AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1186 of 2014

- IFFCO Tokio General Insurance Company Limited, Through its Legal Manager, Iffco Tokio General Insurance Company Ltd., 205, 2nd Floor, M.M. Silver Plaza, Ring Road No. 1, Raipur C.G.

----Appellant

Versus

1. Smt. Anti Bai W/o Late Shatrudhan Yadav Aged About 25 Years

2. Abhishek Yadav S/o Late Shatrudhan Yadav Aged About 2 Years

   Respondent No.2 being a minor is represented through her Mother Smt. Anti Bai, wife of late Shri Shatrudhan

3. Smt. Gudli Bai W/o Lakshman Yadav Aged About 60 Years

   All resident of village Lahsunpath Thana Shankargarh, District Sarguja, Chhattisgarh.

4. Budhan Gupta S/o Kewat Prasad Gupta Aged About 40 Years R/o village Bachwar, Post- Shankargarh, Distt. Surguja C.G.

5. Aspesh Kumar Agrawal S/o Om Prakash Agrawal R/o Mohalla- Bajarpara, Post And Thana- Shankargarh, Distt. Surguja C.G.

6. Sanjay Kumar Sao S/o Suresh Sao Aged About 22 Years R/o Mohalla-Bajarpara, Post And Thana- Shankargarh, Distt. Surguja C.G.

---- Respondents

For Appellant	Shri Abyodhay Singh, Advocate on behalf of Shri Amrito Das, Advocate.
For Respondent Nos. 1 to 3	Shri Rishi Sahu, Advocate.
For the respondent nos. 4 to 6	None, though served.

Hon'ble Shri Justice Gamma Chourdiya

Judgment on Board

14/05/2019

1. This appeal is by the Insurance Company/Non-applicant No.1 against the award dated 12.09.2014 passed by the 2nd Additional Motor Accident claims Tribunal, Ambikapur, Surguja, Chhattisgarh, in Claim Case No.169/2013 awarding total compensation of Rs.4,78,000/- with

interest @ 9% per annum from the date of application till realization, fastening liability on the non-applicant No.1/Insurance Company.

2. As per claim petition, on 08.05.2008, deceased Shatrudhan Yadav, aged about 27 years, earning Rs.6,000/- per month as Labour was travelling in tractor bearing no.CG15-A-5953 as a Labour, which was attached with a trolley. The said tractor was being driven by non-applicant No.4 in a rash and negligent manner, as a result of which the vehicle fell into a ditch and Shatrudhan Yadav suffered grievous injuries and died. At the time of accident, the offending vehicle was insured with non-applicant No.1, the tractor was owned by non-applicant No.2 and trolley was owned by non-applicant No.3.

3. On claim petition being filed by the claimants i.e. wife, children and mother of deceased under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.40,86,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

4. Learned counsel appearing for the appellant/Insurance Company submits that as per the claim petition and as per the evidence adduced in the case, indisputably, the deceased – Shatrudhan Yadav was sitting in the tractor as a gratuitous passenger. The appellant/insurance company is neither statutorily liable to cover the risk of gratuitous passenger sitting in the tractor nor the company had undertaken such risk by entering into special contract with the owner of the vehicle and by charging extra premium therefor. Therefore, the Tribunal has certainly erred in fastening the liability to pay compensation upon the appellant/Insurance Company and as such

the award in so far as it relates to fastening the liability upon the appellant deserves to be set aside.

5. On the other hand, learned counsel for the respondent nos. 1 to 3 supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court. However, he submits that if this Court ultimately comes to the conclusion that the Tribunal has wrongly fastened the liability upon Insurance Company, considering the facts and circumstances of the case, order of pay and recover may be passed in this case.

6. I have heard learned counsel for the parties and perused the award impugned including the record of the Tribunal.

7. It is not disputed by both the parties that as per the claim petition and evidence adduced by the claimants including the documents produced before the Court, at the time of accident deceased was sitting in the tractor which was being driven by non-applicant No.4, owned by non-applicants no. 2 and insured with non-applicant No.1. As per the pleading in para 9 of the claim petition, this fact is mentioned that deceased was sitting in the tractor. AW-1 Anti Bai (wife of the deceased) also stated this fact in paras 1 & 2 of her deposition before the Tribunal that deceased was sitting in the tractor and due to rash and negligent driving of the Tractor, the tractor turned turtle and on account of injuries sustained by him in the accident he died. She also states that at the time of accident, deceased was working as a Coolie in the tractor. No any evidence adduced by the respondents against that statement of AW-1 Anti Bai. As per charge sheet Ex.P-5 and FIR

Ex.P-6 the above fact is also proved that at the time of accident deceased was sitting in the tractor.

8. As per Insurance policy, which is a package policy, the appellant/Insurance Company had not undertaken the risk of gratuitous passenger or Coolier/Labour sitting in the tractor by entering into special contract with the owner of the vehicle and by charging extra premium therefor. Admittedly, on the date of accident, the deceased was travelling in the tractor as a gratuitous passenger but no extra premium was taken by the Insurance Company to cover his risk. Thus, no liability of payment of compensation can be fastened upon the appellant/insurance company and the Tribunal has certainly erred in holding it liable for payment of compensation. The above finding recorded by the Tribunal, being not sustainable in law, is liable to be set aside. As per apex court judgment ***Shivraj Vs. Rajendra and another, (2018) 10 SCC 432***, where tractor was insured only for agricultural purposes having capacity to accommodate only one person i.e. driver and the deceased was travelling in it as a passenger, it was held by the Hon'ble Supreme Court that the vehicle being driven in violation of policy conditions, Insurance Company was not liable for the loss or injuries suffered by the deceased or to indemnify owner of the tractor.

In the instant case, in view of the oral and documentary evidence on record including the Insurance policy, sitting capacity in the vehicle and the aforesaid decision of the Hon'ble Apex Court, this Court is of the opinion that the Tribunal was not justified in fastening liability on the non-applicant no. 1/Insurance Company.

9. However, considering the facts and circumstances of the case, the fact that on the date of accident, the offending vehicle was duly insured with the appellant/insurance company, in view of principles of law laid down by the Hon'ble Supreme Court in ***Manuara Khatun and others Vs. Rajesh Kumar Singh and others (2017) 4 SCC 796***, this Court feels it proper to order for “pay and recover” in this case, meaning thereby that the insurance company shall first pay the amount of compensation to the claimants and then recover the same from non-applicants/owner & driver in accordance with law.

10. In the result, the appeal is allowed in part, while exonerating the Insurance Company/non-applicant No.1 of its liability to pay the compensation to the claimants, the same is fastened upon non-applicants No. 2 & 4/owner and driver of the offending vehicle tractor. However, as observed as, non-applicant No.1/Insurance Company is directed to pay the entire amount of compensation to the claimants and then thereafter recover the same from the non-applicants No. 2 & 4 in accordance with law. The award impugned stands modified to the above extent. However, rest of the conditions of the impugned award shall remain intact.

Sd/-
Gautam Chourdiya
Judge

Akhilesh