

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 154 of 2014

1. Poonam Sahu, S/o Latkhor Sahu Aged About 23 Years R/o Devdongar, Post- Dumardih, P.S. Ghumka, Tahsil and District Rajnandgaon (CG) (owner of vehicle tractor No.CG07-D-1456)
2. Ashok Kumar Agrawal S/o Nathmal Agrawal Aged About 37 Years R/o Near Devanand Jain School, Vardhman Nagar, Rajnandgaon, Tahsil and District Rajnandgaon (CG)
(Owner of vehicle tractor No.CG08-P-1430)

---- Appellants

Versus

1. Krishram Netam, S/o Rajau Ram Netam Aged About 45 Years
2. Smt. Anarbai W/o Krishram Netam Aged About 42 Years
3. Rakesh S/o Krishram Netam Aged About 16 Years
4. Ku. Parwati D/o Krishram Netam Aged About 9 Years
5. Yashwant S/o Krishram Netam Aged About 7 Years
No.3,4 & 5 minor through natural guardian - Mother Smt. Anarbai, w/o Krishram Netam, aged about 42 years, all caste Gond, R/o Devdongar, P.S. Ghumka, Tahsil & District Rajnandgaon (C.G.)
6. The Oriental Insurance Company Limited, through Branch Manager, Near Railway Station, Rajnandgaon, District Rajnandgaon (C.G.)

---- Respondents

For Appellants	:	Mr. B.P. Singh, Advocate
For Respondent No.1 to 5	:	Mr. Rakesh Thakur, Advocate
For Respondent No.6	:	Mr. Raj Awasthi, Advocate

Order On Board By Hon. Mr. Justice Parth Prateem Sahu

19/06/2019

1. Appellants - owner of tractor-trolley respectively, have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging award dated 30.10.2013 passed by learned 2nd Additional Motor Accident Claims Tribunal, Rajnandgaon (for short 'the Claims Tribunal') in Claim Case No.112/12 whereby learned Claims Tribunal has allowed claim application in part, awarded total sum of Rs.1,88,000/- with interest @ 6% p.a. to claimants and fastened liability upon appellants herein to satisfy the award.

2. Facts of the case in nutshell are that on 5.9.2011 at about 1.30 p.m. Poonam Kumar Netam was unloading stock boulder in crusher machine from tractor-trolley bearing registration No.CG07-D-1456 & CG08-P-1430 respectively and in that process, one boulder reverted and fell down upon tractor as a result of which said Poonam Kumar Netam fell down from pathway to crusher machine along with tractor. In aforementioned accident, driver came under tractor, suffered grievous injuries and succumbed to those injuries on spot. Matter was reported to the Police Station Ghumka based on which offence under Section 304A of IPC was registered against said Poonam Kumar Netam. However, considering the fact said Poonam Kumar Netam died due to injuries suffered by him in said accident, therefore, closure report was filed by Police Station Ghumka before competent Court.
3. Claimants, who are parents and siblings of deceased Poonam, filed claim application seeking compensation of Rs.15,44,400/- along with interest against non-applicants therein.
4. Non-applicant No.1 & 2, owners of tractor-trolley respectively, filed reply to claim application denying all adverse pleadings made therein. They pleaded that deceased Poonam was employed with non-applicant No.1 and on the date of accident he was possessing learner's license to drive tractor-trolley. They further pleaded that deceased Poonam was paid salary of Rs.2,000/- per month. They further pleaded that at the relevant period, tractor-trolley were insured with non-applicant No.3, therefore, insurance company would be liable to pay amount of compensation, if any awarded by Claims Tribunal.
5. Non-applicant No.3- Insurance Company submitted its separate reply and denied all adverse pleadings made in claim application. It was pleaded that tractor-trolley in question were insured for agricultural and forestry purpose, but at the time of accident it was used for other than the purpose for which it was insured. Further, on the date of accident deceased driver was not possessing valid & effective driving license. Thus, there was violation of condition of insurance policy and therefore insurance company is not liable to indemnify insured.

