AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 788 of 2014

1. HDFC Ergo General Insurance Company Limited, through Branch Manager Branch Office, 2nd Floor, DM Tower, New Palasiya Road, Racecode Road, Indore, Tah. & Dist. Indore M.P. Through- Manager, Devendra Nagar, Road, Police Station, Devendra Nagar, Civil & Revenue Dist. Raipur C.G.

   (Insurer of Vehicle Tractor No. CG 10 D 0281).

---- Appellant

Versus

1. Smt. Savitri Singh Thakur aged 28 years W/o Late Sukhnandan Singh Thakur,
2. Ku. Udita Singh Thakur aged 2 years (Minor) D/o Late Sukhnandan Singh Thakur,
3. Vinod Singh Thakur aged 16 days (minor) S/o Late Sukhnandan Singh Thakur

   Respondent No. 2 and 3 Minor through their mother Smt. Savitri Singh Thakur. All R/o Bablu Thakur Chall, Beside SBT College, Kududand, Police Station Civil Line, Civil and Revenue Dist. Bilaspur C.G. (Claimants)s
4. Phool Singh aged about 65 years, S/o Late Jagat Singh, R/o Bhathli Khurd, Police Station Lalpur, Civil & Revenue Dist. Mungeli (owner of Vehicle tractor No. CG10 D0281).

---- Respondents

For Appellant	: Shri Rohitashav Singh on behalf of Shri N. K. Thakur, Advocate.
For Respondent No. 1	: Shri Anil Gulati, Advocate
For Respondent No. 4.	: None

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

08/02/2019

(1) This appeal is by the appellant/ HDFC Ergo General Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 against the award dated 06.05.2014 passed by the 3rd Additional Motor Accident Claims Tribunal, Bilaspur (C.G.) in Claim Case No.17/2013 awarding total compensation of Rs. 4,18,000/- alongwith interest @ 6% per annum from the date of filing of claim petition, till its actual payment, fastening liability on the appellant/ Insurance Company as it could not establish the violation of policy condition.

(2) Facts of the case leading to filing of the claim petition are that when on the date of accident i.e. 14.01.2013 the deceased namely Sukhnandan Singh was driving the Tractor bearing registration No. CG 10 D/0281 as he was engaged for plugging the germ, the said tractor turned turtle, as a result of which, he sustained grievous injuries and when he was taken to the hospital, during treatment he succumbed to these injuries. At the time of accident, deceased was earning Rs. 3,300/-per month by working as Driver under the employment of his father i.e. non-applicant No.1.

(3) Learned counsel appearing for the appellant/Insurance Company submits that the claim petition as framed and filed before the Claims Tribunal under Section 163-A of the Motor Vehicles Act, 1988 was not maintainable and, thus, the Claims Tribunal has erred in awarding compensation of Rs.4,18,000/- in favour the claimants and wrongly fastened the liability to pay compensation to the claimants. He further submits that deceased was not under the employment of non-applicant No. 1- Phool Singh and was not the third party and he steps into the shoes of the owner of the offending vehicle;

and furthermore, the deceased did not have valid and effective driving licence to drive the offending vehicle at the time of accident and, therefore, appellant/Insurance Company is not liable to pay compensation to the claimants

(4) Learned counsel for the respondent No.1/claimant, while opposing the contention raised by the counsel for the appellant/Insurance Company, would submit that at the relevant point of time, the deceased was under the employment of respondent No. 1 and earning Rs. 3,300/- per month, the said fact is not controverted by adducing any oral or documentary evidence by the Insurance Company. He also submits that as per insurance policy, the premium of Rs. 50/- was taken by the Insurance Company for the paid driver and/or conductor and/or cleaner, therefore, the Insurance Company can not be exonerated from its liability to pay compensation to the claimants and the learned Tribunal rightly fastened the liability upon it.

(5) I have heard learned counsel appearing for the parties and perused the impugned award including record of the Claims Tribunal.

(6) It is not disputed by both the parties that the accident occurred due to tractor's turned turtle. Further, learned counsel for the appellant/Insurance Company pleaded that at the time of accident, the deceased was not having valid & effective driving licence but this fact is not proved by submitting any oral or documentary evidence on behalf of Insurance Company. It is not in dispute that Insurance Company had taken premium of Rs. 50/- for covering the risk of paid driver/or conductor/or cleaner. In this case, admittedly, the deceased was driving the vehicle in question at the time of accident and the appellant/Insurance Company has failed to prove that the deceased was not under the employment of the owner at the time of accident and the statement in this regard by the wife was unrebuted and uncontroverted by the Insurance

Company, therefore, in the opinion of this Court the learned counsel has rightly fastened the liability on the Insurance Company to pay compensation to the claimants.

(7) In view of foregoing, the appeal filed by the appellant/Insurance Company, being devoid of merit, is liable to be and is hereby dismissed.

-Sd-
Gautam Chourdiya
Judge

Amita