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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1142 of 2014

- Ratanlal Agrawal S/o Late Moolchand Agrawal, aged about 70 Years, R/o Surajpur, P.S. and Post- Surajpur, Distt. Surajpur C.G.

----Appellant

Versus

1. Kalesari Wd/o Late Gulab, aged about 35 Years,
2. Vishwanath S/o Late Gulab, aged about 16 Years Minor,
3. Leela D/o Late Gulab, aged about 15 Years,
4. Sheela D/o Late Gulab, aged about 13 Years,
5. Urmila D/o Late Gulab, aged about 11 Years,
6. Neha D/o Late Gulab, aged about 9 Years,
7. Vishal S/o Late Gulab, aged about 6 Years,
8. Shradha D/o Late Gulab Aged About 2 ½ Years,

   Respondent Nos. 2 to 8 are minors, through their Natural Guardian/Mother Kalesari, Wd/o Late Gulab, aged about 35 years,

   All above R/o Village- Kot, Chitkahipara, P.S. And Tah. Surajpur, Distt. Surguja, Now Surajpur C.G.

9. Sukhmen Wd/o Late Chanduram, aged about 75 Years, R/o Village- Kot, Chitkahipara, P.S. And Tah. Surajpur, Distt. Surguja, Now Surajpur C.G.
10. Sikander S/o Pawan Sai, aged about 30 Years, R/o Lanchi, P.S. and Tah. Surajpur, Distt. Surguja, Now Surajpur C.G.
11. The United India Insurance Company Ltd., Thru- its Branch Manager, The United India Insurance Company Ltd., Near Ram Mandir, Ambikapur, Distt. Surguja C.G.

---- Respondents

For Appellant	Shri Manoj Paranjpe, Advocate with Shri Anurag Singh, Advocate.
For Respondent No.10	Shri Sanjay Agrawal, Advocate.
For Respondent No.11	Shri Dashrath Gupta, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board

27/06/2019

1. This appeal under Section 173 of the Motor Vehicles Act filed by the owner/non-applicant No.2 against the award dated 10.10.2014 passed by the Motor Accident Claims Tribunal, Surajpur, District Surajpur, C.G. in Claim Case No.90/14 whereby in a death case, the Tribunal has awarded a compensation of Rs.4,25,000/- with lump-sum interest of Rs.25,000/- in favour of the claimants, fastening liability on non-applicant Nos. 1 & 2 jointly and severally.

2. As per averments in the claim petition on 15.06.2006, deceased Gulab, aged about 40 years, earning Rs.60,000/- per annum through labour and agricultural work, was travelling in the Truck bearing No. CG15-ZC-0228 in the capacity of labour. However, due to rash and negligent driving of the said vehicle by non-applicant No.1, it turned turtle, as a result of which Gulab sustained grievous injuries and died during treatment on 17.06.2006 in district Hospital, Ambikapur. 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 under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.29,06,000/-, the Tribunal considering the pleadings of the respective parties and the evidence adduced by them vide award dated 09.07.2010 awarded a compensation of Rs.4,25,000/- in favour of the claimants with lump-sum interest of Rs.25,000/-, fastening liability on non-applicant Nos. 1 to 3 jointly and severally. It was further directed that in case the amount of Rs.4,25,000/- is not deposited within a period of one month from the

date of award, the same shall carry interest @ of 12% per annum from the date of application i.e. 08.08.2006 till realization.

4. Aggrieved by the award dated 09.07.2010, non-applicant No.3/Insurance Company filed an appeal i.e. MAC No.1059 of 2010 before this Court challenging the liability fastened upon it. This Court vide order dated 21.07.2011 considering the submission of the respective parties allowed the appeal in part, set aside the award dated 09.07.2010 and remitted the matter to the Tribunal to decide the issue whether the driver holding a learner's licence was driving the vehicle following the provisions of the Rules and Conditions mentioned in the learner's licence.