6. On appreciation of pleadings and evidence placed on record by respective parties, the Claims Tribunal held that accident took place due to falling of one boulder upon tractor which resulted in death of deceased Poonam and awarded total amount of Rs.1,88,000/- as compensation. It was further held that on the date of accident, the tractor-trolley was being used in violation of condition of insurance policy as at the time of accident driver of tractor-trolley was not holding valid and effective driving license and that the tractor-trolley were being used for other than the purpose for which it was insured. On the basis of aforesaid findings, the Claims Tribunal exonerated insurance company from its liability and held non-applicants No.1 & 2/appellants herein liable for payment of amount of compensation awarded to claimants.
7. Learned counsel for appellants submits that the Claims Tribunal erred in holding that at the time of accident deceased driver of offending vehicle was not possessing valid and effective driving license. He further submits that document Ex.D-1 issued by concerned RTO office contains particulars of driving license issued to deceased driver and according to which, license bearing No.CG0820110006519 has been issued in favour of deceased driver on 7.9.2011 authorizing him to drive motorcycle with gear & light motor vehicles and the same was valid upto 5.9.2031. He further submits that details mentioned in Ex.D-1 are with respect to permanent license issued in favour of deceased Poonam on the basis of learner's license issued to him six month's prior to issuance of permanent license. He further submits that shortly after issuance of learner's license, deceased Poonam submitted an application before the competent authority for issuance of permanent license and based on which permanent license was issued in the name of deceased Poonam, as is evident from Ex.D-1. Thus, the finding of Claims Tribunal that on the date of accident deceased driver was not holding valid and effective driving license is liable to be set aside.
8. Learned counsel for respondent Nos.1 to 5 supported the impugned award passed by Claims Tribunal.
9. Learned counsel for respondent No.6 Insurance Company submits

that the Claims Tribunal has not exonerated insurance company only on the ground that driver of offending vehicle was not holding valid and effective driving license but also on account of use of tractor-trolley for other than the purpose for which it was insured vide Ex.D-2 i.e. commercial use.

10. I have learned counsel for the parties and perused the records.
11. Since decision on the point as to whether at the time of accident tractor-trolley in question was being used for the purpose other than agricultural and forestry goes to the root of matter, this Court is of the opinion that this question should be decided first.
12. A glance of insurance policy (Ex.D-2) reveals that it contains a clause relating to 'Limitation as to use' and according to which, the policy covers use only for agricultural and forestry purposes and not for hire or reward or for racing pace making reliability trial or speed testing etc. The claimants and owners of tractor-trolley both have specifically pleaded in their pleadings that at the time of accident tractor-trolley was engaged in unloading of stock boulders in crusher machine. Thus, it is manifest that at the time of accident, tractor-trolley in question was used for other than the purpose for which it was insured i.e. agricultural and forestry purposes and thereby owners of tractor-trolley breached essential condition of insurance policy. This being the position, this Court is of the opinion that the Claims Tribunal was perfectly justified in exonerating insurance company from its liability.
13. Since it is not in dispute that use of offending vehicle was for commercial purpose, therefore, insurance company is not liable for payment of any amount of compensation on account of use of offending vehicle in breach of condition of insurance policy.
14. Section 8 of the Act of 1988 provides for grant of learner's license. Learner's license is issued in Form-3 appended to the Central Motor Vehicles Rules, 1989 (for short 'the Rules of 1989'). This Form contains a condition that holder of license is authorized to drive throughout India as a learner subject to provisions of Rule 3 of the Rules of 1989. Rule 3 of the Rules of 1989 is reproduced herein

below for ready reference;-

“3.General.—The provisions of sub-section (1) of section 3 shall not apply to a person while receiving instructions or gaining experience in driving with the object of presenting himself for a test of competence to drive, so long as—

(a) such person is the holder of an effective learner's licence issued to him in Form 3 to drive the vehicle;

(b) such person is accompanied by an instructor holding an effective driving License to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle; and

(c) there is painted, in the front and the rear of the vehicle or on a plate or card affixed to the front and the rear, the letter "L" in red on a white background as under;...”

15. A bare reading of Rule 3 quoted above makes it clear that holder of learner's license can drive vehicle only when he is accompanied by instructor holding an effective license to drive vehicle and letter 'L' is printed in the front and rear side of vehicle. The aforementioned conditions are mandatory in nature.

16. In the case at hand, admittedly the driver of offending vehicle was possessing learner's license but he was driving offending vehicle in contravention of mandatory provisions of Rule 3 of the Rules of 1989. In other words, there was total non-compliance of conditions mentioned in Clause (b) & (c) of Rule 3 of the Rules of 1989, which amounts to violation of conditions of insurance company.

17. In view of above discussions, facts and evidence on record, I am of the considered view that Claims Tribunal has not committed any illegality or infirmity in exonerating insurance company from its liability to indemnify insured. The appeal being sans merit is liable to be dismissed and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/