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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 631 of 2014

Bajaj Allianz General Insurance Company Limited, Through Branch Manager, Shivmohan Bhawan, Vidhan Sabha Road, Pandri, Raipur, Tahsil and District Raipur (C.G.)- (Insurance Company of Tractor No.CG05-ZG-1429 & Trolley No.CG04-DA-1003)

---- Appellant

Versus

1. Vimla Bai, Wd/o Late Sanjay Kumar Baghel, aged about 20 years, R/o Kevtara, PO Chicholi, Thana- Kharora, District Raipur (CG) (Claimant/Widow)
2. Mohd. Parvez, S/o Firoz Ali, R/o1-6, Farishta Complex, GE Road, Raipur (CG) [owner of tractor No.CG05-ZG-1429 & Trolley No.CG04-DA-1003]
3. Gariba Das, S/o Sadhuram Baghel, R/o Village Kevtara, PO Chicholi, Thana Kharora, District Raipur (CG) (Claimant/father)
4. Pushpa Bai, W/o Garib Das Baghel, R/o Village Kevtara, PO Chicholi, Thana Kharora, District Raipur (CG) (Claimant/ mother)

---- Respondents

For Appellants	:	Shri Sachin Singh Rajput, Advocate
For Respondent No.3 & 4	:	Shri Bharat Gulabani, Advocate under the authority of Shri Amiyakant Tiwari, Advocate

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Order On Board By Hon. Shri Justice Parth Prateem Sahu

28/6/2019

1. Appellant Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging award dated 4.3.2014 passed by the learned 4th Additional Motor Accident Claims Tribunal, Raipur (for short ‘the Claims Tribunal’) in Claim Case No.281/11 whereby learned Claims Tribunal allowed claim application in part, awarded an amount of Rs.4,17,500/- as compensation along with interest @ 10% and fastened liability upon appellant insurance company to pay compensation.

2. Brief facts of case are that on 21.10.2006 at about 2.30 a.m. in the night one tractor & trolley bearing registration No.CG05-ZG-1429 & CG04-DA-1003 respectively, driven by Sanjay Baghel, turned turtle and driver of said tractor-trolley came under it and succumbed to injuries suffered by him on spot. Matter was reported to concerned police station based on which crime bearing No.281/06 was registered for offence defined under Section 304A of the IPC.

3. On account of death of deceased Sanjay Baghel, claimant/ respondent No.1 herein filed claim application before competent Claims Tribunal claiming Rs.5,10,000/- as compensation on the grounds mentioned therein.

4. Non-applicant No.1, owner of offending tractor-trolley, submitted reply to claim application and pleaded that on the date of accident deceased was engaged by him as 'Driver' on monthly wages of Rs.2100/- for driving offending tractor-trolley. He further pleaded that on the date of accident deceased was possessing valid and effective driving license; at the time of accident stones were being transported in the offending tractor-trolley for the purpose of construction of pump house in agriculture farm house of non-applicant No.1 situated at village Mura, Police Station Kharora, District Raipur. It was also pleaded that at the relevant period offending tractor-trolley was insured with insurance company.

5. Non-applicant No.2-Insurance Company filed its separate reply and denied all adverse pleadings made in claim application. It was pleaded that deceased himself was responsible for accident. Claim application under Section 163A of the Act of 1988 was not maintainable as while driving offending tractor-trolley deceased himself

met with an accident and died. Offending tractor-trolley was insured for the purpose of agriculture but on the date of accident it was being used other than the agriculture purpose i.e. for commercial purpose. On the date of accident driver of offending tractor-trolley was not possessing valid and effective driving license. In these circumstances, the insurance company is not liable to indemnify the insured.

6. On appreciation of pleadings and evidence, the Claims Tribunal partly allowed claim application, awarded compensation of Rs.4,17,500/- and fastened liability upon insurance company by holding that there was no breach of any of the conditions of insurance policy.

7. Learned counsel for appellant Insurance Company vehemently argued that Claims Tribunal erred in not considering that insurance policy purchased by owner of offending tractor-trolley was a 'farmer package policy', and therefore offending vehicle can be used for agriculture purpose only. However, on the date of accident, offending vehicle was being used for other than the purpose for which it was insured. He further argued that even on the date of accident driver of offending vehicle was not possessing valid and effective driving license. Thus there was violation of essential conditions of insurance policy and in such a situation, the Claims Tribunal ought not to have held insurance company liable, jointly and severally, with non-applicant No.2 to satisfy impugned award.

8. On the other hand, learned counsel appearing on behalf of claimant/respondent No.1 supported impugned award and submitted that as deceased driver of offending tractor-trolley comes within category of 'third party', therefore, the award passed by Claims Tribunal cannot

be faulted with. He further submits that Claims Tribunal after considering the fact that owner handed over the offending vehicle to deceased driver after perusing his driving license and testing his ability to drive and that on the date of accident, the offending vehicle was being used for agriculture purpose, fastened liability of making payment of compensation on insurance company. This finding of Claims Tribunal being based on proper appreciation of material and evidence available on record does not call for any interference in exercise of appellate jurisdiction of this Court.

