been rebutted by the insurance company. There is no evidence to show that the vehicle in question was being used for commercial purpose. As per insurance policy, the insurance company had taken premium of Rs.25/- for cleaner, conductor and Cooli each and as the deceased was travelling in the vehicle as a Cooli/labour, his risk was covered under the policy and the Tribunal has wrongly exonerated the insurance company of its liability.

05. Learned counsel for the respondent/insurance company, on the other hand, has vehemently opposed the contention of the appellant and submitted that there was breach of policy conditions as there was no sitting capacity in the tractor-trolley for carrying passenger and the deceased was travelling in the vehicle as a passenger.

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

07. As per statement of owner of the vehicle i.e. non-applicant No.2 Mahendra Kumar (NAW-1), he has specifically stated that at the time of accident, the vehicle in question was being driven by non-applicant No.1 for transporting sand from river to his home for the purpose of construction of hut in the agriculture field. He states that at the time of accident the deceased Rakesh was sitting in the said tractor. There is no rebuttal to the above evidence adduced by the owner. No evidence whatsoever has been adduced by the insurance company to prove the factum of breach of policy conditions. As per Ex.D/4, non-applicant No.1 was having a licence, validity of which was from 13.3.2008 to 30.9.2027, for driving LMV and the offending vehicle also falls in the category of LMV. As such, the driver/non-applicant No.1 was having a valid and effective driving licence to drive the offending vehicle.

08. Considering the facts and circumstances of the case, document of Ex.D/3 i.e. insurance policy, which has been duly proved by the appellant, which shows that the insurance company had taken premium of Rs.25/- for covering risk of cleaner, conductor and coolie; there is no evidence adduced by the insurance company regarding use of offending vehicle for commercial purpose or for some purpose other than agriculture purpose, merely carrying of sand by the vehicle for domestic use by the owner, cannot be construed as use of vehicle for commercial purpose. Even otherwise, the unrebutted evidence of the owner shows that the sand being so carried was for construction of hut in the agriculture field and as such, it can be said that the vehicle in question was being used in connection with agriculture purpose.

09. India is an agricultural country whose farmers are poor. The legislature in its wisdom did not think it prudent to cover the agricultural equipments including trolley or even a trailer being used for agricultural purposes under the insurance policy unless proved otherwise that it is or was being used for commercial purpose for the reason that use of Trolley/trailer and tractor combination by farmers to carry grains/fertilizers etc. for domestic and agricultural purposes cannot be

considered as its commercial purpose and saddled with liability of insurance as a commercial vehicle such as “goods carriage”. Further, after imposition of ceiling the farmer's land had been reduced and no farmer can afford a tractor if he cultivates his agricultural land only. He can render his services along with tractor to other farmers to help in their cultivation, may be for some consideration.

10. In a similar case, the coordinate Bench of this Court in the matter of ***Guddu Patel and others Vs. Sadharam and others, MAC No.704/2013 decided on 18.8.2015*** has held the insurance company liable for payment of compensation.

11. For the reasons stated above, it is proved that on the date of accident the driver/non-applicant No.1 was having a valid and effective driving licence to drive the offending vehicle; the vehicle was not being used for commercial purpose or other than agricultural purpose in contravention of the policy conditions and that as per the insurance policy, risk of the deceased being a Cooli/labour was covered. Being so, exoneration of the insurance company by the Tribunal on the ground of breach of policy is not sustainable and it is held that the insurance company is liable to satisfy the impugned award.

12. In the result, the appeal is allowed. The impugned award is hereby modified to the extent that it is non-applicant No.3/ICICI Lombard General Insurance Co. Ltd. which is liable to satisfy the award, jointly and severally along with non-applicants No. 1 & 2/driver & owner. However, rest of the conditions of the impugned award shall remain as it is.

Sd/

(Gautam Chourdiya)

Judge