NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 366 of 2013

1. Ramjanam S/o Lataram Aged About 21 Years R/o Dumarkholi, P.S. Pratappur, Tahsil Surajpur, District Surajpur (C.G.) (Non-applicant No. 1)

2. Mohammad Hussain S/o Gulam Mohammad Aged About 51 Years, Caste – Musalman, R/o Village Domhat, P.S. Chandora, Tahsil Pratappur, District Surajpur (C.G.) (Non-applicant No. 4)

---- Appellants

Versus

1. Usha Devi Wd/o Ravi Kenwat, aged about 22 years, (Claimant No. 1) (Deleted as per Hon'ble Court Order Dated 17-06-2019).

2. Indakunwar W/o Fulsay Kenwat, aged about 48 years, (Claimant No. 2) (Deleted as per Hon'ble Court Order Dated 17-06-2019).

3. Fulsay Kenwat @ Dinbandhu S/o Sonsay Aged About 52 Years, (Claimant No. 3)

   The respondents/claimant No. 1 to 3 are resident of Village Fokatpara, Bhaiyathan, P.S. Bhaiyathan, Distt. Surajpur (C.G.)

4. Keshwar Prasad S/o Wali Prasad (age not mentioned in award) R/o Domhat, Post- Pratappur, P.S. Pratappur, Tahsil Surajpur, Distt. Surajpur (C.G.) (non-applicant No. 2)

5. Branch Manager, The Oriental Insurance Company Limited, Branch Office- Near Ambedkar Chowk, Manendragarh Road, Ambikapur, Distt. Surguja (C.G.) (non-applicant No. 3)

---- Respondents

For Appellants	:	Shri Sunil Tripathi, Advocate.
For Respondent No. 3	:	Miss Laxmeen Kashyap, Advocate on behalf of Shri Pushpendra Kumar Patel, Advocate.
For Respondent No. 4	:	Shri Akhilesh Mishra, Advocate.
For Respondent No. 5	:	Shri N.K. Malaviya, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

27/06/2019

1) This appeal is preferred by the Ramjanam and Mohammad Hussain, driver and owner/subsequent purchaser of the vehicle

under Section 173 of the Motor Vehicles Act, 1988 against the award dated 25/02/2013 passed by First Additional Motor Accident Claims Tribunal Surajpur, Revenue District Surajpur (C.G.) in Claim Case No. 74/2011 awarding total compensation of Rs. 4,50,000/- with interest @ 9% per annum from the date of application till realization, fastening liability on the non-applicant No. 1/appellant No. 1 and non-applicant No. 4/appellant No. 2, jointly severally while exonerating the Insurance Company on the ground that at the time of accident deceased was sitting in Tractor and there is no risk covered by Insurance Company of such person.

2) As per averments in the claim petition, on 11/06/2009 deceased Ravi Kenwat, 22 years of age, earning Rs. 6,000/- per month as a Fish Net Maker, was sitting in Tractor bearing No. CPL 9291 and Trolley bearing No. CPL 9040 and going towards Keshawnagar from Bhaiyathan. However, on the way near village Chainpur non-applicant No.1/Ramjanam was driving Tractor (offending vehicle) in a rash and negligent manner. As a result of his such driving accident occurred and deceased Ravi Kenwat sustained grievous injury and died during treatment. At the time of accident non-applicant No. 2/Keshwar Prasad was the registered owner of the offending vehicle which was insured with Non-applicant No. 3/Oriental Insurance Company Limited and the same was purchased by non-applicant No. 4/ Mohammad Hussain prior to accident from non-applicant No. 2.

3) On claim petition being filed by the claimants, wife and parents of the deceased under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above in para 1 of this judgment.

4) Learned counsel for the appellants submits that though he has raised various grounds in this memo of appeal, however, he is not pressing on those grounds and is assailing the award on the following grounds only :-

i. that learned Tribunal has wrongly exonerated the Insurance Company.

ii. though as per pleading by claimants, the deceased was sitting in the offending Tractor but it is mentioned Charge Sheet Ex. P-7 filed against non-applicant No. 1/Ramjanam, driver of the offending vehicle by the Investigating Officer after due inquiry that non-applicant No. 1 by driving the vehicle in a rash and negligent manner dashed the deceased, as a result of which deceased suffered grievous injury and died.

iii. that as per the statement of claimant/Usha Devi herself, she was not eye witness of the case and the eye witness of the case examined as Ashraf Ali (NAW-02) and Arun Kumar (NAW-01) both are the eye witness of the accident examined by the non-applicants and as per pleading of the respondent, owner and driver specifically at the time of accident deceased was himself running towards Tractor and dashed by the Tractor due to which deceased sustained grievous injury and died. Arun Kumar and Ashraf Ali both are the independent witness and they are also mentioned as witness in criminal case. Even the driver of the offending vehicle also examined himself before Tribunal and specifically stated that the deceased was not sitting in Tractor and was outside the Tractor and got dashed with the Tractor while running. Except that uncontroverted evidence adduced by the non-applicant owner of the vehicle, no other evidence was adduced by the Insurance Company regarding deceased sitting in the Tractor and as per finding of the Investigating Officer in criminal case No. 53/2009 vide Ex. P-7 deceased was not sitting in Tractor, therefore, learned Tribunal wrongly considered the fact on the basis of pleadings as mentioned by the claimant only without any evidence except the pleading, therefore, the liability has to be fastened upon Insurance Company.

