NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No. 581 of 2017

United India Insurance Company Limited, Through Its Branch Manager, Branch Office Anupama Chowk, Jagdalpur, District Bastar, Chhattisgarh (Non-Applicant No.3).

---- Appellant

Versus

1. Victor Kujur, S/o Kamil Kujur, Aged About 48 Years, R/o Village Karli, Tahsil And Police Station Gidam, District South Bastar, Dantewada, Chhattisgarh (Applicant) Priyansh.

2. Dundaru Ram, S/o Bhadaru, Aged About 29 Years, R/o Village Hiranar, Police Station And Tahsil Gidam, District South Bastar, Dantewada, Chhattisgarh (Non-Applicant No.1).

3. Ashok Kumar Burud, S/o Late Khojmal Burud, R/o Main Road, Gidam, District South Bastar, Dantewada, Chhattisgarh, (Owner/Non-Applicant No.2).

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate.
For Respondent No.1	:	Shri Vivek Kumar Tripathi, Advocate.
For Respondent No.2	:	None, though served.
For Respondent No.3	:	Shri P. R. Patankal along with Shri Utsav Mahiswar, Advocates.

Hon'ble Shri Justice Sanjay Agrawal

Order On Board

04.10.2019

1. This Miscellaneous Appeal has been preferred by Non-Applicant No.3/United India Insurance Company Limited, under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988') questioning the legality and validity of the award dated 30.01.2017 passed by the Motor Accident Claims Tribunal, South Bastar, Dantewarda (C.G.) (for short 'the Claims Tribunal') in Claim Case No.356/2014, by which the learned Claims Tribunal, while allowing the claim in part, has awarded the total amount of compensation to the tune of Rs.5,66,796/- with 9% interest per annum from the date of filing of the claim petition till its realisation while fastening the liability upon the Insurance Company. The parties to this Appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated, the facts of the case are that on 13.10.2011 at 6:00 pm, deceased Niran Tirkey was coming along with his niece namely Swarnlata and Anita Kujur by his motorcycle bearing its Registration No.CG-18-E-5952 from Gidam to Dantewada and as soon as they reached near the “Haram Valley”, it was dashed vehemently from its opposite side by the offending vehicle 'Tractor' (attached with its Trolley) bearing its Registration No. CG-18-G-0924, which was owned by Non-Applicant No.2 namely Ashok Kumar Burud and insured with the Non-Applicant No.3/Insurance Company. At the relevant time, the vehicle in question was being driven rashly and negligently by its driver

Dundaru Ram/Non-Applicant No.1. As a result of which, deceased Niran Tirkey died on the spot, while his niece Swarnlata and Anita Kujur sustained serious injuries and Anita Kujur also died during the course of her treatment.

3. On account of the aforesaid accident, the claimant being legal representative of deceased Anita Kujur, instituted a claim petition enumerated under Section 166 of the Act of 1988 by claiming total amount of compensation to the tune of Rs.9,22,796/- has been claimed under various heads.

4. The aforesaid claim has been contested by Non-Applicant No.1/Driver and Non-Applicant No.2/Owner of the vehicle in question by saying that the driver of the offending vehicle was holding the effective and valid driving license and it was insured with Non-Applicant No.3/Insurance Company, therefore, in case of any liability being fastened, the same could be indemnified by the said Insurance Company.

5. While Non-Applicant No.3 has contested the claim by saying that deceased Niran Tirkey was himself responsible for the alleged accident as he was coming by his motorcycle along with his two niece beyond its sitting capacity and since the deceased was not holding the effective and valid driving license, therefore, he alone was responsible for the alleged accident. It is contested further on the ground that the driver of the offending vehicle was also not possessing the effective and valid driving license and since the vehicle in question was being used without any valid permit, therefore, no liability could be fastened upon the Insurance

Company. It is pleaded further that the alleged accident occurred because of the contributory negligence of both the drivers as they were driving their vehicles in a rash and negligent manner.

6. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 13.10.2011 due to rash and negligent driving of the driver of the offending vehicle, resulting into the sad demise of said Niran Tirkey, who died on th spot while his niece Swarnlata sustained serious injuries and Anita Kujur also died during the course of her treatment. It held further that the driver of the offending vehicle was holding the effective and valid driving license and the Insurance Company has failed to establish the fact that the said vehicle was being driven in violation of the policy. As a consequence, while fastening the liability upon the Insurance Company, awarded total amount of compensation as observed hereinabove.

7. Being aggrieved, the Non-Applicant No.3/Insurance Company has preferred this appeal. Shri Dashrath Gupat, learned counsel for the Appellant submits that the award impugned as passed by the Claims Tribunal holding that the vehicle in question was not being used in violation of the insurance policy is apparently contrary to law. He submits further that the driver of the offending vehicle was holding the driving license to drive the light motor vehicle only, whereas the vehicle in question was a commercial vehicle and, therefore, the said driver was not authorized to drive the alleged offending vehicle. It is contended further that the

vehicle in question was a commercial vehicle and in absence of permit, it ought not to have fastened the liability upon the Insurance Company. It is contended further that the deceased was equally responsible in relation to the alleged accident and without considering the said facts in its proper manner, the Claims Tribunal has committed an illegality in holding that the driver of the offending vehicle alone was responsible for the alleged accident, occurred on 13.10.2011.

8. On the other hand, learned counsel for the respondents, while supporting the award impugned, submits that the vehicle in question was insured for agricultural purposes and in absence of any documentary evidence showing that it was registered as a commercial vehicle, it cannot be held that the vehicle in question was a commercial vehicle, as alleged by the counsel for the Appellant. It is contended further that after considering the evidence of injured Swarnlata, the Claims Tribunal has rightly arrived to a conclusion that the driver of the offending vehicle alone was responsible for the alleged accident. The award impugned is, therefore, not liable to be interfered.

9. I have heard learned counsel for the parties and perused the entire record carefully.

10. The main contention of the appellant herein is that the vehicle in question was a commercial vehicle and was being driven in absence of any permit by a driver, who was not holding the effective and valid driving license and, therefore, under such circumstances, the Insurance Company cannot be held liable.

11. In order to substantiate the aforesaid contention, the burden was heavily upon the Insurance Company to prove the same by cogent and reliable evidence. However, from perusal of the record, it appears that the vehicle in question i.e., a 'Tractor' was a kind of light motor vehicle. As such, although the driver of the offending vehicle was possessing a driving license to drive the light motor vehicle, but it cannot be held that he was not authorized to drive the same. The further contention of learned counsel for the Appellant that the deceased was equally responsible for the alleged accident is also noted to be rejected as the Claims Tribunal after examining the evidence of injured Swarnalata rightly arrived to a conclusion that the driver of the offending vehicle alone was responsible for the alleged accident.

12. In so far as, the vehicle in question was being used without any valid permit is concerned, it appears that only the statement of Anoop Kumar Duge was available on record which shows that the vehicle in question i.e., a 'Tractor-Trolley' was registered as a commercial vehicle, but I do not find any documentary evidence on record showing that it was a commercial vehicle. Mere statement of the said witness by itself would not be sufficient to hold that it was a commercial vehicle as contended by the learned counsel for the Appellant. That apart, a bare perusal of the insurance policy marked as Ex.NA-1 would lead to an irresistible conclusion that it was insured for agricultural and forestry purposes. Thus, from stretch of any imagination, it cannot be held that the vehicle in question was a commercial vehicle so as to require a permit under Section 66 of the Act of

1988.

13. In view of the foregoing discussions, I do not find any substance in this appeal. The appeal being devoid of merit, is hereby dismissed. No order as to costs.

Sd/-
(**Sanjay Agrawal**)
Judge

Deepti Jha