AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1045 of 2014

- National Insurance Company Ltd., Through: Divisional Manager, National Insurance Company Ltd., G.E. Road, Raipur (C.G.).

---- Appellant

Versus

1. Pyarelal S/o Late Samaru Dhruv, age, 39 years,
2. Sunita Bai W/o Pyarelal Dhruv, age 38 years,

   R/o Village P.O.- Hirmi, District- Baloda Bazar- (C.G.).
3. Tarun Kumar S/o Bali Ram Sahu, R/o Sakin and P.O. Hirmi, P.S.- Suhela, District- Baloda Bazar- (C.G.).
4. Narayan S/o Bali Ram Sahu, R/o Sakin and P.O. Hirmi, P.S.- Suhela, District- Baloda Bazar- (C.G.).
5. Devlal S/o Bali Ram Sahu, R/o Sakin and P.O. Hirmi, P. S.- Suhela, District- Baloda Bazar (C.G.).

---- Respondents

For Appellant	: Shri Raj Awasthi, Advocate
For Respondent Nos. 1 & 2	:Shri Amiyakant Tiwari, Advocate
For Respondent Nos. 3 to 5	: None

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

14.03.2019

(1) This appeal under Section 173 of the Motor Vehicles Act, 1988 (henceforth, “Act, 1988”) has been preferred by the National Insurance Company Limited/non-applicant No. 4, challenging the impugned award dated 24th March, 2014 passed in Claim Case No. 52/2012 whereby the learned Chief Motor Accident Claims Tribunal, Raipur has

partly allowed the claim application of the claimants/respondents No. 1 & 2 awarding compensation of Rs.3,23,000/- to the said claimants and at the same time fastening the liability for payment of compensation upon the appellant/Insurance Company.

(2) Brief facts of the case, in short as projected by the claimants, are that on 13.04.2012 at about 7.30 pm in village Hirmi nearby Water tank Jai Prakash Dhruv (since deceased) crushed by offending vehicle Tractor bearing registration No. CG-04DM-9850 and Trolley bearing registration No. CG-04DM-5414, as the same was rashly and negligently driven by its driver i.e. Non-applicant No. 1, resulting into spot death of deceased - Jai Prakash Yadav. The said offending vehicle is insured with appellant/National Insurance Company Limited.

(3) On claim petition being filed by the claimants, who are unfortunate parents of deceased – Jai Prakash Yadav, under Section 163-A of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

(4) Learned counsel for the appellant/Insurance Company submits that FIR (Ex.P-2) lodged by claimant No. 1, who is the father of deceased, shows that at the time of accident the deceased was sitting on the mudguard of the tractor, and there is no sitting capacity in the tractor for any person except driver and the appellant/insurance company is not statutory liable to cover the risk of passenger sitting in the tractor nor had assumed such risk by charging extra premium therefor, therefore, the Tribunal has fallen in error in fastening the liability upon the appellant/insurance company to pay compensation to the claimants.

(5) Learned counsel for the respondent Nos. 1 & 2/claimants supported the award and submits that at the time of accident deceased was not sitting on the mudguard of the tractor. As per pleadings and evidence adduced by the claimants, deceased was standing outside on the road and the driver of the offending vehicle, while driving the offending vehicle rashly & negligently, crushed the deceased and on account of the injuries sustained by him ('the deceased'), he died on the spot, and, therefore, learned Claims Tribunal has rightly fastened liability upon the Insurance Company to pay compensation to the claimants, which does not call for any interference in the instant appeal.

(6) I have heard learned counsel appearing for the parties and perused the impugned award with.

(7) It is not in dispute that the deceased died in the motor accident occurred on 13.04.2012 due to involvement of offending vehicle Tractor & Trolley. Since, the Claim application was filed under Section 163-A of the Act, 1988 before the Claims Tribunal, therefore, only one question arises on behalf of the appellant/ Insurance Company with regard to liability fastened upon it that as the deceased was sitting on the mudguard of the tractor, appellant/insurance company is not statutory liable to cover the risk of passenger sitting in the tractor, except this, no other issue was raised on behalf of the appellant/Insurance Company.