5. After remand of the matter, the Tribunal passed a fresh award dated 10.10.2014 whereby the liability has been fastened upon non-applicant Nos. 1 & 2 while exonerating the Insurance Company. Hence, this appeal by non-applicant No.2/Owner of the vehicle.

6. Learned counsel for the appellant submits that this Court vide order dated 21.07.2011 while remanding the matter to the Tribunal had directed for deciding the issue of liability afresh and at the same time made it clear that the parties shall be allowed to amend their pleadings, adduce further evidence in support thereof and may file further documents and get the documents verified etc. Thereafter the parties appeared before the concerned Tribunal, however, neither the driver, owner nor the Insurance Company amended their pleadings in the written statements but non-applicant Nos. 1 & 2 adduced additional evidence by examining Chintamani as NAW-1, Sikandar as NAW-2 and Ratanlal as NAW-3 whereas non-applicant No.3 did not adduce any additional evidence. He submits that the Insurance Company in its

written statement in paras 13 & 14 has contended that at the time of accident the driver of the offending vehicle was not having a valid and effective licence and further stated that in fact the driver has no licence at all and as such the vehicle was being plied in contravention of the policy conditions. Since no specific pleading was mentioned by the Insurance Company in its written statement, the owner did not amend his pleading in the written statement. He submits that in this case, no evidence has been adduced by the Insurance Company regarding breach of policy conditions by non-applicants No. 1 & 2 and the provisions of Rule 3 of the Central Motor Vehicles Rules, 1989. He submits that it is not in dispute that 'L' mark was not mentioned in the truck which was being driven by non-applicant No.1 but it is equally true that present is not a case where the accident occurred between two vehicles and in fact the accident occurred on account of a cow coming in front of the vehicle all of a sudden, as a result of which non-applicant No.1 despite all possible efforts could not control the vehicle and it turned turtle.

7. He submits that it is not in dispute that non-applicant No.1 was having a valid and effective learner's licence on the date of accident for driving the offending vehicle. As per evidence of NAW-1 Chintamani, he is a driver for the last 20 years with non-applicant No.2 Ratanlal and has a valid licence for heavy goods vehicle. This witness further states that on the date of accident he was with non-applicant No.1 in the offending vehicle. NAW-3 Ratanlal has also supported the evidence of above witnesses. Thus, in view of above, it is clear that there was basic compliance of the provisions of Rule 3 of the Central Motor Vehicles by the owner of the vehicle and as such there was no breach of policy conditions on the part of non-applicant Nos. 1 & 2. Lastly, he submits

that arising out of the same accident another claim case was filed by the injured Shavango Bai and Sehhatar in which the Tribunal vide award dated 23.03.2011 while granting compensation in favour of the claimants fastened liability upon non-applicant No.3 jointly and severally along with non-applicant Nos. 1 & 2 and the said award has already been satisfied by the Insurance Company and, therefore, now the Insurance Company cannot contend that it is not liable to satisfy the award passed in the instant case since the earlier award passed in the case of injured person has already been satisfied and it has attained finality. In these circumstances, the Tribunal was not justified in fastening liability upon non-applicant Nos. 1 & 2 and it should have been fastened upon Insurance Company/Non-applicant No.3.

8. On the other hand, learned counsel Insurance Company/Non-applicant No.3 supporting the impugned award submits that non-applicant Nos. 1 & 2 did not amend their pleadings and that they adduced evidence as an after thought to escape the liability. He submits that in the criminal case, it has nowhere been mentioned that Chintamani NAW-1 was also sitting with non-applicant No.1 Sikandar in the offending vehicle at the time of accident. This apart 'L' mark was also not there on the vehicle which has been admitted by non-applicants. In these circumstances, on account of there being breach of policy conditions, the Tribunal has rightly fastened liability upon non-applicant Nos. 1 & 2. Reliance has been placed on the decision of this Court date 24.04.2015 passed in MAC No. 301 of 2006, Branch Manager Vs. Smt. Damayanti Bai and others and other connected matters.