5) On the other hand, learned counsel for the respondent No. 3/ claimants supports the contention made by the appellants

counsel regarding the exoneration of the Insurance Company and submits that deceased was not sitting in Tractor Trolley. She submits that though in the claim petition the claimant have mentioned that deceased was sitting in the offending vehicle, however, she has no knowledge about the same.

6) Learned counsel for the respondent No. 4/Keshwar Prasad also supports the contention made by the appellants counsel.

7) Learned counsel for the respondent No. 5/Insurance Company opposes the contention made by the appellant counsel and submits as per the pleading of the claimants themselves, deceased was sitting in Tractor Trolley and no any evidence adduced by the Insurance Company but as per evidence adduced by the claimants this fact is proved that deceased was sitting in the Tractor. Therefore, learned Tribunal rightly exonerated Insurance Company and at the time of accident, the vehicle was sold to appellant/Mohammad Hussain but that information is not given by the respondent No. 4/Keshwar Prasad. Therefore, the Insurance Company is not liable to indemnify the claim on these two grounds and he objected to the contention made by the appellants counsel. He further submits that offending vehicle was transferred to the appellant/ Mohammad Hussain by the respondent No. 4/Keshwar Prasad

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

9) It is not disputed by both the parties that vehicle is driven by non-applicant No.1/appellant Ramjanam and charge sheet has been filed against non-applicant No. 1/Ramjanam for driving vehicle rashly and negligently and due to that accident Ravi Kenwat was died. As per Ex. P-7, the finding is made after investigation by the Investigating Officer that deceased died on being dashed by the Tractor. As per Ex. P-7, the summary of the accident mentioned and it is unchallenged by the respondent Insurance Company. Usha Devi who is the claimant examined herself

before the Tribunal and in paragraph 7, she admitted that she was not an eye witness of the accident, only on the basis of the document, she was claiming the claim on the death of Ravi Kenwat, therefore, the Usha Devi is not an eye witness of this case. Author of the F.I.R. Ex. E-03 Indakunwar is not examined before the Tribunal to prove the fact that deceased was sitting in the Tractor. Ashraf Ali (NAW-02) is the eye witness who is also mentioned as an eye witness in crime No. 53/2009 as per Ex. P-7. Ashraf Ali (NAW-02) and Arun Kumar (NAW-01) are the independent witnesses' and they have no relation with the appellants or respondents. Both Ashraf Ali (NAW-02) and Arun Kumar (NAW-01) have stated that at the time of accident, deceased was running towards Tractor on road and being dashed by the Tractor deceased Ravi died.

10) Thus considering the unrebutted evidence of eye witness Ashraf Ali (NAW-02) which is also supported by the evidence of non-applicant No. 1/ Ramjanam driver, the written statement and pleadings of non-applicant No. 2 and Non-applicant No. 4, the document of Ex. P-7, i.e. Charge Sheet, it is clear on the date of accident the deceased was not sitting in the Tractor but was on the road when he was hit by the Tractor being driven by non-applicant No. 1 in rash and negligent manner.

11) No any evidence has been adduced by the Insurance Company to prove the fact that the deceased was sitting in the Tractor and therefore, merely on the basis of pleading of the claimants as mentioned in para -7 of claim petition that deceased was sitting in the Tractor, it would not be justifiable to hold that on the date of accident the deceased was sitting in the Tractor.

12) FIR is not a substantive piece of evidence and as such it cannot be placed on pedestal higher than the statement made before the claims Tribunal on oath ***United India Insurance Company Ltd. Vs. Smt. Kamli & Others, 2010(2), CGLJ 1 (M.P.).*** No evidence whatsoever has been adduced by the Insurance Company to prove that there was any breach of policy conditions

on the part of non-applicant Nos. 1 or 4 therefore, considering the overall evidence and circumstances of the case, pleadings of the parties and the evidence adduced by them in support thereof this Court is of the opinion that the Tribunal was not justified in fastening the liability on non-applicant Nos. 1 & 4 while exonerating the Insurance Company.

13) In the result, the appeal is allowed and the impugned award is hereby modified to the extent that non-applicant No. 3/Insurance Company is jointly and severally liable with Non-applicant Nos. 1 & 4 to pay compensation as awarded by the Tribunal to the claimants. However, rest of the conditions of the impugned award shall remain intact.

14) If any amount has been deposited by the appellants and disbursed to the claimants, the appellants are entitled to recover the same from Insurance Company non-applicant No. 3/ respondent No. 5.

-Sd/-
(Gautam Chourdiya)
Judge

Chandrakant