9. I have heard learned counsel for the parties and perused the records.

10. So far as first ground raised by learned counsel for appellant with respect to use of offending tractor-trolley other than the purpose for which it was insured is concerned, perusal of insurance policy (Ex.D-2) reflects that it was a 'farmer package policy' having its validity from 8.11.2005 to 7.11.2006. It is also not in dispute that offending vehicle met with an accident while carrying stone ballast in mines area at village Mura, Police Station Kharora, District Raipur. Owner of offending vehicle has though pleaded in his reply that at the time of accident offending vehicle was loaded with stone ballast required for construction of a pump house in his farm house, but he failed to produce any documentary evidence showing his title over any agriculture field with bore. This apart, non-applicant No.1 failed to bring any document on record showing that he is having agriculture farm house at village Mura where stone ballasts were allegedly being transported for construction of a pump house. Thus, from the material available on record it is clear that on the date of accident offending tractor-trolley was being used

other than the purpose for which it was insured i.e. for commercial purpose instead of agriculture. Perusal of FIR lodged by owner of offending vehicle himself i.e. non-applicant No.1, also shows that the mine where accident took place belong to him

11. In view of facts emerging from records, particularly the fact that non-applicant No.1 failed to prove that vehicle was used for transportation of stone ballast for construction of a pump house in his farm house and contnets of FIR (Ex.P-1), the finding recorded by Claims Tribunal that at the time of accident offending tractor-trolley was being used for agriculture purpose is not sustainable. The Claims Tribunal was required to decide issue with respect to violation of condition of insurance policy on the ground of its use. In the case at hand, the Claims Tribunal has only taken into consideration pleadings made in claim application and evidence of witness examined on behalf of insurance company that a vehicle if insured for agriculture purpose then it can also be used for transporting stones/stone ballast for personal use. The Claims Tribunal wrongly shifted burden on insurance company to prove use of offending vehicle other than the purpose for which it was insured, particularly when owner of offending vehicle failed to prove by producing legally admissible documentary evidence showing existence of his agriculture farm house at village Mura. On the contrary, mines where accident took place has been stated to be of non-applicant No.1.

12. In view of above, finding recorded by Claims Tribunal that there was no violation of conditions of insurance policy on account of use of offending tractor-trolley other than the purpose for which it was insured under

policy (Ex.D-2) is not sustainable and is hereby set aside.

13. So far as second ground raised by appellant that on the date of accident deceased driver of offending vehicle was not possessing valid and effective driving license is concerned, in this regard only material available on record is pleading made by non-applicant No.1 in his reply to claim application that after seeing driving license and testing driving skills of deceased driver, he engaged him as driver of offending tractor-trolley. To prove that deceased driver was holding valid and effective driving license on the date of accident, driving license is required to be produced before Claims Tribunal in order to enable insurance company to get it verified from concerned licensing authority also if required. Until and unless copy of license is placed on record and the same is verified by insurance company, only on the basis of pleadings it cannot be said that at the time of accident deceased driver of offending vehicle was having valid and effective driving license. Records of criminal case also show that copy of driving license was not seized by police during the course of investigation. Owner of offending vehicle was examined as a witness before Claims Tribunal and he in his evidence has categorically admitted that police has seized driving license from the driver and not from him. Ex.P-6 & P-7 are the seizure memo by which the police had seized certain articles. Vide seizure memo (Ex.P-6) the police had seized offending tractor & trolley and vide seizure memo of Ex.P-7, registration papers of offending tractor-trolley were seized. There is no seizure memo showing seizure of driving license. Assistant Sub Inspector N.K. Thkaur (NAW-3) has stated in his examination-in-chief that as on the date of accident

driver of offending vehicle was not possessing any driving license, therefore, no license was seized.

14. Considering the fact that owner of offending vehicle has seen license of deceased driver before engaging him as driver of offending vehicle and further considering documents of criminal case registered under Section 304A of IPC, the Claims Tribunal has held that as the offence for not possessing license has not been registered against deceased driver, therefore, it could not be held that deceased driver was not having valid and driving license on the date of accident and accordingly decided issue of driving license against insurance company. This finding of Claims Tribunal is contrary to law. Fact of possessing license by a person is required to be proved by producing a copy of license on record as evidence. If copy of license is not available then details and particulars of license are to be brought on record, so that it can be verified from concerned licensing authority. In the instant case, neither copy of license nor particulars/details of license has been placed on record. Hence, finding recorded by Claims Tribunal with respect to license is not sustainable and is hereby set aside.

15. In view of above facts that offending vehicle was being used other than the purpose for which it was insured i.e. for commercial purpose in place of agriculture purpose, and even owner of offending tractor-trolley failed to prove by leading cogent and clinching piece of evidence that on the date of accident driver of offending vehicle was possessing valid and effective driving license, the impugned award so far as it relates to fastening of liability upon insurance company is concerned, the same is liable to be set aside and is hereby set aside.

16. In the result, the appeal is allowed and impugned award is modified to the extent that appellant insurance company is exonerated from its liability and respondent No.2 is directed to pay the entire amount of compensation as awarded by Claims Tribunal to the claimant. Rest of the conditions of impugned award shall remain as it is.

17. On respondent No.2's depositing entire amount of compensation, the amount so deposited by insurance company and disbursed to claimant will be adjusted and refunded to insurance company in accordance with law.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-