AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 984 of 2014

- Hichchharam Kurre S/o Junlal Kurre Aged About 58 Years, By Caste Satnami, R/o Keramuda, Post- Bawankera, Thana Patewa, Tah. And Civil & Revenue Distt. Mahasamund C.G. (Owner of Tractor No. CG 04 DB 9045)

---- Appellant

Versus

1. Fattelal Patel S/o Indrajeet Patel Aged About 55 Years, By Caste Aghariya,
2. Mulabati Patel W/o Fattelal Patel Aged About 52 Years, By Caste - Aghariya
3. Smt. Dhaneshwari Patel W/o Late Sewakram Patel Aged About 32 Years
4. Minor Ku. Namrata Patel D/o Late Sewakram Patel Aged About 13 Years
5. Minor Ku. Urwashi Patel D/o Late Sewakram Patel Aged About 10 Years
6. Minor Nehit Kumar Patel S/o Late Sewakram Patel Aged About 7 Years

   Respondents No. 4 to 6 are minor through natural guardian mother Smt. Dhaneshwar Patel, all are R/o Village and Post Nartora, Thana-Patewa, Tahsil-Mahasamund, Civil & Revenue Distt. Mahasamund (CG)
7. Anand Kumar Kurre S/o Hichchharam Kurre Aged About 31 Years, By Caste- Satnami, R/o Keramuda, Post- Bawankera, Thana- Patewa, Tah. And Civil & Revenue Distt. Mahasamund C.G. (Driver of Tractor No. CG 04 DB 9045)
8. Cholamandalam General Insurance Company Ltd. Infront Of Chhoti Rail Line, LIC Office, Pandari, Branch Office, Raipur, Thana- Pandari, Civil & Revenue Distt. Raipur C.G.

   (Insurer of Tractor No. CG 04 DB 9045)

---- Respondents

For Appellant	:	Shri Sunil Sahu, Advocate.
For Respondent No.1 to 6	:	Shri J.A. Lohani, Advocate.
For Respondent No.7	:	None though served.
For Respondent No.8	:	Shri Abhishek Sinha and Shri Amit Buxy, Advocates.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

21/01/2019

This appeal is by the owner/non-applicant No.2 against the award 23.8.2014 passed by Motor Accident Claims Tribunal, Mahasamund in Claim Case No.159/2013 awarding total compensation of Rs.18.15 lacs with interest @ 6% per annum from the date of application till realization and in default interest @ 9% per annum, fastening liability on non-applicants No. 1 & 2/driver & owner jointly and severely while exonerating non-applicant No.3/insurance company.

02. As per claim petition, on 1.6.2013 Sevakram was going on motorcycle bearing No. CG 06 P/9851 as a pillion rider which was being ridden by Roshanlal Patel. However, on the way, non-applicant No.1 Anand Kumar Kurre by driving tractor bearing No. CG 04 DB 9045 and trolley bearing No. CG 04 DB 9046 in a rash and negligent manner came from opposite side and dashed the said motorcycle. As a result of which Sevakram suffered grievous injuries and died while being taken to hospital for treatment.

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

04. Learned counsel for the appellant/owner submits that the Tribunal has committed an illegality in fastening liability on the owner and exonerating the insurance company on the ground of breach of policy. In this case, as per documents filed and proved by the parties, it is evident that there was no breach of policy. However, the Tribunal only on the basis of statement of Roshanlal Patel, who has stated that on the date of accident some persons were sitting in the tractor and iron rod and other material were being carried by the said vehicle, has recorded a finding that the offending vehicle was being plied in contravention of the policy conditions. No specific evidence has been adduced by the insurance company regarding breach of policy. The witnesses examined by the insurance company have no knowledge as to who were sitting in the said tractor or as to what type of articles were being carried by the offending vehicle. They were not aware about the facts and circumstances of the case. Therefore, the award impugned insofar as it relates to exoneration of insurance company of its liability

and fastening the same on non-applicants No. 1 & 2/driver & owner is liable to be set aside.

05. Learned counsel appearing for respondents No.1 to 6/claimants supports the arguments advanced by learned counsel for the appellant/owner. However, he submits that no appeal has been filed by the claimants for enhancement of compensation.

06. On the other hand, learned counsel for the respondent/insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly exoneration the insurance company and fastened liability upon non-applicants No. 1 & 2/driver & owner.

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

08. From perusal of the impugned award, it is observed that the Tribunal in para-28 of the award has recorded a finding that though it has not been proved that there was breach of driving licence, but in view of statement of Roshalal Kurre who has stated that cement and sand were being carried in the offending vehicle and 2-3 persons were sitting in the tractor, it is found that the offending vehicle was being driven in violation of the policy conditions. As per Exs.D/1C and D/2C i.e. Registration Certificates of trolley and tractor, both were registered for agricultural purposes. As per Ex.D/3 i.e. insurance policy, it is a package policy for miscellaneous and special type vehicle. Thus, the offending vehicle falls in the category of Light Motor Vehicle. As per Ex.D/5C, non-applicant No.1 Anand Kumar Kurre was having a licence to drive LMV, which was valid from 28.5.2009 to 28.5.2029. Thus, non-applicant No.1 was having a valid and effective licence to drive the said vehicle on the date of accident.

As per evidence available on record, the offending vehicle was registered for agricultural purposes. The offending vehicle was being driven by non-applicant No.1 who was coming from opposite direction and he dashed the motorcycle in which the deceased was sitting as a pillion rider. As per statement of Roshanlal Patel, on the date of accident some iron rods and cement were being carried in the trolley and that 2-3 persons were sitting in the tractor. No specific evidence has been adduced by the insurance company. Therefore, only on the basis of statement of Roshanlal Patel, it cannot be held with certainty that the offending vehicle was being driven for commercial purposes in contravention of the policy conditions. Non-applicant No.1 Anand Kumar Kurre, driver of the offending vehicle, has specifically denied carrying of any such material in the vehicle and also denied carrying of persons in the tractor. Thus, there are two contrary evidence on record. No specific evidence is there on record by the insurance company regarding breach of policy conditions.

09. On the basis of aforesaid discussions, considering the overall facts and circumstances of the case, the pleadings of the respective parties, nature and quality of evidence adduced by them in support thereof, this Court is of the opinion that the Tribunal was not justified in exonerating non-applicant No.3/insurance company of its liability on the ground of breach of policy conditions and fastening the same on non-applicants No. 1 & 2/driver & owner of the offending vehicle.

10. In the result, the appeal is allowed. The impugned award insofar as it relates to fastening of liability on non-applicants No. 1 & 2/driver & owner jointly and severely is hereby modified to the extent that non-applicant No.3/insurance company is held liable jointly and severally along with non-applicants No. 1 & 2/driver & owner to satisfy the award passed by the Tribunal.

Non-applicant No.3/insurance company shall deposit the entire awarded amount with the concerned Tribunal within a period of one month from today. The amount, if any, already paid by non-applicant No.1/owner shall be adjusted accordingly. However, rest of the conditions of the impugned award shall remain intact.

Sd/

(Gautam Chourdiya)

Judge

Khan