It is not disputed that the vehicle involved in the accident is the tractor. As per FIR (Ex. P/2) lodged by the claimant/Non-applicant No. 1 Pyarelal, it is clear that the deceased was sitting on tractor and due to jump on road the deceased fell down from the tractor. Furthermore, Ishwar Prasad Dheewan (AW -2) has stated that at the time of accident, deceased was standing on the road side and non-applicant No. 1 while driving the offending vehicle tractor & trolley rashly and negligently, crushed the deceased, due to which deceased died on the spot. Claimant No.1, who is father of the deceased, has admitted in paragraph 7 of his statement that he is not an eyewitness to the incident as he was not present at the spot when the accident had occurred and he is only the lodger of the FIR (Ex. P-2). As per para 1 of statement of Eshwar Prasad Dheevar (AW-2), he stated that at the time of accident the deceased was not sitting in the tractor but was standing outside the road. As per statement of Non-applicant witness No. 1- Johan Ekka, Deputy Manager in National Insurance Company has stated, in paragraph 3 of the statement, regarding the accident one person was engaged for investigation but on the date of recording of evidence i.e. 4.2.2019 investigation was incomplete, therefore, report was not produced before the Tribunal.

(8) Looking to the overall fact situation of the case, I am of the opinion, that the learned Claims Tribunal has rightly fastened liability upon the Insurance Company as it could not establish the violation of policy conditions.

(9) Supreme Court in the matter of **Halappa Vs. Malik Sab** reported in **(2018) 12 SCC 15** has held as under:

"8. The judgment of the Tribunal indicates that the defence of the insurer based on the first information report, the complaint Ext. P-1 and the supplementary statement of the appellant at Ext. P-2 was duly evaluated. The Tribunal, however, observed thus:

> **".... Respondent 3 and RW 1 submitted that the petitioner**

has invited the alleged unfortunate accident but except the FIR and complaint Ext. P-1 Respondent 3 has not produced any documents to show that at the time of accident the petitioner was travelling as passenger by sitting on the engine of the tractor in question. During the course of cross-examination RW 1 has admitted that Respondent 3 has maintained a separate file in respect of accident in question and he has also admitted that Respondent 3 has not produced the investigator's report of this case. Admittedly Respondent 3 has not examined any independent eyewitness to the accident to prove that on the relevant date and time of the accident the petitioner was travelling as a passenger by sitting on the engine of the tractor. If really the petitioner has sustained grievous injuries by falling down from the engine of said tractor Respondent 3 insurer could have produced the separate file maintained by it in respect of the accident in question and it could have also produced investigator's report in respect of the said accident but admittedly Respondent 3 has not produced the said separate file and investigator's report in respect of the accident in question for the reasons best known to it. On the other hand as already stated above it is clear from the statement of petitioner on oath an eyewitness and from the supplementary statement of petitioner at Ext. P-2 and police statement of witnesses at Ext. P-3 and charge-sheet at Ext. P-6 it is clear that due to rash and negligent driving of said tractor by Respondent 1 the said tractor turtled down and fell over the petitioner who was about to board the tractor and as result of which petitioner has sustained grievous injuries. Moreover as already stated above the Investigating Officer concerned after detail investigation has filed the charge-sheet against Respondent 1 for the offences punishable under Section 279 and 338 IPC..."

(10) Applying the ratio of law laid down by the Supreme Court in the matter of **Halappa** (supra) in the instant case, it is apparent that the facts of instant case are similar to the aforesaid judgment of the Supreme Court as according to the FIR (Ex.P-2), the deceased was sitting on the mudguard in the tractor but looking to the evidence of eyewitness contrary statements was recorded i.e. deceased was standing on outside of the road, therefore, in my opinion, the Tribunal has rightly fastened the liability upon the appellant/Insurance Company to pay compensation to the claimants as entire evidence should have been considered and appreciated for just & proper decision of the case and only sole FIR can not be accepted as a gospel truth.

(11) In view of the aforesaid discussion, the misc. appeal filed by the appellant/Insurance Company, being devoid of merit, is liable to be and is hereby dismissed.

Sd/-

(Gautam Chourdiya)

Judge

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