

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 138 of 2014

- M/s Radheshyam Agrawal (wrongly mentioned as Radheshyam Agrawal in judgment dtd. 2.8.2013) Partner- Sanjay Agrawal, S/o Radheshyam Agrawal, Age- 39 Yrs, R/o Sarvodaya Nagar, Heerapur Road, Near C.G. Public School, Tatiband, Distt. Raipur C.G. (Owner of Truck bearing Regn. No. CG 04/JB 2329)

---- Appellant

Versus

1. Mahangu S/o Sudaroo Aged About 32 Years
2. Ganesh S/o Mahanhu Aged About 10 Years
3. Ku. Rukmani D/o Mahangu Aged About 7 Years

No. 2 and 3 both minor, through father Mahangu, All caste – Kewat, R/o Village Ghotiya, Pujaripara, Post -Ghotiya, P.S. Chowki-Ghotiya, Tahsil-Bastar, Distt. Bastar (CG)

4. Sonu Vishwakarma S/o Jagjitvan Vishwakarma Aged About 25 Years R/o Village Sripur, Post- Gorigamadeeh, P.S. Kurhani, Distt. Mujaffarpur, Bihar., District : Muzaffarpur, Bihar (Driver of Truck No. CG 04 JB 2329)
5. Reliance General Insu.Co.Ltd. S/o Shop No. 412, 413, 4th Floor, Ravi Bhawan, Jai Stambh Chowk, Raipur- 492001, District : Raipur, Chhattisgarh

---- Respondents

For Appellant	:	Shri Manish Upadhyay, Advocate.
For Respondent No.1 to 3	:	Shri Subhash Yadav, Advocate.
For Respondent No.4	:	None.
For Respondent No.5	:	Shri Saurabh Sharma, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Order On Board

08/01/2019:

Aggrieved by the award dated 2.8.2013 passed by Motor Accident Claims Tribunal, Bastar at Jagdalpur in Claim Case

No.204/2011 whereby the Tribunal has awarded compensation of Rs.2,95,500/- in favour of the claimants with interest @ 8% per annum from the date of application till realization, fastening liability on the appellant/owner while exonerating the insurance company, the appellant/owner has filed the instant appeal under Section 173 of the Motor Vehicles Act.

02. As per averments in the claim petition, on 28.1.2010 at 4 pm Smt. Batibai along with others was working as a labour for the construction of Stop Dam at Narangi river at Village-Ghotiya. At that time, non-applicant No.1 Sonu Vishvakarma by driving the vehicle Truck (Tipper) bearing No. CG 04 JB 2329 in a rash and negligent manner while reversing the same dashed Smt. Batibai as a result of which she suffered grievous injuries and died during treatment in Maharani Hospital, Jagdalpur at 11 pm.

03. On claim petition being filed by the claimants under Section 166 of the Act, the Tribunal considering the evidence led by both the parties passed the impugned award as mentioned above.

04. Learned counsel for the appellant/owner submits that the Tribunal has wrongly fastened liability on the owner of the offending vehicle on the ground that there is no evidence to show that the vehicle in question was insured with respondent No.5/insurance company at the relevant time. However, as per Ex.A/11 i.e. seizure memo, it is evident that RC Book, Permit, Insurance Policy of the offending vehicle including the Driving Licence of non-applicant No.1 were seized by the police and therefore, the owner was not in a position to file any such document before the Tribunal. Further, as per Annexure A/3 i.e. copy of insurance policy filed by the appellant, the vehicle in question was duly insured with respondent No.5 during the relevant period. There is nothing on record which could suggest that the offending vehicle was being driven in contravention of the insurance policy conditions. In these circumstances, the Tribunal was not justified in exonerating the insurance company of its liability and fastening the same on the appellant/owner and therefore, the matter is required to be sent back to the Tribunal for decision afresh after giving due opportunity of hearing

and of adducing evidence to both the parties as expeditiously as possible.

05. Copy of the insurance policy filed by the appellant as Annexure A/3 has been supplied to learned counsel for respondent No.5/insurance company. After going through the same, he submits that the insurance company was proceeded ex-parte before the Tribunal, the said policy is required to be proved before the Tribunal and further, evidence would be required to be led by the parties to prove whether there was any violation of the said policy conditions or not. He argues that as the owner did not produce any document before the Tribunal or adduce any evidence which could show that the liability of satisfying the award is of the insurance company, the Tribunal was justified in fastening the same on the owner. However, he has no objection if the matter is remanded to the Tribunal. He prays for direction to the Tribunal for affording proper opportunity to both the parties of hearing and of adducing evidence including amendment of pleadings and that the Tribunal may be directed to decide the claim case afresh on all issues.

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

07. As per Ex.A/11 i.e. seizure memo, it is seen that RC Book, Permit, Insurance Policy of the offending vehicle including the Driving Licence of non-applicant No.1 were seized by the police. Definitely, all these documents were in possession of the police and the same are relevant for proper adjudication of the claim case, particularly of the liability part. Further, as per Annexure A/3 i.e. copy of insurance policy filed by the appellant with the appeal, it appears that the vehicle in question was duly insured with respondent No.5 at the time of accident. In the given facts and circumstances of the case, this Court is of the opinion that the Tribunal was not justified in deciding the claim petition in a mechanical manner and fastening liability on the appellant/owner on the ground of non-production of the insurance policy and other relevant documents. Hence, in the interest of justice, the matter needs to be remanded to the Tribunal for decision afresh on

all issues.

08. In the result, the appeal is allowed in part. The impugned award is hereby set aside and the matter is remanded to the Tribunal with a direction to decide the claim case afresh after giving due opportunity of hearing and adducing evidence to both the parties, within a period of six months from the date of receipt of the records. The parties shall also be permitted to amend their pleadings, if so required, and adduce evidence thereon. The amount, if any, deposited by the appellant/owner shall be adjusted in the final award to be passed by the Tribunal.

09. Registry is directed to send the record to the concerned Tribunal without delay.

10. Parties to appear before the concerned Tribunal on 4th February, 2019.

It is made clear that nothing in this order shall be construed as an expression of opinion on merits of the case and the Tribunal to decide the claim case strictly on the basis of material available before it in accordance with law.

Sd/

(Gautam Chourdiya)

Judge