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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 175 of 2013

The Oriental Insurance Company Limited Malviya Nagar Durg Tahsil and District Durg, Chhattisgarh

Policy No.2001/2128 Period dated 20.06.2000 to 19.06.2001 (Vehicle of the insurer Tractor No.MP-23-GA-4592)

---- Appellant

Versus

1. Brijlal YadavS/o Late Latel Yadav Aged About 51 Years
2. Chanda Bai W/o Brijlal Yadav Aged About 47 Years

   Both are R/o village Sirsida, Oteband Bhatha, PS Pulgaon. Tahsil and District Durg Chhattisgarh
3. Horilal Sahu S/o Toran Lal Sahu Aged About 32 Years Occupation Driver R/o village Khunteri, PS and Tahsil Gunderdehi District Durg Chhattisgarh (Driver of the vehicle Tractor No.MP-23-GA-4592)

4A Ravindra Tripathi S/o Dr. Suryakant Tripathi R/o village P.S. and Tahsil Gunderdehi District Durg Chhattisgarh (Vehicle Tractor No.MP-23-GA-4592)

4B Ravindra Tripathi S/o Dr. Suryakant Tripathi R/o village P.S. and Tahsil Gunderdehi District Durg Chhattisgarh (Owner of the Vehicle Tractor No.MP-23-GA-4592)

---- Respondents

For Appellant	:	Mr. Raj Awasthi, Advocate
For Respondents	:	None

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

12/04/2019

1. By the instant appeal, appellant/Insurance Company assailed the legality, validity and propriety of impugned award dated 26.11.2012 passed by Fifth Additional Motor Accident Claims Tribunal, Durg, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.90/2012 whereby the learned Claims

Tribunal partly allowed the claim application filed by claimants holding that deceased was contributory negligent to the extent of 50% in accident and awarded a sum of Rs.1,72,000/- as compensation in a death case.

2. Brief facts for disposal of this appeal, are that, on 11.10.2000, at about 9.00 am, Jhanna Bai Yadav was travelling on a Trolley bearing registration No. MP-24-F-1418 attached with Tractor bearing registration No. MP-23-GA-4592 (hereinafter referred to as 'offending vehicle') along with other 30-40 labours and going to agricultural farm at village Matwari for harvesting of paddy. On the way, driver of offending vehicle drove the vehicle rashly and negligently, due to which, Jhanna Bai fell down and came under the wheels.

3. Claimants who were parents of deceased Jhanna Bai have filed claim application under Sections 166 and 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') before the competent Claims Tribunal claiming Rs.7,83,400/- in total as compensation on all heads.

4. Non-applicant No.1- driver of offending vehicle submitted reply to claim application stating that on the date of accident, there were 15 labours going for the purpose of harvesting of paddy and offending vehicle was engaged in agricultural work. It has also been pleaded that Jhanna Bai due to her own negligency fell down from offending vehicle.

5. Non-applicant No.2- owner of offending vehicle has submitted reply to claim application stating that offending vehicle was engaged in agricultural activities and deceased Jhanna Bai was travelling as one of the labours along with other labours. It has been further pleaded that Jharna Bai due to her own negligency fell down from offending vehicle, for which, neither non-applicant No.1 nor non-applicant No.2 is liable in any manner. It has lastly been pleaded that on the date of accident, offending vehicle was insured with non-applicant No.3/Insurance Company.

6. Non-applicant No. 3/Insurance Company submitted reply to claim application and stated that on the date of accident, offending vehicle was being driven in contravention of conditions of insurance policy. It was further pleaded that driver of offending vehicle was not possessing valid and effective driving licence to drive the vehicle, therefore, Insurance Company is not liable for payment of any amount of compensation and prayed for its exoneration.

7. On appreciation of pleadings, evidence and material available on record, learned Claims Tribunal arrived at a conclusion that Insurance Company failed to prove violation of conditions of insurance policy. Premium for four labours and one driver was paid, which is mentioned in insurance policy itself, accident took place due to negligence of driver of offending vehicle, deceased was also contributory negligent in the accident to the extent of 50% and

after deducting 50% of total amount of compensation, awarded a sum of Rs.1,72,000/-.

8. Learned counsel appearing for appellant submitted that as driver of offending vehicle was not possessing valid and effective driving licence to drive the vehicle, therefore, there is violation of conditions of insurance policy. He further submitted that on the date of accident, deceased was sitting on a tool box, therefore, there is sole negligence on the part of deceased herself.

9. I have heard learned counsel appearing for appellant and perused the record carefully.

10. Learned Claims Tribunal held that as deceased was sitting on a tool box, making her contributory negligent in the accident and after assessing amount of compensation, deducted 50% twice from the assessed amount of calculation, but award shows that both deductions of 50% have been shown to be made towards personal expenses. From reading entire award of learned Claims Tribunal, it appears that learned Claims Tribunal passed an award holding deduction of 50% towards personal expenses as deceased was unmarried and further deduction of 50% towards contributory negligence because learned Claims Tribunal while answering issue No.1 and 1A held that deceased was contributory negligent to the extent of 50%. On the date of accident, offending vehicle was insured and perusal of insurance policy (Ex. D-1) shows that premium was paid by the owner of offending vehicle with respect to paid

drivers/workmen No.4. The offending vehicle has been insured under the policy of miscellaneous and special type of vehicle policy.

11. Learned counsel appearing for appellant also not disputed that under the policy issued by appellant/Insurance Company along with vehicle had also insured for four workmen/labours.

12. The pleadings and evidence of Brijlal (AW-1) and Amrit Lal Dewangan (AW-2) clearly mentions that deceased along with other labours were travelling in offending vehicle. In the facts and circumstances of the case and looking to insurance policy (Ex.D-1) issued by appellant/Insurance Company along with driver, four numbers of labours were also insured, therefore, Insurance Company is liable to satisfy the award at least for four labours. Even Shanturam Sahu (NAW-1), Administrative Officer of appellant/Insurance Company also admitted in para-2 of his cross-examination that premium for four labours have been accepted, therefore, they are liable to pay compensation with respect to four claims of labours. In the instant case, deceased was travelling as labour and therefore, learned Claims Tribunal rightly fastened liability on the Insurance Company.

13. In evidence, it has come that deceased was sitting on a tool box of Tractor, therefore, in the opinion of this Court, learned Claims Tribunal rightly held the deceased to be 50% negligent in the accident. As there is no appeal on behalf of claimants, findings recorded by learned Claims Tribunal to this effect is not been further

discussed and interfered with by this Court. So far as the arguments of learned counsel for appellant that deceased was sitting on tool box of Tractor is concerned though Amrit Lal Dewangan (AW-2) in cross-examination had stated that deceased was travelling on tool box of Tractor, but in other evidence, which are available in record i.e. (Ex. P-1) Final Report, (Ex. P-2) First Information Report, (Ex. P-3) Merg intimation, (Ex. P-8), (Ex. P-9) and (Ex. P-10) statements under Section 161 recorded by Police, it is specifically mentioned that deceased was sitting on tool box attached with front side of Trolley. Merg intimation was recorded after $1^{1/2}$ hour of accident on same day. First Information Report was also lodged on same day within 1.35 hour of accident and even statement under Section 161 of Cr.P.C. was also recorded on same day. Looking to the proximity of time in registering First Information Report, recording of statement under Section 161 of Cr.P.C, the fact narrated by complainant and witnesses does not appear to be false and afterthought. In the opinion of this Court, the learned Claims Tribunal not committed any error in holding that the deceased at the time of accident was sitting on tool box attached with Tractor Trolley. There is no reason to disbelieve the fact mentioned in the documents i.e. (Exs. P-1, P-2, P-3, P-8, P-9 and P-10) prepared immediately after the accident.

14. The other ground raised by learned counsel for appellant is that on the date of accident, driver of offending vehicle was not possessing valid and effective driving licence as driver of offending vehicle was

possessing licence with an endorsement to drive 'LMV' i.e. Light Motor Vehicle, but as on the date of accident, Trolley along with Tractor is attached and more than 30 persons/labours were travelling in the Trolley attached to the Tractor, therefore, there should be an endorsement and authorization in licence with respect to 'Light Commercial Vehicle'.

15. Registration certificate of Tractor is available on record and unladen weight of Tractor has been shown as 1750 Kgs. As per definition of 'Light Motor Vehicle' provided under Section 2(21) of the M.V. Act, the motor vehicle which is having unladen weight of 7500 Kgs. is being treated as 'Light Motor Vehicle'. Section 2(21) of the M.V. Act is reproduced herein-below:-

> "**2. Definitions.-**In this Act, unless the context otherwise requires.-
>
> x x x x
>
> (21) "Light Motor Vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed [7500] kilograms;"

16. The issue with respect to persons having a particular class of licence authorizing to drive a particular type of vehicle, but on the date of accident found driving the vehicle other than the type of vehicle mentioned in the licence, but of the same category, has been considered by the Hon'ble Supreme Court in the matter of **Mukund**

Dewangan v. Oriental Insurance Company Limited[1] and held as under:-

> "59. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as amended on 28-03-2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in Section 2(21) and the provisions of Section 10(2)(d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in Section 10(2)(e) of the Act 'Transport Vehicle' would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in Section 10(2)(e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed.
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> 60. Thus, we answer the questions which are referred to us thus:
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> 60.1. ''Light motor vehicle'' as defined in Section 2(21) of the Act would include a transport vehicle as per the weight prescribed in Section 2(21) read with Sections 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54 of

1 **(2017) 14 SCC 663**

> 1994.
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> 60.2. A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, ‘unladen weight’ of which does not exceed 7500 kg. and holder of a driving licence to drive class of “light motor vehicle” as provided in Section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the “unladen weight” of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under Section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28-03-2001 in the form.

17. In the light of aforementioned law laid down by the Hon'ble Supreme Court, if I consider the fact of the case in hand, it is clear that on the date of accident, driver of offending vehicle was possessing licence with an endorsement to drive 'Light Motor Vehicle' only. Undisputedly, offending vehicle comes within the definition of 'Light Motor Vehicle', therefore, the argument raised by learned counsel for appellant that there is violation of conditions of insurance policy as driver of offending vehicle was not having valid and effective driving licence is not sustainable and is repealed.

18. Learned counsel for the appellant has not raised any other ground before this Court.

19. In view of above discussions, learned counsel for appellant failed to make out any good ground calling interference with the impugned award.

20. In the result, the appeal being devoid of any substance, is liable to be and is hereby dismissed.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh