AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 910 of 2013

- Manikram S/o Ramcharan Aged About 35 Years Caste Kalar, R/o Village Koundkera, P.S. Vishrampuri, Civil And Revenue Distt. North Bastar Kanker C.G.

---- Appellant/owner

Versus

1. Smt.Kalawati W/o Late Dhanraj Pandey Aged About 20 Years

2. Smt. Chaitibai W/o Late Muneshwar @ Meneram Aged About 45 Years

3. Tileshwari D/o Late Muneshwar @ Muneram Aged About 24 Years

4. Kalyan S/o Late Muneshwar @ Muneram Aged About 18 Years

   All by Caste Kalar, R/o Village Koundkera, present residing at Village Pandripani, Police Station Kanker, Civil & Revenue District Kanker (CG)

5. National Insurance Company Limited, Above Central Bank, Near R.M.S. Office, Jagdalpur, Civil And Revenue Distt. Bastar C.G.,

---- Respondents

For Appellant	:	Shri Raj Kumar Pali, Advocate.
For Respondent Nos. 1 to 4	:	None.
For Respondent No.5	:	Shri Ratan Pusty, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

25/06/2019

This appeal is filed by the owner-cum-driver/non-applicant No.1 under Section 173 of the Motor Vehicles Act, 1988 against the award dated 8th July, 2013 passed by Additional Motor Accident Claims Tribunal, North Bastar, Kanker (CG) in Claim Case No.55/2012 awarding total compensation of Rs.3,27,880/- with interest @ 7.5% per annum from the date of application till realization, fastening liability on the non-applicant No. 1/owner-cum-driver while exonerating non-applicant No.2/insurance company on the ground of breach of policy conditions as the vehicle was being used for commercial purpose by carrying bricks for construction of school whereas it was insured for agricultural purpose only.

02. As per claim petition, on 14.7.2011 Dhanraj Pandey, agriculturist, aged about 21 years, earning Rs.4000/- per month, along with other agriculturists was travelling in the vehicle Tractor bearing registration No. CG 17G 1924, owned and driven by non-applicant No.1 and insured with non-applicant No.2. However, due to rash and negligent driving of the vehicle by non-applicant No.1, Dhanraj Pandey fell down from the vehicle, suffered grievous injuries and died on the spot itself.

03. On claim petition being filed by the claimants, wife, mother, sister and brother of the deceased, under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

04. Learned counsel for the appellant/owner submits that at the time of accident the vehicle in question was being used for agricultural purposes as paddy plants and seeds were being carried in the said vehicle for plantation and sowing and the bricks kept near the school were also being carried for the purpose of construction of pump house in the filed for irrigation. The Tribunal did not consider the evidence of Claimant No.4 Kalyan Pandey who has specifically stated in para-6 that the appellant Manikram was bringing bricks lying near the school for the purpose of construction of drain in the field and paddy plants were also loaded in the tractor, which remained unchallenged in the cross-examination. Even lodger of FIR (Ex.P/2) namely Heeraman (NAW-2) and NAW-1 Manikram (owner-cum-driver) have also corroborated the above evidence. The evidence of these three witnesses to the above effect remain uncontroverted in cross-examination. However, the Tribunal merely on the basis of one line statement made in the FIR (Ex.P/2) lodged by Heeraman (NAW-2) that bricks were being carried in the vehicle for construction of school without considering the fact that the said Heeraman has subsequently

denied this fact while deposing before the Tribunal on oath, held that the vehicle in question was being used for commercial purpose in contravention of the policy conditions and thus, wrongly exonerated the insurance company of its liability.

He submits that no evidence whatsoever has been adduced by the insurance company to substantiate its plea regarding breach of policy conditions. So far as FIR (Ex.P/2) is concerned, it is a settled principle of law that FIR is not a substantive piece of evidence and it can be used either for corroboration under Section 157 or for contradiction under Section 145 of the Evidence Act of the reporter but cannot be used as a substantive evidence to discredit testimony of other witnesses. The lodger of the FIR namely Heeraman (NAW-2) has specifically denied to have made any such statement before the police regarding carrying of bricks in the vehicle for construction of school. Even in the merg intimation Ex.D/3 lodged by Heeraman, he has only stated that appellant Manikram was carrying bricks in his vehicle and not stated that the same was being carried for construction of school. No any authority from the concerned school or the contractor raising such construction has been examined before the Tribunal.

05. Learned counsel for the insurance company, on the other hand, supporting the impugned award submits that as per the FIR (Ex.P/2), it is specifically mentioned by Heeraman that on the date of accident, bricks were being carried in the vehicle for construction of school. However, since said Heeraman is brother in relation of the deceased, just for taking benefit of the insurance policy in collusion with the owner of the vehicle he denied the fact mentioned in the FIR before the Tribunal. He submits that as per statement of NAW-2 J.R. Bhuarya, Assistant Sub Inspector, examined on behalf of the insurance company, FIR (Ex.P/2) is recorded on the basis of information given by Heeraman Pandey. Therefore, the Tribunal was justified in exonerating the insurance company of its liability.

Reliance has been placed on the decision of the Hon'ble Supreme Court in the matter of ***Oriental Insurance Co. Ltd. Vs. Brij Mohan and others, 2007(3) TAC 20 (SC)*** and ***Oriental Insurance***

***Co. Ltd. Vs. Premlata Shukla, 2007 AIR SCW 3591*.**

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

07. It is not disputed by the parties that the appellant had got his vehicle Tractor bearing registration No. CG 17G 1924 insured as per insurance policy of Ex.D/1. As per particulars of the policy given by the insurance company (Ex.D/1), premium for three Kulis (labourers) @ Rs.25/- each i.e. Rs.75/ was taken by the insurance company for covering their risk under the policy. Further, it is admitted by the parties that there is no issue regarding driving licence. The only issue raised by the parties is regarding use of the vehicle in question.

08. In this case, NAW-1 P.S. Bindra, Sr. Branch Manager, examined by the insurance company is not an eyewitness to the accident, he stated regarding use of the vehicle for carrying bricks for construction of school only on the basis of FIR (Ex.P/2). Another witness examined by the insurance company namely Kalaram Mandavi (NAW-2), clerk in RTO, is also not an eyewitness to the accident. NAW-2 J.R. Bhuarya, ASI, examined by the insurance company, is the person who registered the FIR (Ex.P/2) on the basis of information given by Heeraman. He has admitted that Heeraman is not an eyewitness to the accident and he has not mentioned in the FIR as to from which brick kiln the bricks were being taken. Further he has stated that he did not examine any person from the Village or Janpad Panchayat of the concerned village. None of the above witnesses examined by the insurance company is eyewitness to the accident and also they have no knowledge as to for what purpose the bricks were being carried in the vehicle. No any authority from the concerned school or the contractor raising such construction has been examined before the Tribunal.

Kalyan Pandey (AW-1), who is claimant No.4, brother of the deceased, in para-2 has specifically stated that on the date of accident the deceased along with other labouers was travelling in the vehicle of Manikram who was carrying bricks in the vehicle for construction of drain in the field and also carrying paddy plants. The above statement of Kalyan Pandey remains uncontroverted in the cross-examination.

09. Heeraman (NAW-2) lodged of the FIR (Ex.P/2) when examined before the Court and confronted with the FIR, denied to have made statement before the police regarding carrying of bricks in the vehicle for construction of school. He states that the vehicle was used for carrying paddy plants, manure and bricks for construction of drain in the field. The said statement also remains unchallenged in the cross-examination.

10. Manikram, owner-cum-driver of the vehicle, in his written statement has specifically mentioned in para-11 that on the date of accident he was carrying paddy plants for plantation and bricks from near the school for construction of drain in his field. The said pleading has been duly proved by Manikram while deposing before the Tribunal and the same has not been controverted by the insurance company.

11. So far contention of the insurance company as to collusion between Heeraman and owner of the vehicle is concerned, in the given facts and circumstances of the case, specific pleadings of the owner, the unrebutted evidence of Heeraman, Manikram and other witnesses as observed above, and the nature and quality of evidence adduced by the insurance company, this Court finds no substance in the above contention of the insurance company and therefore, rejects the same.

12. The judgment in the matter of *Brij Mohan* (supra) relied upon by the insurance company is of no help to it because in the cited case it has been specifically proved that the vehicle was being used for commercial purpose whereas it was insured for agricultural work only. Similarly, the decision in the matter of *Premlata Shukla* (supra) is also not applicable to the facts of the present case as in the said case there was an eyewitness and therefore, his evidence being substantive evidence was taken into consideration. However, in the present case, as already discussed above, the lodger of the FIR namely Heeraman on oath before the Tribunal has denied to have made any statement to the police that the vehicle in question was being used for carrying bricks for construction of school as mentioned in the FIR. Therefore,

both the cited judgments being distinguishable on facts from the present case are of no help to the insurance company.

13. In the result, the appeal is allowed with modification in the impugned award to the extent that it is non-applicant No.2/insurance company which is jointly and severally along with non-applicant No. 1/ owner & driver liable to pay the entire amount of compensation to the claimants as awarded by the Tribunal. If the owner has already deposited the compensation and the same has been paid to the claimants, he shall have the right to recover the same from the insurance company in accordance with law.

Sd/-

(Gautam Chourdiya)

Judge

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