AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 500 of 2014

- IFFCO Tokio General Insurance Co. Ltd. 3rd Floor, Shop No. 345-347 Ganga Shopping, G.E. Road, Raipur, Tahsil And Distt. Raipur C.G.

---Appellant

Versus

1. Purshottam S/o Late Shri Shankar Fekar Aged About 19 Years
2. Smt. Nandini Bai W/o Late Shankar Fekar Aged About 36 Years
3. Pushpa D/o Late Shankar Fekar Aged About 21 Years
4. Kumari Durga D/o Late Shankar Fekar Aged About 16 Years
5. Kumari Saraswati D/o Late Shankar Fekar Aged About 14 Years
6. Kumari Bhojkumari D/o Late Shankar Fekar Aged About 11 Years
7. Ramavtar S/o Late Shankar Fekar Aged About 7 Years

   Respondent Nos. 4 to 7 being Minors, through their natural guardian mother Smt. Nandini Bai, wife of Late Shri Shankar Fekar, aged about 36 years,

   All are R/o Village Chherkapur, Thana- Palari, Distt. Baloda Bazar-Bhatapara C.G.

8. Naru @ Naresh Sahu S/o Faguvaram Aged About 48 Years R/o Chherkapur, P.S. Palari, Distt. Baloda Bazar-Bhatapara C.G.
9. Fanduram Sahu S/o Faguvaram Sahu Aged About 50 Years R/o Chherkapur, P.S. Palari, Distt. Baloda Bazar-Bhatapara C.G.

---- Respondents

For Appellant	Shri Amrito Das, Advocate.
For Respondent No.1 to 7	Shri C.K. Sahu, Advocate.
For Respondent Nos.8 & 9	Ms. Uma Sahi, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board

06/03/2019

1. This appeal is by the Insurance Company/non-applicant no.3 against the award dated 20.12.2013 passed by the Motor Accident Claims Tribunal, Balodabazar, District Balodabazar, C.G. in Claim Case No.52/2013 awarding total compensation of Rs.4,22,200/- with interest @ 6% 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.
2. As per claim petition, on 16.11.2012 deceased Shankar, aged about 42 years, earning Rs.10,000/- by doing Agriculture Work, Labour and pissiculture, died in the motor vehicular accident caused due to rash and negligent driving of Tractor bearing no.CG04-DT-2696 and Trolley bearing no.CG04-DT-2697 by non-applicant No. 1. At the time of accident, the offending vehicle was owned by non-applicant no.2 and insured with non-applicant no.3.

3. On claim petition being filed by the claimants i.e. Wife and Children of deceased under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.28,92,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

4. Learned counsel for the appellant submits that the Tribunal has wrongly fastened the liability on the Insurance Company

as on the date of accident deceased was sitting in the tractor-trolley as gratuitous passenger whereas there is no sitting capacity in the vehicle. Vehicle is used for non-agricultural purpose for the transport of fishing seeds and the appellant/insurance company is neither statutorily liable to cover the risk of passengers sitting in the vehicle nor has taken any premium for covering risk of such persons by entering into special contract with the owner of the vehicle. Therefore, on the face of record, the Tribunal has fallen in error in fastening the liability of payment of compensation upon the appellant/insurance company.

5. On the other hand, learned counsel for the respondents support the impugned award and submit that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court.

6. Heard learned counsel for the parties and perused the material available on record.

7. It is not disputed by both the parties that at the time of accident the offending vehicle was insured with Insurance Company. As per Ex.NA-3C there is no any premium taken by the Insurance Company for carrying passenger in the tractor. As per Ex.NA-3C only third party and limited liability for driver PA is covered and premium is taken, therefore,

Ex.NA-3C Insurance Company is not liable to pay for gratuitous passenger. Looking to the statement and evidence adduced by the AW-1 Purshottam that the deceased was sitting in the Tractor and due to rash and negligent driving by non-applicant no.1 deceased fell down from the tractor trolley and this fact is proved and supported by AW-2 Narendra. As per FIR Ex.A-2 and Final Report Ex.A-1 submitted before the Tribunal, at the time of accident deceased was sitting in the tractor trolley. In the matter of ***Shivaraj Vs. Rajendra and Another 2018(4)T.A.C.1(SC),*** the Hon'ble Supreme Court while considering the identical issue of liability of the Insurance Company in case of deceased travelling in the tractor as a passenger having sitting capacity for only one person i.e. driver and insured for agricultural purposes held as under:-

> "9. The High Court, however, found in favour of respondent No.2 (insurer) that the appellant travelled in the tractor as a passenger which was in breach of the policy condition, for the tractor was insured for agriculture purposes and not for carrying goods. The evidence on record unambiguously pointed out that neither was any trailer insured nor was any trailer attached to the tractor. Thus, it would follow that the appellant travelled in the tractor as a passenger, even though the tractor could accommodate only one person namely the driver. As a result, the Insurance Company (respondent No.2) was not liable for the loss or injuries suffered by the appellant or to indemnify the owner of the tractor. That conclusion reached by the High Court, in our opinion, is unexceptionable in the fact situation of the present case.
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> 10. At the same time, however, in the facts of the present case the High Court ought to have directed

> the Insurance Company to pay the compensation amount to the claimant (appellant) with liberty to recover the same from the tractor owner, in view of the consistent view taken in that regard by this Court in *National Insurance Co. Ltd. V. Swarna Singh & Ors., (2004)3SCC297 : 2004 (1) T.A.C. 321; Mangla Ram v. Oriental Insurance Co. Ltd. (2018)5SCC656 : 2018 (2) T.A.C.337; Rani & Ors. v. National Insurance Co. Ltd & Ors., 2018 (9) SCALE 310 : 2018 (3) 683* and including Manuara Khatun and Others v. Rajesh Kumar Singh and Others, (2017) 4 SCC 796 : 2017 (2)T.A.C. 5. In other words, the High Court should have partly allowed the appeal preferred by the respondent no.2. The appellant may, therefore, succeed in getting relief of direction to respondent No.2 Insurance Company to pay the compensation amount to the appellant with liberty to recover the same from the tractor owner(respondent No.1)."

8. Thus, considering the facts and circumstances of the case in hand, the oral and documentary evidence adduced by the parties, the terms and conditions of the Insurance Policy, in light of the decision of Hon'ble Supreme Court in Shivraj (supra), this Court is of the opinion that the Tribunal was not justified in fastening the liability on the Insurance Company of paying compensation to the claimants on account of there being specific breach of policy condition as the deceased was travelling in the offending vehicle as a passenger which was insured for agricultural purposes and having sitting capacity for one person only i.e. driver and no premium was taken by the Insurance for covering the risk of any other person being carried in the vehicle as a passenger. Therefore, the Insurance Company is exonerated of its liability and same is fastened upon non-applicants no. 1 & 2 jointly and severally. However, considering the fact that at

the time of accident the vehicle in question was duly insured with non-applicant no.3/Insurance Company, in view of the aforesaid decision, non-applicant no.3/Insurance Company is directed to first pay the entire amount of compensation and then recover the same from the driver and owner of the offending vehicle in accordance with law.

9. In the result, the appeal is allowed in part with modification in the impugned award to the above extent. However, rest of the conditions of the impugned award shall remain intact.

Sd/-
Gautam Chourdiya
Judge

Akhilesh