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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 277 of 2014

- Branch Manager, The United India Insurance Company Ltd., Branch Office- Jeypore, Koraput Orrisa.

--Appellant

Versus

1. Smt. Ashalata Nag W/o Gajendra Kumar Nag Aged About 37 Years R/o Benoor, Tahsil Narayanpur, District Narayanpur Chhattisgarh.
2. Bhim Bahadur Adhikari S/o Digamber Bahadur Adhikari, Aged About 36 Years R/o Kumahar Para, Jagdalpur, Distt. Bastar C.G.

---- Respondents

For Appellant	Shri H.B. Agrawal, Senior Advocate along with Shri Pankaj Agrawal, Advocate.
For Respondent No.1	Shri Kalpesh Ruparel, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board

07/02/2019

1. This appeal is by the Insurance Company/non-applicant no.2 against the award dated 18.12.2013 passed by the Additional Motor Accident Claims Tribunal (FTC), Bastar Place, Jagdalpur, C.G. in Claim Case No.69/2012 awarding total compensation of Rs.2,41,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant no.2/Insurance Company.
2. As per claim petition, on 28.08.2007 deceased Devki Bai, aged about 48 years, earning Rs.6,000/- by running grocery and clothes shop was going to the house of her relatives at Kotpadh

(Orissa) by travelling in Jeep bearing no.CG17-T-0140 driven by Santosh Rao. However, at gram Chowkawada main road the driver Santosh Rao was driving the vehicle rashly and negligently, as a result of which right tyre got burst and the vehicle got dashed against a mango tree. In the said accident, Devki Bai suffered grievous injuries and died on the spot itself. The driver of the Vehicle Santosh Rao also died. At the time of accident, the offending vehicle was owned by non-applicant no.1 and duly insured with non-applicant no.2.

3. On claim petition being filed by the claimant i.e. daughter of the deceased under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.23,87,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

4. Learned counsel for the appellant submits that at the time of accident driver of the offending vehicle was having a light motor vehicle driving licence whereas he was driving the vehicle TAXI Jeep bearing no. CG17-T-0140 which is a Commercial Vehicle, and there is no endorsement regarding carrying passengers in the said vehicle. Further, permit is issued only for Bastar District but vehicle was carrying passengers for Orissa. Therefore, there being breach of policy conditions, the Insurance Company is not liable to pay compensation to the claimant. He further submits that claimant was not dependent upon the deceased and as such learned Tribunal has wrongly awarded Rs.2,41,000/- along with interest in favour of the claimant.

5. Learned counsel for the respondent no.1/claimant submits that deceased was mother of the claimant Ashalata, as per the pleading Ashalata is dependent upon her mother. After marriage she was residing with her mother along with her husband and was totally dependent upon her mother. Her statement in per Para 6 to this effect remained uncontroverted. No any evidence is adduced by the Insurance Company to rebut the above contention of the claimant. Therefore, learned Tribunal rightly awarded compensation in favour of the claimant treating her dependent upon the deceased.

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

7. So far as dependency of the claimant upon the deceased is concerned, in her claim petition claimant has specifically pleaded that she is the only daughter of the deceased, after marriage she was residing with her husband in the house of the deceased and she was fully dependent upon the deceased. In her Court statement, she has also reiterated the same and the said statement remained uncontroverted in the cross-examination. No evidence was adduced by the Insurance Company to prove that the claimant was not dependent upon the deceased. Thus, considering the facts and circumstances of the case, the pleading and uncontroverted evidence, in absence of any evidence in rebuttal of the same by the non-applicants, the Tribunal rightly held that claimant was dependent upon the deceased.

8. So far as the issue of liability is concerned, admittedly on the date

of accident driver Santosh Rao (deceased) was having a licence for motorcycle with gear and LMV as per Ex.P-1. The said fact has also been duly proved by NAW-1 Ram Karan Ratre and NAW-2 B.K. Mandal, the offending vehicle was insured as a commercial vehicle with non-applicant no.2 and the insurance policy was valid from 26.07.2007 to 25.07.2008. Admittedly, the accident occurred in this case on 28.08.2007 and as such on the date of accident, the vehicle in question was duly insured with non-applicant no.1. As per Ex.P-1 gross weight of the offending vehicle is 1775 Kg, the said document has not been disputed by the parties. Thus, in view of decision of Hon'ble Supreme Court in the matter of ***Mukund Dewangan Vs. Oriental Insurance Company Ltd.***, reported in ***(2017) 14 SCC 663,*** wherein it has been observed that if the gross weight is below 7500 kg, the person holding a licence for driving LMV is also entitled to drive such vehicle without there being any requirement of endorsement in the vehicle.

9. So far as the issue of permit is concerned, as per Ex.P-13 i.e. permit issued by the Regional Transport Authority, the vehicle was permitted to be driven in the whole district of Bastar and it was valid from 03.07.2007 to 30.09.2007. As such on the date of accident the permit was valid and effective. Since, the accident occurred on within the area of District Bastar, it cannot be said that the offending vehicle was being driven in violation of the conditions of the permit.

10. On the basis of aforesaid discussion, this Court is of the

opinion that the Insurance Company has utterly failed to prove that offending vehicle was being driven on the date of accident in violation of any of the policy conditions and being so the Tribunal was fully justified in fastening liability upon Insurance Company of satisfying the award.

11. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed.

Sd/-
Gautam Chourdiya
Judge

Akhilesh