

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 481 of 2014**

- Bajaj Allianz General Insurance Company Limited Thru- Branch Manager, Vyapar Vihar, Bilaspur C.G., Thru- Area Office- Shiv Mohan Bhavan, Vidhan Sabha Road, Pandri, P.S. Pandri, Civil and Revenue Distt. Raipur C.G.

(Insurer of Vehicle tractor No. CG 10 L 0882 and trolley no. CG 10 D 6689 vide policy no. OG -12-2321-5001-00000304, period from 3.1.2012 to 2.1.2013)

---- Appellant**Versus**

1. Savita Sriwas W/o Late Jitendra Sriwas Aged About 26 Years
 2. Anjali Sriwas D/o Late Jitendra Sriwas Aged About 3 Years Minor,
 3. Ramnarayan Sriwas S/o Late Jitendra Sriwas Aged About 2 Years Minor,
 4. Manharan Sriwas S/o Late Chhedilal Sriwas Aged About 68 Years
 5. Radhika Sriwas W/o Manharan Sriwas Aged About 60 Years
- Respondent No. 2 and 3 are minor through their mother Mrs. Savita Sriwas All R/o Vill. Nirtu, PS Sarkanda, Civil and Revenue Distt. Bilaspur (CG) - claimants
6. Rakesh Prajapati S/o Chhotelal Prajapati R/o Village- Nirtu, P.S. Sarkanda, Distt. Bilaspur C.G., District : Bilaspur, Chhattisgarh (Owner of Vehicle tractor No. CG 10 L 0882 and trolley no. CG 10 D 6689

---- Respondents

For Appellant	:	Shri NK Thakur, Advocate.
For Respondent Nos. 1 to 5	:	Shri VK Sahu, Advocate.
For Respondent No.6	:	None.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****07/03/2019**

This appeal is by the insurance company under Section 173 of the Motor Vehicles Act, 1988 against the award 20.12.2013 passed by Additional Member to First Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No.46/2013 awarding total compensation of 4.18 lacs with interest @ 6% per annum from the date of application till realization, fastening liability on non-applicant No.2 jointly and severally along with non-applicant No.1/owner.

02. As per claim petition, on 26.5.2012 Jitendra Shrivass was driving tractor bearing No. CG 10 L 0882 attached with trolley bearing No. CG 10 D 6689. However, on the way, due to failure of the break, the said vehicle got uncontrolled and overturned. As a result of this accident, Jitendra Shrivass suffered grievous injuries and died on the spot itself. At the time of accident, the said vehicle was owned by non-applicant No.1 and insured with non-applicant No.2/appellant herein.

03. On claim petition being filed by the claimants, wife, children and parents of the deceased, under Section 163A 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/insurance company submits that the deceased was not the paid driver of the owner/non-applicant No.1. As per Ex.D/8 i.e. statement of Rakesh Prajapati (owner/non-applicant No.1), before the investigating officer in criminal case, he has specifically stated that the deceased Jitendra Shrivass had forcibly taken the vehicle in question and driven the same rashly and negligently and thus it is clear that the deceased was not driver of non-applicant No.1 and therefore, the insurance company is not liable to pay any compensation to the claimants.

05. On the other hand, learned counsel for the respondents/claimants supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

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

07. As per statement of registered owner of the vehicle Rakesh Prajapati before the Tribunal, in para-2 he has categorically stated that the deceased was working prior to six months of the accident as his driver and he was paying Rs.3,200/- per month to the deceased for driving the vehicle and that the deceased had a valid and effective licence to drive the vehicle at the time of accident. Though in his

statement Ex.D/8, he has stated that the deceased had forcibly taken his vehicle and driven the same rashly and negligently, however, in this case, Rakesh Prajapati, owner, has not been confronted with the said statement (Ex.D/8) before the Tribunal while recording his evidence. Therefore, the statement of Ex.D/8 has no evidentiary value. Further, the evidence of the owner before the Tribunal that the deceased was his paid driver, remains uncontroverted in cross-examination by the insurance company. The witness Praveen Sijoriya (NAW-2) has been examined by the insurance company, but he is not an eyewitness. No evidence has been adduced by the insurance company to prove that the deceased was not the paid driver of non-applicant No.1 or that there was no relationship of employee and employer between the deceased and non-applicant No.1/owner. In these circumstances, this Court finds no substance in the arguments of learned counsel for the appellant.

08. In the result, the appeal being without any substance is hereby dismissed.

Sd/

(Gautam Chourdiya)

Judge