NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1130 of 2014

- United India Insurance Company Ltd. Branch Office, Ambikapur, Distt. Surguja C.G.

---Appellant

Versus

1. Chandarmaniya Wd/o Late Devraj Aged About 40 Years, Caste Kanwar.
2. Devnarayan S/o Late Devraj Aged About 25 Years, Caste Kanwar.
3. Ramsurit S/o Late Devraj Aged About 22 Years

   All are R/o village Hariharpur, Tahsil Pratappur, Distt. Surajpur C.G.
4. Smt. Kailasho (Dead)
5. Bhanwarsay S/o Indrajeet Gond Aged About 50 Years R/o Hariharpur, Tah. Pratappur, District Surajpur C.G.
6. Chhatradhari @ Guddu Gond S/o Amarjit Gond Aged About 22 Years R/o Davankara (Kachharpara), P.S. Chandora, Distt. Surajpur C.G.

---- Respondents

For Appellant	Shri H.B. Agrawal, Senior Advocate along with Ms. Preeti Yadav, Advocate.
For Respondent Nos.1 to 3	Shri Rahul Mishra, Advocate.
For Respondent No.5 & 6	Ms. Rashul Bhawnani, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

20/03/2019

This appeal is by the Insurance Company/non-applicant no.1 against the award dated 24.09.2014 passed by the Additional Motor Accident Claims Tribunal, Pratappur, District Surajpur, C.G. in Claim Case No.17/2013 awarding total compensation of Rs.3,37,000/- with interest @ 7% per annum from the date of application till realization, fastening liability on the non-applicant no.1/Insurance Company.

02. As per claim petition, on 22.12.2012 deceased Devraj, aged about 45 years, earning Rs.15,000/- by doing Agriculture Work and Mason, died in the motor vehicular accident caused due to rash and negligent driving of Tractor bearing no.CG15-A-8594 and Trolley bearing no.CG15-A-8595 by non-applicant No. 4. At the time of accident, the offending vehicle was owned by non-applicant nos.2 & 3 and insured with non-applicant no.1

03. 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.19,00,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

04. Learned counsel for the appellant submits that the Tribunal has wrongly fastened the liability on the Insurance Company as on the date of accident non-applicant no.4 driver was not having a valid and effective driving licence to drive the offending vehicle. He further submits that at the time of accident deceased was sitting in the tractor-trolley as gratuitous passenger as is evident from the FIR Ex.P-2 lodged by AW-2 Devraj Kawar and the evidence of AW-2 in para 8 as well as the Investigating report Ex.D-2; 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.

05. 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 matters has rightly awarded compensation which needs no interference by this Court.

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

07. As regards the breach of policy conditions, the Insurance Company has contended that the deceased was travelling in the tractor trolley whereas there is no sitting capacity in the trolley and the sitting capacity in the tractor is only one i.e. for driver. Further, the Insurance Company has contended that the driver of the offending vehicle was not having a valid and effective driving licence on the date of accident. It is a settled principle of law that onus of proving the plea lies on the party raising the same. Thus, the Insurance Company was required to substantiate the plea regarding breach of policy conditions by adducing reliable and cogent evidence. In support of its plea, the Insurance Company has relied upon the FIR Ex.P-2, Merg Intimation Ex.P-4, Postmortem Report, Final Report, Insurance Policy, Registration Certificate Ex.D-3 and Investigating Report Ex.D-2 as also examined Vijay Kumar Lakda as NAW-1. However, the claimants in their claim petition have specifically pleaded that on the date of accident the deceased was not travelling in the offending vehicle and was going on foot and he died due to injuries suffered by him on account of rash and negligent driving

of the offending vehicle by non-applicant no.4. In support of their pleadings the claimants examined Chandramaniya AW-1, Devnarayan AW-2 and Rajju AW-3 and their evidence remain uncontroverted in cross-examination. Though in the FIR, merg intimation and final report, it has been mentioned that the deceased was travelling in the tractor at the time of accident but in view of the unrebutted evidence of the claimants witnesses before the Tribunal on oath, it cannot be said that the deceased was travelling in the tractor at the time of accident. FIR is not a substantive piece of evidence and a such it cannot be placed on pedestal higher than the statement made before the Tribunal on oath ***United India Insurance Company Limited Vs Smt. Kamli and others, 2010(2), CGLJ 1 (M.P.).*** No contrary evidence has been adduced by the Insurance Company in this case.

08. So far as the contention of the Insurance Company that the Driver was not having a valid and effective licence to drive the offending vehicle is concerned, the Insurance Company has heavily relied upon the charge sheet filed against the non-applicant no.4 under Sections 304A of IPC and 3/181 of Motor Vehicles Act. However, merely on the basis of filing of charge sheet against a person under particular sections, it cannot be presumed that the person so charged is guilty of such offence. No specific evidence has been adduced by the Insurance Company in this regard as is evident from the perusal of the entire record. This part Vijay Kumar Lakda NAW-1 in his cross-examination in para 10 on behalf of non-applicant nos. 3 & 4 has specifically stated that it is incorrect to say that at the time of accident non-applicant no.4 was not having a licence to drive the tractor. Further, as per Ex.D-2 i.e.

enquiry report submitted by Investigator of the Insurance Company namely Shiv Shankar Singh though it is mentioned there was breach of policy conditions but said Shiv Shankar Singh has not been examined before the Tribunal.

09. On the basis of aforesaid discussions, this Court is of the opinion that the Tribunal was taking into account the over all facts and circumstances of the case, oral and documentary evidence adduced on record by the respective parties and the law regarding breach of policy conditions has rightly fastened liability on the Insurance Company on the ground that the Insurance Company has failed to prove any breach of policy conditions.

10. In the result, the appeal being without any substance is liable to be and is, accordingly, dismissed.

Sd/-
Gautam Chourdiya
Judge

Akhilesh