NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 322 of 2013

Judgment Reserved on 04/09/2018

Judgment Delivered on 14/11/2018

- Hiralal Yadav S/o Jagdev Yadav Aged About 40 Years, Occupation Vehicle Owner R/o Bachwar, P.S. Shankergarh, Distt. Sarguja C.G.

---- Appellant

Versus

1. Ramswarath Yadav, S/o Ram Vilas Yadav, Aged About 50 Years, Occupation Agriculturist
2. Kismatiya Bai W/o Ramswarath Yadav, Aged About 45 Years

   Both are R/o Poskat, P.S. Bagicha, Distt. Jashpur C.G, Present Address - Village Khairadih, P.S. Shankergarh, Distt. Sarguja C.G.
3. Manoj Kumar Xalxo, S/o Laxman Xalxo Aged About 28 Years, Occupation Driver, R/o Dumartoli, Jamdi, P.S. Shankergarh, Distt. Surguja C.G. (Driver)
4. The Oriental Insurance Company Ltd through Branch Manager, Branch Office, Manendragarh Road, Ambikapur, Distt. Surguja C.G.

---- Respondents

For Appellant	Shri Shakti Raj Sinha, Advocate.
For Respondent No.4	Shri Sandeep Shrivastava, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

C A V Judgment

1. This appeal by the owner under Section 173 of the Motor Vehicle Act against the award dated 27.02.2013 passed by the 3rd Additional Motor Accident Claims Tribunal, Ambikapur, Surguja, C.G. in claim case No.57/2012,

whereby the Tribunal has fastened the liability on the appellant/owner, while exonerating the Insurance Company on the ground of breach of policy conditions.

2. Brief facts of the case are that on the date of accident i.e. 05.06.2010, deceased Ashok Yadav, son of the claimants was travelling in vehicle Bolero bearing registration No. CG-15B-0771, which was being driven by non-applicant No.1 in a rash and negligent manner and as the said vehicle turned turtle, the deceased Ashok Yadav died on the spot. It is not is dispute that on the date of accident vehicle in question was owned by non-applicant No.2/appellant herein and insured with Non-applicant No.3/respondent No.4.

3. The claimants filed a claim petition under Section 166 of Motor Vehicle Act for compensation of Rs.10,00,000/- against the death of their son in the said Motor Vehicle Accident.

4. Non applicant Nos. 1 & 2 filed their written statement and stated that non-applicant No.1 was having a valid and effective driving licence. On the date of accident, he was driving the vehicle with all due care, however, due to some mechanical break down the vehicle turned turtle. They further averred that as the vehicle was insured with non-applicant No.3, liability, if any, is to be fastened upon Insurance Company.

5. Non-applicant No.3 Insurance Company contested case on the ground of breach of policy conditions as the vehicle was being used for carrying marriage party whereas vehicle was insured for non commercial purposes.

6. Learned Tribunal considering the evidence available on record and the pleadings of the respective parties by the

impugned award granted a total compensation of Rs.2,25,000/- with interest at the rate of 6% per annum from the date of application till its realization, fastened the liability upon non-applicant Nos. 1 & 2 jointly and severely, while exonerating the Insurance Company of the same on the ground of breach of policy conditions. Hence, this appeal by the appellant/owner.

7. Learned counsel for the appellant submits that the appellant Hiralal Yadav, owner of the vehicle examined himself as NAW-2 before the Tribunal and stated categorically that the vehicle in question was being plied in accordance with the terms and conditions of the Insurance policy. The non-applicant No.3 Insurance Company has failed to prove that there was breach of policy condition on the part of non-applicant No.1 Driver. In these circumstances, the Tribunal was not justified in exonerating the Insurance Company of its liability and fastening the same upon the driver and owner of the vehicle. Further he submits that the Tribunal has erred in calculating the compensation on the higher side and therefore, the same needs to be recalculated in accordance with the evidence available on record.

8. On the other hand, counsel for the Insurance Company submits that the vehicle in question was insured for non commercial purposes, whereas it was being driven for commercial purposes. On the date of accident as many as 9 passengers were sitting in the vehicle beyond the sitting capacity for which the vehicle was insured. Therefore, the Tribunal was justified in exonerating the Insurance Company on the ground of breach of policy conditions.

9. Heard learned counsel for the parties and perused the material available on record including the impugned award.

10. As mentioned in Ex.P-2 i.e. PM report of the deceased, age of the deceased was 12 years but applicant witness No.1 father of the deceased Ramswarath Yadav has stated in para-2 that the age of the deceased was 16 years and the same is not challenged in his cross-examination. Father is the best person to tell about the age of his children. However, from perusal of the Primary School Certificate of the deceased, it is seen that his date of birth is 16.03.1997 and as such on the date of accident he was 13 years of age. Therefore, the Tribunal has not committed any illegality in applying the multiplier of 15 as per Second Schedule of the Act.

11. So far as liability is concerned, the appellant/non-applicant No.2 owner of the vehicle has stated in his evidence that on the date of accident non-applicant No.1 Driver Manoj was driving the vehicle, he was having a valid and effective licence. According to Insurance company also the Driver was having a valid licence but it was for LMV only and there was no endorsement to drive the vehicle. From perusal of the document of Ex.P-4 i.e. Certificate of Registration of the vehicle, it is evident that the unladen weight of the vehicle was 1615 kg and the said fact has not been disputed by the respondents. Therefore, in view of decision of the Hon'ble Supreme court in the matter of **Mukund Dewangan Vs Oriental Insurance Company Ltd.** Reported in **2017 Volume 14 SCC 663**, wherein it has been held that no endorsement is required in the driving licence for driving the vehicle unladen weight of which does not exceed 7,500 Kg, it cannot be said that the non-applicant No.1 driver was not having a valid and effective licence to drive the vehicle in question.

12. Now the next question which arises for consideration of this

Court is whether on the date of accident the vehicle in question was being used for commercial purposes. The appellant/non-applicant No.2 in his evidence has stated that on the date of accident he along with his family members and driver had gone to attend marriage function at village Bhasni and on reaching there when his uncle Bhabkin Yadav requested him to drop some guests through his vehicle upto the Bus, he asked his driver/non-applicant No.1 to drop 5 to 6 persons upto the Bus. Further, this witness has stated that as there was failure of steering the driver lost control over the vehicle and the vehicle turned turtle which was immediately informed to him by the driver. He has stated that his driver had a valid and effective licence to drive the vehicle. No any specific evidence has been adduced by the Insurance Company to establish that vehicle was hired and being used for commercial purposes.

13. As per NAW-2 Chandra Shekhar Shrivastava examined on behalf of Respondent No.3, the vehicle in question was registered as a private vehicle, its sitting capacity was 7+1, the same can be used for carrying relatives of the owner of the vehicle and the LMV licence holder can drive the said vehicle.

14. As per NAW-3 Anup Mehta, the Investigator of the Insurance company, the vehicle was carrying more passengers than the permissible sitting capacity, and the driver of the vehicle had a valid licence.

15. Thus, from the over all evidence available on record, it appears that on the date of accident, the driver was carrying relatives of the owner in the vehicle in question for dropping them at a particular point. There is nothing on record that the owner had received any amount for providing such service to his relatives. The Investigator (NAW-3) has also

admitted that he did not record statement of any of the passengers travelling in the vehicle. As per witness of Insurance Company NAW-2 Chandra Shekhar Shrivastava, the vehicle in question can be used for carrying relatives/guests of the owner and there is no restriction in use of vehicle for this purpose. Thus, considering the pleadings of the respective parties and the evidence adduced thereon, this Court is of the opinion that the Tribunal was not justified in exonerating the Insurance Company on the ground that the vehicle in question was being used in contravention of the policy conditions and saddling the owner of the vehicle with the liability.

16. In the result, the appeal is allowed in part. The impugned award is hereby modified to the extent that it is the Insurance Company which is to indemnify the owner and satisfy the award. In other words, the Insurance Company along with Driver and Owner of the vehicle are jointly and severely held liable for satisfying the impugned award. However, rest of the conditions of the impugned award shall remain intact.

Sd/-
Gautam Chourdiya
Judge

Akhilesh