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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1257 of 2012

- The Oriental Insurance Co.Ltd. S/o Branch Office- Sunday Market, Raigarh, Distt. Raigarh C.G., Chhattisgarh **---- Appellant**

Versus

1. Chintamani Yadav S/o Dilbandhu Yadav Aged About 40 Years by caste Mahkul, r/o village Pithaama, P.S. Bagbahar, Distt. Jashpur, Chhattisgarh
2. Somari W/o Chintamani Yadav Aged About 33 Years, by caste Mahkul, r/o Pithaama, P.S. Bagbahar, Distt. Jashpur, Chhattisgarh
3. Shyam Lal S/o Dhaneshwar Aged About 23 Years, r/o village Khadamacha, P.S. Bagbahar, Distt. Jashpur, Chhattisgarh
4. Chamar Sai S/o Lohar Sai Aged About 41 Years, by caste Nag, r/o village Khadamacha, P.S. Pathalgaon, Distt. Jashpur C.G. As Per Deleted Order Dated- 19-01-2011
5. Anand Singh S/o Rameshwar Aged About 39 Years, by caste Kanwar, r/o village Khadamacha, Kukargaon, P.S. Pathalgaon, Distt. Jashpur Chhattisgarh **---- Respondents**

For Appellant	:	Shri Raj Awasthi, Advocate
For Respondent- 3	:	Shri Sanjay Agrawal, Advocate
For other Respondents	:	None appears

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

24.01.2019

1. The appellant-Insurance Company by this instant appeal challenged the impugned award dated 31.08.2012 passed by learned Additional Motor Accident Claims Tribunal, Kunkuri, district Jashpur (for short, 'Claims Tribunal') in Claim Case No. 02 of 2009 whereby learned Claims Tribunal partly allowed the claim application filed by the claimants for grant of compensation and awarded a total sum of Rs.2,70,000/- as compensation and liability has been fastened on the appellant as well as respondents- 3 and 5, driver and owner respectively.

2. Brief facts for disposal of this appeal are that on 05.05.2008 at about 8 am one tractor bearing No.14A-0676 while transporting cow dung

manure, met with an accident. At that relevant time, Muralidhar Yadav @ Murali Yadav and Ludro Yadav were travelling on the said tractor. In the aforementioned accident Muralidhar Yadav died on spot and the matter was reported to Police Station, where Crime No.42 of 2008 was registered for the offences punishable under Sections 279, 337 and 304(A) IPC against the driver of tractor ie respondent- 3. On account of death of Muralidhar Yadav, who was aged about 18 years, claimants/parents of the deceased have filed claim application before the Claim Tribunal mentioning therein that death of their son Muralidhar Yadav took place due to rash and negligent driving of tractor by respondent- 3. They further pleaded that on the date of accident deceased was working as labour and thereby earning about Rs.3,000/- per month and they were dependent on him and claimed Rs.21,02,000/- as compensation.

3. Respondents- 3 and 4 submitted their reply to the claim application in which it was stated that name of Respondent- 4 be removed as party respondent because he was not registered owner of the offending vehicle- tractor. Therefore, his name may be deleted from the array of respondents. It has been further pleaded that as Anand Singh/respondent- 5 is registered owner of the offending vehicle- tractor, liability for payment of compensation would be on driver/respondent- 3, 5 (registered owner) and the Insurance Company, appellant herein. Respondent- 5 did not appear before learned Claims Tribunal and was proceeded *ex-parte* before the Claims Tribunal.

4. Insurance Company submitted its reply to the claim application and denied all the adverse pleadings made against them. They also denied

the fact of accident. It was further pleaded that the accident took place on account of negligence on the part of driver of the offending vehicle therefore, Insurance Company is not liable for payment of any amount of compensation. It was also pleaded that on the date of accident offending vehicle was registered in the name of Anand Singh/respondent- 5 for use of agriculture purpose only and the trolley was not insured with them. Therefore, they pleaded for dismissal of claim application.

5. Appreciating pleadings and evidence available on record of respective parties, learned Claims Tribunal held that tractor bearing No.CG-14A-1676 was involved in the accident on account of which death of Muralidhar Yadav, aged about 18 years took place. At that relevant time, driver of offending vehicle was driving the tractor in a rash and negligent manner. Learned Claims Tribunal also arrived at a finding that Insurance Company failed to prove that there was violation of conditions of Insurance Policy by producing any cogent and clinching piece of evidence and fastened the liability of satisfying the award on driver/respondent- 3, owner /respondent- 5 and the Insurance Company/ appellant herein.

6. Learned counsel appearing for the Insurance Company submitted that on the date of accident the deceased was travelling on the tractor engine and it was used for commercial purpose. Seating capacity provided on tractor engine is only one including driver but on the date of accident deceased was sitting on tractor engine along with driver, which is in violation of conditions of Insurance Policy. Though, there is violation of conditions of Insurance Policy, learned Claims Tribunal erroneously and contrary to the material available on record fastened the liability on the

Insurance Company which is not sustainable. He also submitted that the copies of documents ie Policy and registration certificate were very much available on record and the documents speak for themselves. He also argued that proceedings before the Tribunal are in the nature of summary enquiry and the Tribunal ought to have taken cognizance of the documents available on record.

7. Per contra, learned counsel for driver/ respondent- 3 submitted that the Insurance Company not led any evidence in support of its defence with respect to violation of conditions of Insurance Policy. He further submitted that the Insurance Company even did not produce Insurance Policy and terms and conditions of the Insurance Policy to prove that there was violation of any of the conditions mentioned in the Policy and supported the award passed by learned Claims Tribunal.

8. Looking to the dispute, it will be beneficial to look at the relevant provisions of the Motor Vehicle Act, 1988 and Chhattisgarh Motor Vehicle Rules, 1994 (for short, '1988 Act' and '1994 Rules' respectively).

9. Section 166 of 1988 Act provides for application for compensation. Section 168 provides for award of the Claims Tribunal and Section 169 of 1988 Act provides for procedure and powers of Claims Tribunal.

10. Section 169 of 1988 Act is reproduced here below for ready reference:

> “Section 169. **Procedure and powers of Claims Tribunal.** (1) In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of and matter relevant to the inquiry to assist it in holding the inquiry."

11. Rule 220 of 1994 Rules provides for the application for compensation arising out of an accident. Rule 226 of 1994 Rules provides for obtaining information and documents necessary for award of compensation under Section 140, which is reproduced here below for ready reference:

"226. **Obtaining of information and documents necessary for awarding compensation under Section 140**. The Claims Tribunal shall obtain whatever information and documents which may be found necessary from the police, medical and other authorities and proceed to award the claim whether the parties who were given notice, appear or not, on the appointed date"

12. Rule 231 of 1994 Rules provides for summoning of witnesses, whereas Rule 234 for power of summary examination. Rule 234 is reproduced here below for ready reference:

"Rule 234 **Power of summary examination** (1) The Claims Tribunal during an inspection or at any other time, save at a formal hearing of a case pending before it, may examine summarily any person likely to be able to give information relevant to such case, whether such person has been or is to be called as a witness in the case or not, and whether any or all the parties are present or not.

(2) No oath shall be administered to a person examined under sub-rule (1)

(3) Statements made by person examined under sub-rule (1) if reduced to writing, shall not be signed by the person making the statement, nor shall they, except as hereinafter provided, be incorporated in the record or utilised by the Claims Tribunal for the purpose of arriving at a decision in the case.

(4) If a witness who has been examined under sub-rule (1) makes in evidence any material statement contradicting any statement made by him in such examination and reduced to writing the Claims Tribunal may call his attention to such statement and shall in that case direct that the parties be furnished with the relevant part of such statement for the purpose of examining or cross-examining the witness.

(5) Any statement or part of a statement which is furnished to the parties under sub-rule (4) shall be incorporated in record.

(6) Where a case is settled by agreement between the parties the Claims Tribunal may incorporate in the record any statement under sub-rule (1) and may utilize such statement for the purpose of justifying its acceptance of, or a refusal to accept, the agreement reached at."

13. From perusal of above provisions, it is amply clear that the application filed before learned Claims Tribunal ought to be enquired by it summarily in which very strict procedures of Civil laws are not applicable. It is also the duty of Claims Tribunal to consider each and every document available on record in view of pleadings made by the respective parties. It is not expected from the Claims Tribunal under the provisions of 1988 Act and 1994 Rules to act as spectator but it is also its duty to cull out correctness of facts from the material available on record ie pleadings and other documents which are produced by the parties and available on record.

14. In the case in hand, as per requirements of Rule 220 (3) of 1994 Rules, parties have produced copies of the Insurance Policy as well as registration certificate of offending vehicle. On perusal of Insurance Policy at page-72 of record wherein it is clearly mentioned they type of Policy as 'Kisan Package Policy'. But registration certificate of the tractor bearing registration No.CG 14A 0675 which is offending vehicle and trolley bearing No.CG 14A 0676 are also available on record of Tribunal at page- 76 and 77. Perusal of registration certificate of tractor would show that seating capacity mentioned in the tractor has been shown as only one including driver.

15. Learned Claims Tribunal while passing the impugned award have failed to take note of the documents placed on record in its entirety. The proceedings before the Claims Tribunal are summary proceedings and enquiry is to be conducted by the Tribunal to arrive at a correct finding and to pass appropriate award in the facts and circumstances of the case.

16. At this juncture, learned counsel appearing for the appellant placed reliance on the judgment in the matter of **Oriental Insurance Company Limited Vs Brij Mohan and others** reported in 2007 (3) TAC 20 SC. In this case the accident occurred with a labour travelling in a trolley, attached to the tractor. Paragraph 12 of the said judgment is reproduced here below:

> "12. Interpretation of the contracts of insurance in terms of Section 147 and 149 of the Motor Vehicles Act came up for consideration recently before a Division Bench of this Court in *National Insurance Co.Ltd.Vlaxmi Narain Dhut,* 2007 (4) Scale 36:2007 (2) TAC 398, wherein it was held:

"24. xxxxxxxx

25. xxxxxxxx

It was further observed :

36. xxxxxxxx

37. Francis Bennion in his book "Statutory Interpretation" described "purposive interpretation" as under:

"A purposive construction of an enactment is one which gives effect to the legislative purpose by —

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose, or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose.

38. More often than not, literal interpretation of a statute or a provision of a statute results in absurdity. Therefore, while interpreting statutory provisions, the Courts should keep in mind the objectives or purpose for which statute has been enacted. Justice Frankfurter of US Supreme Court in an article titled as Some Reflections on the Reading of Statutes (47 Columbia Law Reports 527), observed that, "legislation has an aim, it seeks to obviate some mischief, to supply an adequacy, to effect a change of policy, to formulate a plan of Government. That aim, that policy is not drawn, like Nitrogen, out of the air; it is evidenced in the language of the statutes, as read in the light of other external manifestations of purpose."

17. Learned counsel appearing for respondent- 3 also placed reliance on a judgment in the matter of **Sambhu Patel Vs Shatruhan Prasad and others** decided on 05.03.2018 by this Court in MAC-646 of 2012. The case cited by learned counsel are entirely on different facts. In the said case there was a dispute with respect to travelling of deceased in tractor or not and therefore, this judgment cannot be applied to the case in hand on its fact.

18. Property seizure memo of criminal case is filed as Ex.P-4 by the claimants themselves shows that police seized registration book of tractor No.CG14-A-0675 and also the copy of insurance policy issued by appellant Insurance Company.

19. In another case relied by respondent- 3 is **National Insurance Company Limited Vs Smt Triveni Sahu and others** decided on 18.03.2013 by this Court in MAC-160 of 2000, it appears that there was a dispute with respect to the coverage of number of persons under the policy which requires specific evidence and proof.

20. In the instant case, there is evidence available on record that offending vehicle is being used by respondent- 4 but registered owner is respondent- 5, who became *exparte*. From the facts it reveals that respondent- 4 tried to play tactics to avoid its liability. The Court/Tribunal cannot sit and permit such type of mischief played by any of the parties to the proceedings.

21. The facts and evidence adduced by respective parties of present case clearly show the manner in which accident took place. The documents available are not disputed i.e. registration of offending vehicle as well as Insurance Policy are very much available on record because on the basis of said documents owner and insurer were made respective parties. Learned Claims Tribunal not initiated the proceedings as provided under **Section 169** of 1988 Act as well as **Rule 226** of 1994 Rules. When once the documents placed on record is relied upon for some purpose by any of the party, then it is also to be read as it is for further deciding the *lis*.

In this case, copy of registration book is placed on record to show involvement of vehicle and copy of policy is placed on record to say that the vehicle was insured with appellant insurance company. The learned claims Tribunal failed to take note of those documents in the facts of the case.

22. In view of above, in the considered opinion of this Court the impugned award passed by learned Claims Tribunal is not sustainable and is hereby set aside. Matter is remitted back to the Tribunal for passing an award afresh after granting opportunity of hearing to the parties and also to lead further evidence in their support.

23. Records of learned Claims Tribunal be sent forthwith.

24. Looking to the date of accident and year of filing of this appeal, it is expected from learned Claims Tribunal to dispose off the claim petition at the earliest.

Sd/-
(Parth Prateem Sahu)
JUDGE

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