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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 537 of 2014

- The United India Insurance Co. Ltd. Through Branch Manager, Branch Office- Brambh Road, Ambikapur, Distt. Surguja C.G.

---- Appellant

Versus

1. Smt. Navrangi W/o Late Maheshwar Aged About 23 Years
2. Rakesh Kumar S/o Late Maheshwar Aged About 5 Years Minor, Caste Kunwar, Respondent No.2 is under guardianship of mother named Smt. Navrangi.
3. Duggi S/o Thirku Aged About 70 Years, Caste – Kunwar,

   All are resident of Village Selra, Police Station – Lakhanpur, Distt. Sarjuga (CG)
4. Satish Agrawal S/o Chhabi Das Agrawal Aged About 35 Years R/o Village- Lakhanpur, Bazar Dand, P.S. And Tah. Lakhanpur, Distt. Surguja C.G.
5. Mahesh @ Chandu Bargha S/o Vifan Bargha Aged About 30 Years R/o Village And Post- Jamgala, Thana- Lakhanpur, Distt. Surguja C.G.

---- Respondents

For Appellant	:	Smt. Chitra Shrivastava, Advocate.
For Respondents	:	None.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

01/02/2019:

This appeal is by the insurance company against the award 29.3.2014 passed by First Additional Motor Accident Claims Tribunal, Ambikapur, Distt. Sarguja (CG) in Claim Case No. 193/2011 awarding total compensation of 3.85 lacs with interest @ 9% per annum from the date of application till realization, fastening liability on the non-applicant

No.3/insurance company jointly and severally along with non-applicants No. 1 & 2/owner & driver.

02. As per claim petition, on 17.11.2010 non-applicant No.2/Mahesh @ Chandu by driving tractor bearing No. CG 15A 2791 attached with trolley bearing No. CG 15A 2792, owned by non-applicant No.1 Satish Agrawal and insured with non-applicant No.3 United India Insurance Co. Ltd, in a rash and negligent manner, dashed Maheshwar, as a result of which Maheshwar suffered grievous injuries and died during treatment in the hospital on 18.11.2010. Crime was registered against non-applicant No.2/driver of the offending vehicle by the police.

03. On claim petition being filed by the claimants under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

04. Learned counsel for the appellant/insurance company submits that the Tribunal has wrongly fastened liability upon the insurance company because as per charge sheet filed against non-applicant No.2/driver and the FIR, which has been produced and proved by the claimants, it is evident that the deceased was travelling in the tractor as a passenger, due to rash and negligent driving of the tractor by non-applicant No.2 the vehicle got uncontrolled and dashed against a tree and the deceased fell down from the vehicle. In this case, no premium was taken by the insurance company for carrying passenger in the tractor. Further, the vehicle was being used for commercial purpose and therefore, on account of there being breach of policy conditions, the insurance company is not liable to pay compensation to the claimants.

05. Heard learned counsel for the appellant and perused the material available on record.

06. In their claim petition under Section 166 of the Motor Vehicles Act, the claimants have pleaded that deceased Maheshwar died on 18.11.2010 during treatment for the injuries suffered by him in the accident caused on 17.11.2010 due to rash and negligent driving of the offending vehicle by non-applicant No.2. From the record it is seen that

Govind Prasad also suffered injuries in this accident, he lodged FIR (Ex.P/2). Govind Prasad is an eyewitness to the accident, he has been examined by the claimants as AW-2 and he states in cross-examination in para-2 of his evidence that on the date of accident while he along with deceased Maheshwar were returning on foot, they were dashed by the offending vehicle, information about the said accident was conveyed by him to wife of the deceased and the villagers. Statement of owner of the offending vehicle also corroborates the evidence of AW-2 and the pleadings of the claimants.

07. Though AW-2 Govind Prasad, lodger of FIR (Ex.P/2), has stated in the FIR that the deceased was sitting in the tractor when the accident occurred, however, before the Tribunal he has stated on oath that at the time of accident the deceased was on foot. FIR is not a substantive piece of evidence and as such it cannot be placed on pedestal higher than the statement made before the claims Tribunal on oath. {***Oriental Insurance Co. Ltd. Vs. Smt. Kamli and others, 2010(2) CGLJ 1 (MP)***}. Thus, considering the pleadings of the claimants, evidence NAW-1 Satish Agrawal, owner of the vehicle and particularly the fact that no contrary evidence has been adduced by the insurance company, there is no reason to disbelieve the statement of AW-2 Govind Prasad. Further, no evidence whatsoever has been adduced by the insurance company on the point of use of the offending vehicle for commercial purpose.

08. In the result, the appeal filed by the insurance company being without any substance is liable to be dismissed and is, accordingly, dismissed.

Sd/

(Gautam Chourdiya)
Judge

Khan