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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 489 of 2013

Judgment Reserved on 29/08/2018

Judgment Delivered on 14/11/2018

- Anil Kumar Dewangan S/o R.A. Dewangan Aged About 44 Years R/o C-27, R.M.S. Colony, Shailendra Nagar, Raipur, Distt. Raipur C.G.

---- Appellant

Versus

1. Smt. Rekha Goutam W/o Munendra Kumar Goutam Aged About 37 Years

2. Munendra Kumar Goutam S/o Late Duleshwar Singh Goutam Aged About 47 Years,

3. Varun Sahu Through- Ramesh Sahu, R/o Opposite Street, M.M. Hospital, Village- Post- Lalpur, Distt. Raipur C.G.

4. The New India Insurance Company Ltd. Thru- Divisional Officer, Madina Building, Jail Road, Raipur, Distt. Raipur C.G.

---- Respondents

For Appellant	Shri Vivek Sharma, Advocate.
For Respondent No.4	Shri Hanuman Prasad Agrawal, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

C A V Judgment

1. This is an appeal by the appellant/owner under Section 173 of the Motor Vehicle Act against the award dated 19th February, 2013 passed by the 5th Additional Motor Accident Claims Tribunal, Raipur, C.G. in claim case No. 04/2013, whereby the Tribunal in a death case has awarded a total sum of Rs.11,92,900/- with interest at the rate of 9% per annum from the date of application till its realization, fastening the liability on the appellant/owner, while exonerating the

Insurance company on the ground of breach of policy conditions.

2. As per averments in the claim petition on 06.07.2008 deceased Ashish Goutam, a student aged about 14 years along with his parents and sister was travelling in Tata Indica bearing registration No.CG04-H-0461. However, while they were returning from Bhilai to Raipur at about 5:00 pm, the driver of the said vehicle non-applicant No.1 Varun Sahu by driving the vehicle rashly applied the break all of a sudden, as a result of which, the head of the deceased was hit against the dash board. The deceased was immediately taken to RamKrishna Hospital, where during the course of treatment on 18-10-2008, he succumbed to the injuries sustained by him.

3. The claimants/parents of the deceased filed a claim petition under Section 166 of the Motor Vehicle Act and claimed compensation of Rs.12,64,000/- with interest at the rate of 12% per annum from the date of application till its payment.

4. Non-applicant Nos. 1 & 2 are driver and owner filed their joint written statement and stated that the claimants have claimed compensation on much higher side, the vehicle in question was insured with non applicant No.3 and the driver was having a valid and effective driving licence and therefore, the insurance company is liable to pay compensation, if any, to the claimants.

5. Non-applicant No.3/Insurance Company on the other hand in its written statement contested that the vehicle in question was insured as a private vehicle whereas the same was being used as a taxi. Further, the driver of the vehicle was not having valid and effective driving licence. Therefore, the Insurance Company prayed for its exoneration on the ground of breach of policy conditions.

6. The Tribunal considering the evidence and material available on record held that on the date of accident the vehicle in question was being driven as a commercial vehicle, there was no endorsement in the licence of the driver for driving commercial vehicle and as such there was breach of policy conditions. With the aforesaid

observations, the Tribunal fastened the liability on the driver and owner jointly and severely, while exonerating the insurance company of its liability and granted compensation in favour of the claimants as mentioned above.

7. Learned counsel for the appellant submits that the Tribunal has erred in recording a finding that the driver/non-applicant No.1 was not having a valid and effective licence to drive the vehicle in question, there is no evidence to establish that the said vehicle was being used as a commercial vehicle and therefore as the vehicle was insured with non-applicant No.3 Insurance Company, the Tribunal ought to have fastened liability on the Insurance Company. Further, he submits that the Tribunal has also erred in awarding compensation to the claimants on the higher side whereas the claimants have failed to prove the medical bills.

8. On the other hand, learned counsel for the Insurance Company/Non-applicant No.3 supports the impugned award and submits that the Tribunal after considering the entire evidence available on record has rightly fastened the liability on the driver and owner and as such there is no need to interfere with the award.

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

10. The Tribunal has exonerated the Insurance Company of its liability mainly on the ground that the vehicle in question was being driven as a commercial vehicle whereas it was insured as a private vehicle. This said finding of the Tribunal is based on the evidence of NAW-1 Piyush Tiwari, Investigator (Insurance Company) who gave his inquiry report Ex.D-2 wherein he has mentioned that the vehicle in question was being driven as a commercial vehicle and the statement of claimant No.2 Munendra Kumar Goutam (Ex.D-1), wherein he has stated that he had hired the vehicle of non-applicant No.2 for Rs.500/- per day excluding the charges of diesel and was

going by the said vehicle to Bhilai.

11. From perusal of the documents of Ex.D-3 driving licence, it is proved that non-applicant No.2 was competent to drive light motor vehicle and this fact is not disputed by either of the parties. AW-1 Smt. Rekha Goutam has specifically denied in her evidence that on the date of accident, the vehicle in question was taken on rent. Further, AW-2 Munendra Kumar Goutam has stated in his evidence in para-9 that non-applicant No.2 Anil Kumar Dewangan, owner of the vehicle is known to him very well and therefore he had taken the vehicle of non-applicant No.2 for going to Bhilai. He has specifically denied that the said vehicle was taken on rent. He further denied to have made statement (Ex.D-1) that on the date of accident, the vehicle in question was being used as commercial vehicle. AW-1 Smt. Rekha Goutam has also supported the evidence of AW-2 Munendra Kuma Goutam and stated in para-9 of her evidence that the owner of the vehicle non-applicant N0.2 is a friend of her husband and therefore, her husband had taken the vehicle of non-applicant No.2 for going to Bhilai. Thus, the document of Ex.D-1 i.e. statement of AW-2 Munendra Kumar Goutam, which has been relied upon by the Tribunal, has been denied by AW-2. Further, from perusal of the document of Ex.D-1, it does not appear to be a reliable document as it bears signature of the AW-2 Munendra Kumar Goutam on the left side margin. NAW-1 Anil Kumar Dewangan has also categorically denied that on the date of accident, the vehicle in question was being driven as commercial vehicle by taking rent from the claimants. Thus, there is no specific evidence adduced by the Insurance Company to prove that the vehicle in question was being used in contravention of the Insurance Policy either on the ground of valid and effective driving licence or on the ground of vehicle being used for commercial purposes. As such the Tribunal was not justified in fastening liability on the driver and owner of the vehicle and exonerating the Insurance Company.

12. So far as quantum of compensation is concerned, considering the pleadings of the respective parties, the evidence adduced by them and the medical bills filed by the claimants, the death certificate, postmortem report and other material available on record, the Tribunal has granted a total compensation of Rs.11,92,900/-, which cannot said to be exorbitant or excessive rather it appears to be just and proper in the facts and circumstances of the case.

13. In the result, the appeal is allowed in part. The impugned award is modified to the extent that the Insurance Company is held liable for paying compensation, as assessed by the Tribunal, to the claimants. However, rest of the conditions of the impugned award shall remain intact.

Sd/-
Gautam Chourdiya
Judge

Akhilesh