

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1036 of 2012

The National Insurance Co. Ltd. Gumla, Distt. Gumla Jharkhand Thru-Auth. Sign. Nati.Insu. Com.Ltd. Divisional Office- B-1 Taha Complex, Ring Road-2, Priyadarshani Nagar, Bilaspur, Chhattisgarh.

---- Appellant

Versus

1. Smt. Lalmuni Bai Wd/o Late Ramesh Ram Aged About 20 Years
2. Kumari Radha Bai D/o Late Ramesh Ram Aged About 2 Years Thru- Natural Guardian- Mother- Smt. Lalmuni Bai
3. Tutlu Ram S/o Late Godom Aged About 50 Years
4. Smt. Keshav Bai W/o Tutlu Ram Aged About 45 Years
5. Sevanti Bai D/o Tutlu Ram Aged About 17 Years Thru- Natural Guardian Mother- Smt. Keshav Bai
All R/o Talasili, P.S. And Tah. Manora, Distt. Jashpur C.G
6. Suresh Ram @ Chauran Ram S/o Tulu Ram Aged About 55 Years Beldih, P.S. Aasta, Distt. Jashpur C.G
7. Bhagwat Narayan Singh S/o Late Umesh Chandra Singh Aged About 51 Years Sanna Road, Jashpur, P.S. And Tah. And Distt. Jashpur C.G

---- Respondents

For Appellant	: Shri BN Nande, Advocate.
For Respondents-6 and 7	: Shri SS Painkra, Advocate on behalf of Shri AK Prasad, Advocate
For other private Respondents	: None appears.

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

18.01.2019

1. By this appeal, the appellant-Insurance Company has assailed the impugned award dated 18.07.2012 passed by the learned Motor Accident Claims Tribunal, Jashpur CG (for short, 'the Tribunal') in Claim Case No.19 of 2010 wherein learned Claims Tribunal has partly allowed the claim application filed by the appellants/claimants and awarded total sum of Rs.4,42,000/- towards compensation.

2. Brief facts for disposal of this appeal are that on 07.07.2008 respondent- 6 was driving tractor bearing No.CG 14 A-2288 and returning to the house of its owner after ploughing agricultural fields. At that relevant time, the tractor met with an accident and one Ramesh Ram, son of respondents- 3 and 4 died as the tractor turned turtle. On account of his death, claimants who are wife, children, parents and sister of the deceased have filed claim application against the non-applicants seeking compensation of Rs.15,40,000/- in total on all heads.

3. Respondent Nos. 6 & 7 who are driver and owner of the ill-fated vehicle submitted reply to the claim application and denied all the material pleadings made in the application. They have also pleaded that the claim amount was on higher side. Non-applicant 3, appellant/Insurance Company herein submitted its separate reply and stated that on the date of accident, deceased- Ramesh Ram who was sitting on the tractor engine, came under the tractor and died, therefore, there was violation of conditions of Insurance Policy and the Insurance Company is not liable to indemnify the claim amount.

4. Learned Claims Tribunal while considering the pleadings and evidence available on record allowed the claim application and held that there was no violation of conditions of policy as the deceased was not travelling or sitting over the tractor engine at the time of accident but he was helping to take out the tractor engine from the sticky mud along-with other persons present on spot. It is also held that the deceased was third party and not an occupant of the offending vehicle.

5. Learned counsel for the appellant would submit that father of the deceased had lodged FIR (Ex.P/2) in which it has been mentioned that at the time of ploughing the agricultural fields, deceased Ramesh Ram was sitting over the tractor engine and due to rash and negligent driving the tractor engine turned turtle. At that time as Ramesh Ram was sitting over the tractor, he came under the vehicle and died in the said accident. As there is only one seating capacity including driver in tractor engine, there is violation of conditions of insurance policy. He further submitted that this is a case where father of the deceased himself lodged FIR and further submitted that once any document is relied upon by the claimants and made part of the records, then, they cannot be permitted to turn around from the contents of the document. Therefore, learned Claims Tribunal committed an error in not considering the proposition as well as the document Ex.P/2 in its entirety.

6. Learned counsel for the appellant placed reliance on two judgments, one of which is rendered by Hon'ble Supreme Court in the matter of **National Insurance Company Limited Vs Rattani and others** reported in **2009(1) TAC 420 SC** and another is passed by this Court in the matter of **United India Insurance Company Limited Vs Chouvaram and others** reported in **2009 (1) TAC 192 (Chhattis)**, to support his contentions.

7. Per contra learned counsel appearing for respondents- 6 and 7 driver and owner of the offending vehicle submitted that there is no material and evidence available on record to come to the conclusion that deceased Ramesh Ram was sitting on the offending vehicle at the time of

accident. Further it has been submitted that the evidence available on record is otherwise. He further submitted that there is a clear statement made by the witnesses examined before learned Claims Tribunal that at the time of accident deceased Ramesh Ram along with other persons was helping to push out the tractor from sticky mud and at that relevant time, the tractor turned turtle when the driver tried to drive it ahead with high accelerator.

8. Heard learned counsel for the parties and perused the records with utmost care. To appreciate the argument raised by learned counsel for the appellant, perused the document Ex.P/2 which is a copy of FIR that has been lodged by father of deceased Ramesh Ram, namely Tutlu Ram who has been examined before learned Claims Tribunals as AW-1. From its perusal it reveals that on 07.07.2008 tractor of Bhagwat Narayan Singh was being driven by Suresh Ram for ploughing agricultural fields; at that time deceased Ramesh Ram was sitting. If we consider the said fact narrated in the FIR as it is, it nowhere clearly and specifically says that at the time of accident, deceased was sitting over the tractor but it can also be assumed that the deceased was sitting in the fields or on the boundary of the fields. Even otherwise, Tutlu Ram who lodged FIR though not an eyewitness, he is uneducated person, resident of interior village of tribal area and put his thumb impression on FIR. He lodged FIR on the basis of information received by him from other persons who were said to be present on the spot.

9. The evidence of other witnesses AW-2 Dilip Kujur and Aw-3 Francis Khalkho also clearly mentions that the deceased was not sitting on tractor

but he was helping with other persons to push out the tractor to take it out from sticky mud. The evidence available on record is very specific and clear to this effect that the deceased was not sitting on tractor.

10. The proposition of law as laid down by the Hon'ble Supreme Court in the matter of **Rattani and others** (*supra*) cannot be disputed but at the same time, the application of proposition of such law made by the superior Courts is to be made applicable looking to the facts and circumstances of each case.

11. In the matter of **Rattani and others** (*supra*), the FIR on record was lodged clearly mentioning therein that the deceased and other injured persons were members of marriage party who were travelling in the offending vehicle. The other case which is relied on by the counsel for the appellant is **Chouvaram and others** (*supra*), wherein the maker of FIR is the person who hired the vehicle and in the FIR it has been categorically stated that the vehicle was hired for marriage purpose and the deceased was returning from marriage at the time of accident.

12. Reverting back to the facts of present case, if we consider the entire material available on record, there is no specific mention anywhere that at the time of accident, the deceased was sitting over the tractor but the material and evidence that are available on record say that the deceased was helping to drive out the vehicle from sticky mud by pushing it and not travelling in the tractor. In view of specific oral evidence available on record then one line of FIR which is also not clear cannot be taken as

admissible piece of evidence particularly when the author of FIR was not the eye witness to the incident and is an illiterate person.

13. In view of above discussion, the facts of present case are distinguishable from the facts of cases relied upon by learned counsel for the appellant. Except this ground no other ground has been raised by learned counsel for the appellant. The evidence of AW-1 Tutlu Ram, father of deceased, AW-2 Dileep Kujur and AW-3 Francis Khalco makes it amply clear that the accident occurred when the deceased was helping to push the vehicle from sticky mud along with other persons and nothing incriminating has come in their cross examination.

14. Looking to the above, I am of the considered view that the Claims Tribunal has not committed any error holding that there is no violation of conditions of insurance policy and fastening the liability on the Insurance Company. The appeal is devoid of merit. Accordingly, it is liable to be dismissed and is hereby dismissed.

15. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE