

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 623 of 2013**

1. Omprakash Verma, S/o D.D. Verma Aged About 38 Years R/o Village And Post- Ghumka, Ward No. 05, P.S. And Tah. Ghumka, Distt. Rajnandgaon, Chhattisgarh
2. Guneshwar Patel S/o Ratan Lal Patel Aged About 21 Years R/o Village And Post- Ghumka, P.S. And Tah. Ghumka, Distt. Rajnandgaon, Chhattisgarh

---- Appellants**Versus**

1. Dilip Kumar Thakur, S/o Late Ratti Ram Thakur R/o Chikhali, Post- Jevra Sirsa, Chowki-Jevra Sirsa, P.S. Pulgaon, Tah. And Distt. Durg C.G. (Claimant)
2. Choramandalam M.S. General Insu.Co.Ltd. Thru- Branch Manager, Branch Office, Arihant Tower Ground Floor, Phool Chowk, G.E. Road, Raipur, Chhattisgarh
3. Sevak Ram Janghel S/o Tulsi Janghel Aged About 25 Years R/o Saloni, Tah. Dongargarh, District : Rajnandgaon, Chhattisgarh
4. Gendram Verma S/o Chataru Ram Verma R/o Saloni, Post- Dhara, P.S. Dongargarh, District : Rajnandgaon, Chhattisgarh
5. Union Bank S/o Sakul Daihan, Thru- Manager, Union Bank, Sakuldaihan, Post- Dhangaon, District : Rajnandgaon, Chhattisgarh

---- Respondents

For Appellants	: Shri Jitendra Gupta, Advocate
For Respondent- 1	: Shri SP Sahu, Advocate on behalf of Shri CR Sahu, Advocate
For Respondent- 4	: Shri Shashank Thakur, Advocate
For Respondent- 5	: Shri NK Vyas, Advocate
For Respondents- 2 and 3	: None appears

Hon'ble Shri Justice Parth Prateem Sahu**Order on Board****24.06.2019**

1. The appellants/ owner and driver of Tata207 bearing No.CG08-B 0816 (for short, Tata207)/non-applicants 1 & 2 have filed this appeal under section 173 of Motor Vehicle Act, 1988 challenging impugned award dated 30.03.2013

passed by 1st Additional Motor Accidents Claims Tribunal, Durg (for short, 'Claims Tribunal') in claim case No.203 of 2011.

2. Brief facts relevant for disposal of this appeal are that on 14.05.2011 Aarti along with other persons was travelling on Tata207 from Khapri Mudiya Main Road, Chiddo to Botepar. When Tata207 reached near village Mudiya, tractor bearing No.CG08-C-7219 (for short, 'offending tractor') coming from village Khapri, dashed Tata207. In the aforementioned accident Aarti travelling in Tata207 suffered grievous injuries over her person and she was taken to district Hospital, Rajnandgaon, from there she was referred to Sector-IX hospital, Bhilai where she succumbed to accidental injuries suffered by her during the course of her treatment on 19.05.2011.

3. Claimant who is husband of deceased filed claim application before competent Claims Tribunal mentioning therein that on the date of accident deceased was aged about 20 years and earning Rs.3,750/- per month. He claimed compensation of Rs.5,70,000/- against non-applicants jointly and severally.

4. Non-applicants 1 & 2 driver and owner respectively, submitted reply to claim application, denied the fact of rash and negligent driving of driver of Tata207 i.e. appellant-2 herein, and pleaded that claim has been made on higher side. It was further pleaded that it was the driver of offending tractor/ non-applicant 4, who drove his vehicle rashly and negligently and dashed Tata207. Therefore, principle of contributory negligence will not apply. They have also pleaded that on the date of accident non-applicant-1, driver of Tata207 was possessing valid and effective driving license and the vehicle

was insured with non-applicant-3 / Insurance Company on the date of accident.

5. Non-applicant-3/Insurance company of Tata207 submitted its separate reply and denied the fact of accident and death of Aarti due to accidental injuries. It was further pleaded that on the date of accident driver of Tata207 was not possessing valid and effective driving license and there is violation of conditions of Insurance Policy.

6. Respondents- 4 & 5 who are driver and owner of offending tractor submitted reply to claim application and denied adverse pleadings made against them. They further pleaded that amount claimed by the claimant is on higher side and accident took place due to rash and negligent act of non-applicant-1, driver of Tata207.

7. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties, held that accident took place due to rash and negligent driving of contributory negligence of drivers of both the vehicles; deceased Aarti died due to accidental injuries; there was no valid and effective driving license with both the drivers of vehicles involved in the accident on the date of accident; and the vehicles were being driven in violation of condition of insurance policy on the date of accident. Learned Claims Tribunal while allowing the claim application in part, awarded a total sum of Rs.3,37,000/- as compensation and held non-applicants 1 & 2, driver and owner of Tata207 to be jointly and severally liable for payment of amount of compensation.

8. Learned counsel for appellants submits that learned Claims Tribunal committed error in holding that there was violation of conditions of the Insurance Policy on the ground that driver of Tata207 was not possessing valid and effective driving license on the date of accident is erroneous and finding recorded by learned Claims Tribunal with respect to issue-1 that accident took place due to rash and negligent driving of driver of Tata207 is contrary to the finding recorded with respect to issue-4. He further argued that as learned Claims Tribunal held that there is contributory negligence on the part of both the drivers involved in the accident and therefore, learned claims tribunal ought to have directed appellants herein as well as non-applicants 4 & 5 jointly and severally liable for payment of compensation. Learned counsel also argued that learned Claims Tribunal committed error in assessing income of deceased on higher side.

9. Per contra, learned counsel appearing for respondent-1/claimant supports the award and submits that learned claims tribunal on the basis of facts, documentary and oral evidence rightly assessed the amount of compensation.

10. Learned counsel appearing for respondent-4, owner of offending vehicle/ non-applicant 5 supported the impugned award passed by learned Claims Tribunal.

11. Learned counsel appearing for respondent-5 /non-applicant-6 submits that he is only financier of offending tractor and therefore, he is not liable for any amount of compensation if awarded against the owner of offending tractor.

12. No one appears for respondent-3/ driver of offending tractor even after consecutive calls.

13. I have heard learned counsel for the parties and perused record.

14. So far as first ground raised by learned counsel for appellants that learned Claims Tribunal committed error in exoneration of Insurance Company for payment of compensation is concerned, learned Claims Tribunal arrived at this finding on the ground that Tata207 has been registered as light goods vehicle and on the date of accident and it was carrying passengers in it. The other ground on which Insurance Company was exonerated as recorded by learned Claims Tribunal is that driver of Tata207 was not possessing a valid and effective driving license to drive that vehicle because, on the date of accident he was possessing license only to drive Motorcycle with gear or light motor vehicle. So far as carrying passengers in the vehicle in question ie Tata207 is concerned, it is not disputed by learned counsel for the appellants.

15. In view of the fact that at the time of accident, passengers were travelling in goods vehicle, which is also one of the grounds to hold violation of conditions of Insurance Policy. Learned Tribunal has not considered this aspect of the case but has held violation of conditions only on the ground that there was no valid license. The license was only for light motor vehicle (LMV).

16. So far as valid and effective driving license on the date of accident is concerned this issue has been dealt with Hon'ble Supreme Court in the matter of **Mukund Dewangan Vs Oriental Insurance Company Limited** reported in 2017 14 SCC 663 and held that person possessing license to drive LMV will also have authorization to drive the vehicle irrespective of its registration

either goods or passenger vehicle or private vehicle of same category ie. LMV. On the date of accident non-applicant 1 was driving light goods vehicle and driver was holding license to drive light motor vehicle, therefore in view of aforementioned judgment of Hon'ble Supreme Court, finding recorded by the Tribunal that there was no valid and effective driving license is erroneous. The finding recorded with respect to violation of condition of Insurance Policy is sustained on the ground of carrying passengers in goods vehicle.

17. So far as second ground raised by learned counsel for the appellants is concerned, learned claims tribunal recorded that there is contributory negligence on the part of driver of offending tractor and Tata207 but learned Claims Tribunal held liable only appellants for payment of compensation. In this regard, I have perused impugned award. In para-12, learned Claims Tribunal recorded a finding that there is contributory negligence on the part of both the drivers of two vehicles involved in the accident which was not challenged by them before this court. Deceased was not driver but occupant of one of the vehicles and the claimants can claim against anyone or both the driver and owner of both vehicles.

18. In this case, claimant has made non-applicant driver and owner of both vehicles involved in accident and also claimed against them jointly and severally.

19. In view aforementioned categorical findings recorded by learned Claims Tribunal, driver and owner of Tata207 cannot be held solely liable to pay the amount of compensation as awarded and calculated by learned Claims

Tribunal but owner and driver of offending tractor will also be liable for satisfying the award.

20. In view of aforementioned discussion as learned Claims Tribunal has recorded that there is contributory negligence on the part of both drivers of vehicles, direction issued by learned claims tribunal for payment of amount of compensation against non-applicants 1 & 2/appellants herein jointly and severally is erroneous and it is hereby set aside and now owner and driver of both the vehicles will be jointly and severally liable for payment of amount of compensation.

21. Other grounds raised by learned counsel for appellants is that learned Claims Tribunal assessed income of deceased at Rs.3,000/- per month is on higher side is concerned, date of accident which was mentioned and which is evident from pleadings as well as Ex.P/3, ie copy of FIR mentions date of accident as 14.5.2011. Looking to the pleadings made in claim application, on the date of accident deceased was working as labour, therefore, in the opinion of this court income of deceased pleaded and assessed by learned Claims Tribunal cannot be said to be on higher side. Income of deceased assessed by learned Claims Tribunal is not liable to be interfered with in this appeal

22. In view of aforementioned discussions in preceding paragraphs, it is clear that deceased was occupant of one of the two vehicles involved in accident and FIR was also registered against both the drivers of vehicles involved in the accident. Claimant filed his claim application against owner, driver of both the vehicles and claimed compensation against all the non-applicants jointly and severally and therefore, now along with appellants, non-

applicants 3 & 4 will also be jointly and severally responsible for payment of amount of compensation.

23. The other part of impugned award and conditions imposed by learned claims tribunal will remain intact.

24. In the result, appeal is allowed in part and amount of compensation will be paid by appellants herein as well as non-applicants 3 & 4 jointly and severally.

25. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

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