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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No.1122 of 2019

Branch Manager IFFCO TOKIO General Insurance Company Ltd., Gauri Shankar Mandir Road, District Raigarh. (Insurer of Tractor & Trollery CG 14 ME 2176 And CG 14 A 0259).

---- Appellant

Versus

1. Smt. Damini Gilahre, W/o Late Nageshwar Kumar Gilhare, Aged About 26 Years, R/o Kasaridih Gurughasidas Ward No. 44, Tahsil Durg, District Durg, Chhattisgarh (Claimant).

2. Dimpal Gilahre, D/o Late Nageshwar Kumar Gilahare, Aged About 5 Years, Through Legal Guardian Mother Damini Gilahre, R/o Kasaridih Gurughasidas Ward No. 44, Tahsil Durg, District Durg, Chhattisgarh (Claimant No.2, Daughter of deceased).

3. Ritika Gilahare, D/o Late Nageshwar Kumar Gilahare, Aged About 2 Years Through Legal Guardian Mother Damini Gilahre, R/o Kasaridih Gurughasidas Ward No. 44, Tahsil Durg, District Durg, Chhattisgarh (Claimant No.3, Daughter of deceased).

4. Payariram Gilahare, D/o Late Chaituram, Aged About 66 Years, R/o Village Kurra, Post Patewa Abhanpur, Tahsil Abhanpur, District Raipur Chhattisgarh (Claimant No.4 Father of Deceased).

5. Smt. Jhunabai Gilahare, W/o Payariram Gilahare, Aged About 60 Years, R/o Village Kurra, Post Patewa Abhanpur, Tahsil Abhanpur, District Raipur Chhattisgarh (Claimant No.5 Mother of Deceased).

6. Hemant Kumar Sahu, S/o Gautam Ram Sahu, Aged About 47 Years, R/o Village Tokro, Thana Abhanpur, District Raipur, Chhattisgarh (Respondent No. 1, Driver of Bus No. CG 06 J 2244).

7. Mo. Arsad Raza Changal, S/o Late Mo. Yusuff Changal, Aged About 34 Years, R/o Near to Railway Station, Thana Gobra, Nayapara, District Raipur, Chhattisgarh (Respondent No. 2 Owner of Trolley).

---- Respondents

For Appellant	:	Shri Vaibhav Shukla, Advocate.
For Respondents	:	None.

Hon'ble Shri Justice Sanjay Agrawal

Award On Board

26.08.2019

1. This Miscellaneous Appeal has been preferred by the Non-Applicant No.3/IFFCO TOKIO General Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') questioning the legality and propriety of the award dated 23.03.2019 passed by the 2nd Additional Motor Accident Claims Tribunal, Durg (C.G.) (for short 'the Claims Tribunal') in Claim Case No.396/2017, whereby, the learned Claims Tribunal while allowing the claim in part has awarded the total amount of compensation to the tune of Rs.16,76,500/- with 7% interest per annum from the date of filing of the claim petition till its realization while fastening the liability upon the Insurance Company. The parties to this appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated the facts of the case are that on 10.04.2017 at 11:30 AM deceased Nageshwar Kumar Gilhare was going to Kawardha Ahir from Nayapara by the offending vehicle (Bus)

bearing its Registration No. CG-06-J-2244, owned by Non-Applicant No.2 namely, Mohammad Arsad Raza Changal, insured with Non-Applicant No.3/Insurance Company. It was being driven rashly and negligently by its driver namely, Hemant Kumar Sahu, as a result of which, he lost his control near the village Bemata, resulting into the sad demise of one Smt. Barkat Chouhan and Nageshwar Kumar Gilhare, who were expired on the spot.

3. On account of the aforesaid accident, the claimants being legal representatives of deceased Nageshwar Kumar, instituted a claim petition enumerated under Section 166 of the Act of 1988, alleging *inter alia* that deceased, who was a conductor by profession used to earn Rs.9,000/- per month and a sum of Rs.200/- as a daily allowance, and therefore, total amount of compensation of Rs.54,50,000/- has been claimed on various heads.

4. Non-Applicant Nos.1 & 2, the driver and owner of the vehicle in question while disputing the monthly income of the deceased contested the claim on the ground that the alleged accident has not occurred with the said vehicle. According to them, the vehicle in question was insured with the Non-Applicant No.3/Insurance Company, therefore, in case of any liability being fastened, the same could be indemnified by Non-Applicant No.3/Insurance Company.

5. The Non-Applicant No.3/Insurance Company while disputing the income of the deceased contested the claim mainly on the ground that the alleged accident was not occurred due to the rashness and negligent driving of its driver. It is pleaded further

that since the vehicle in question 'Bus' was being used for carrying passengers more than its capacity and the driver of it was not holding the effective and valid driving licence, therefore, it was being used in violation of the insurance policy. The Insurance Company is, therefore, entitled to be exonerated from its liability.

6. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 10.04.2017 at 11:30 AM due to the rashness and negligent driving of its driver, resulting into the sad demise of the said Nageshwar Kumar Gilhare and one Smt. Barkat Chouhan. It held further that the vehicle in question was not being used in violation of the insurance policy and that by considering the monthly income of the deceased at Rs.7,500/- and by applying multiplier of 17 awarded total amount of compensation to the tune of Rs.16,76,500/- with 7% interest per annum from the date of filing of the claim petition till its realization while fastening the liability upon the Insurance Company.

7. Being aggrieved, the Non-Applicant No.3/Insurance Company (Insurer) has preferred this appeal. Learned counsel for the Appellant submits that the award impugned as passed by the Claims Tribunal is apparently contrary to law. It is contended that at the relevant time, the vehicle in question was being used for carrying passengers more than its capacity and was being used by the driver without holding the effective and valid driving licence. However, without considering these material facts in its proper manner, the Claims Tribunal has committed an illegality in

fastening the liability upon the Insurance Company. The award impugned is, therefore, liable to be set aside.

8. I have heard learned counsel for the Appellant and perused the entire papers annexed with this memo of appeal carefully.

9. The main contention of the appellant herein is that the vehicle in question was being used in violation of the policy, and therefore, no liability as such could be fastened upon it. The burden to establish the said fact was, therefore, upon the Insurance Company. However, no evidence was adduced in this regard. In absence thereof, it is difficult to hold that the vehicle in question was being used in violation of the insurance policy, as contented by the appellant.

10. Consequently, I do not find any substance in this appeal. The appeal being devoid of merit, is hereby dismissed at admission stage itself. No order as to costs.

Sd/-
(**Sanjay Agrawal**)
Judge

Deepti Jha