9. Learned counsel for the non-applicant No.1/respondent No.10 supports the contention of the counsel for non-applicant No.2/Owner.

10. I have heard learned counsel for the parties and perused the material available on record.

11. Initially on the claim petition being filed by the claimants an award was passed by the Tribunal on 09.07.2010, fastening liability on non-applicant No.3 jointly and severally along with non-applicant Nos. 1 & 2. On the said award being challenged by non-applicant No.3 before this Court by filing an appeal MAC No.1059 of 2010, this Court vide order dated 21st July, 2011 remanded the matter to the Tribunal for deciding the issue of liability by framing of issue whether the driver holding a learner's licence was driving the vehicle following the provisions of the Rules and Conditions mentioned in the learner's licence. This Court also allowed the parties to amend their pleadings and adduce further evidence in support thereof and file further documents.

12. From perusal of the record, it is seen that the non-applicants did not amend their pleadings pursuant to the order passed by this Court, however, non-applicant Nos.1 & 2 examined three witnesses thereafter i.e. NAW-1 Chintamani, NAW-2 Sikandhar and NAW-3 Ratanlal, no witness was examined by the non-applicant No.3 after remand of the matter.

13. From perusal of the award, it is seen that the Tribunal found the presence of Chintamani (NAW-1) in the offending vehicle with non-applicant No.1 Sikandar, driver of the offending vehicle doubtful on the ground that if the owner of the vehicle was already having an experienced driver i.e. Chintamani, there was no occasion for allowing non-applicant No.1 who was having a learner's licence to drive the offending vehicle. Further, the Tribunal recorded a finding that even if it

is assumed that Chintamani NAW-1 was sitting beside the non-applicant No.1, there is nothing on record to show that Chintamani was sitting in the offending vehicle in such a position as to have control over the vehicle. Further, the Tribunal observed that there was no 'L' mark on the offending vehicle particularly when it was being driven by a learner i.e. non-applicant No.1. Thus, considering all these things, the Tribunal held that there was breach of policy conditions on the part of non-applicants No. 1 & 2 and exonerated the Insurance Company.

14. Chintmani (NAW-1) has categorically stated in his affidavit under Order 18 Rule 4 of CPC that he has been working with non-applicant No.2/owner as a driver for the last 20 years and on the date of accident also he had gone to Pampapur on the instruction of the owner in the offending vehicle which was being driven by non-applicant No.1 Sikandar and he was sitting beside him. He has further stated that non-applicant No.1 was driving the vehicle with a moderate speed carefully and the vehicle turned turtle as all of a sudden a cow came running in front of the vehicle. In his cross-examination by non-applicant No.3/Insurance Company, he has admitted that he is stating the above facts that he was sitting beside non-applicant No.1 at the time of accident for the first time and no such statement has been given by him to the police. He has stated that non-applicant No.1/Owner has four vehicles. He has denied the suggestion that at the time of accident he was not in the offending vehicle.

15. Non-applicant No.2 Ratanlal, examined as NAW-3 has also stated that on the date of accident his vehicle was being driven by non-applicant No.1 and that Chintamani NAW-1 was also sitting in the vehicle beside non-applicant No.1.

16. As per unrebutted evidence of Chintamani NAW-1, it is clear that the owner of the offending vehicle has four vehicles and Chintamani has been working with non-applicant No.2 for the last more than ten years. If a person has number of vehicles and he engages more than one driver for driving his vehicles, it cannot be considered unreasonable or illogical as has been considered by the Tribunal. Therefore, it is not a reason to disbelieve the statement of Chintamani NAW-1.

17. True it is that Chintamani NAW-1 has admitted that he is making statement for the first time before the Tribunal that on the date of accident he was sitting in the offending vehicle with non-applicant No.1 and no such statement was given by him to the police. At the same time, it is also true that Chintamani has a valid licence to drive the heavy goods vehicle which has not been controverted by the Insurance Company. The statement of Chintamani finds due corroboration from the statement of Sikandar NAW-2 and Ratanlal NAW-3. Therefore, the Tribunal was not justified in disbelieving the statement of Chintamani on the ground that no such statement was ever made by him before the police and he is stating the said fact for the first time before the Tribunal because it is well settled principle of law that while deciding criminal cases strict rule of evidence is to be insisted upon but the claim cases being in the nature of civil cases are to be decided on the basis of preponderance of probabilities.

18. So far as non-mentioning of 'L' mark in the offending vehicle is concerned, admittedly 'L' mark was not mentioned in the offending vehicle but it is also not in dispute that the accident does not involve two vehicles but it happened on account of a cow all of a sudden coming in front of the vehicle, as a result of which non-applicant No.1

lost control over the vehicle.

19. So far as sitting position of Chintamani in the offending vehicle is concerned, considering the facts and circumstances of the case, the manner in which the accident occurred, the fact that no evidence has been adduced by the Insurance Company to the effect that Chintamani was sitting in the offending vehicle in such a position that he was not able to control the vehicle, this Court is of the opinion that the Tribunal was not justified in recording a finding that the Chintamani was not sitting in the vehicle in such a position as to have control over the vehicle.

20. Another important aspect of the matter is that arising out of the same accident another claim case was filed by Injured claimants and the award dated 23.03.2011 passed in the said claim case, fastening liability upon non-applicant No.3 jointly and severally along with non-applicants No. 1 & 2 has already been satisfied by the Insurance Company and it has attained finality. In this view of the matter, it is unreasonable on the part of the Insurance Company to contend that it is not liable in the present case of paying compensation to the claimants.

The judgment relied upon by the Insurance Company in the matter of *Branch Manager Vs. Smt. Damayanti Bai and others and other connected matters (supra)* being distinguishable on facts from the present case is of no help to it. In the said case, the law of estoppal was held to be not applicable against the Insurance Company despite it having paid compensation in respect of the other claimants because the said compensation was mutually agreed between the parties in the Lok Adalat proceedings where the claimants tendered their satisfaction with such receipt of amount to avoid litigation. However, in the present case the Insurance Company has already satisfied the award of the Tribunal passed in another claim case arising out of the same accident which was decided on merits and for want of further challenged by it has already attained finality.

21. Thus, considering the over all facts and circumstances of the case, the fact that even after framing of specific issue by the Tribunal regarding breach of conditions of the learner's licence, the Insurance Company neither amended its pleading nor did it adduce any evidence to substantiate its plea whereas non-applicant Nos. 1 & 2 adduced additional evidence in support of their pleadings by examining Chintamani as NAW-1, Sikandar as NAW-2 and Ratanlal as NAW-3, keeping in view the principle of preponderance of probabilities applicable to the claim cases, this Court is of the opinion that the Tribunal was not justified in exonerating the Insurance Company on the ground of breach of policy conditions by non compliance of Rule 3 of the Central Motor Vehicles Rules, 1989.

22. Apart from the liability, the owner in the memo of appeal has already challenged the quantum of compensation but no argument on this issue has been advanced by the counsel for the appellant and he confined his arguments only to the liability part. Since the counsel for the appellant is not pressing the quantum of compensation and no counter appeal has been filed by the claimants for enhancement, the same is being not dealt with.

23. In the result, the appeal is allowed in part. Non-applicant No.3/Insurance Company is held liable jointly and severally along with non-applicant Nos. 1 & 2 to pay the entire amount of compensation to

the claimants. If the owner has already deposited the entire amount of compensation or the part thereof and the same has been disbursed to the claimants, he shall be at liberty to recover the same from the non-applicant No.3/Insurance Company in accordance with law. However, rest of the conditions of the impugned award shall remain intact.

Sd/-
Gautam Chourdiya
Judge

Akhilesh