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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1138 of 2013

1. Rameshwar Prasad Chandrakar S/o Govindram Chandrakar Aged About 44 Years R/o Singhanpur, Post And P.S. Pithora, Tah. And Distt. Mahasamund Chhattisgarh
2. Mangaluram Satnami S/o Ratnuram Satnami Aged About 42 Years R/o Gudhelabhata Pithora, Post And P.S. Pithora, Tah. District : Mahasamund, Chhattisgarh

---- Appellants

Versus

1. HDFC Ergo General Insurance Com. Ltd S/o Thru- Its Branch Manager, Divisional Office, 3rd Floor, Commercial Building, Devendra Nagar Square, Raipur, P.S. Raipur, Distt. Raipur Chhattisgarh
2. Smt. Ansuiya Bai Chowhan W/o Late Chhabiram Chowhan Aged About 40 Years R/o Singhanpur, Post And P.S. Pithora, Tah. And Distt. Mahasamund District : Mahasamund, Chhattisgarh
3. Ku. Manju Chowhan D/o Late Chhabiram Chowhan Aged About 10 Years Minor, R/o Singhanpur, Post And P.S. Pithora, Tah. And Distt. Mahasamund District : Mahasamund, Chhattisgarh
4. Umesh Chowhan S/o Late Chhabiram Chowhan Aged About 30 Years R/o Singhanpur, Post And P.S. Pithora, Tah. And Distt. Mahasamund Chhattisgarh

---- Respondents

For Appellants	:	Shri JA Lohani, Advocate
For Respondents	:	None appears even the case is called out in fourth round today.

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

01.02.2019

1. The appellants who are owner and driver of offending vehicle have challenged the legality and validity of impugned award dated 24.09.2013 passed by the learned Motor Accident Claims Tribunal, Mahasamund CG (for short, 'the Tribunal') in Claim Case No.16 of 2011 wherein learned Claims Tribunal awarded total compensation of Rs.4,76,000/-.

2. Brief facts for disposal of this appeal are that on 08.02.2010 when Chhabiram along with other persons were travelling on a tractor bearing No. CG-06B-7116 and trolley bearing No.CG-06B-7118 (hereafter referred to as 'offending vehicle') and returning from Singhanpur to their village, at that relevant time when the offending vehicle reached near Koma Khallari bridge, it met with an accident and turned turtle. In the accident, Chhabiram came under the vehicle and sustained grievous head injury. He succumbed to the injury on the spot. Matter was reported to concerned Police Station on the same day and on the basis of which Crime No.59 of 2010 was registered for offence punishable under Section 304A of IPC against the driver of offending vehicle.

3. On account of untimely death of Chhabiram in the motor accident, respondents- 2 to 4/claimants filed claim application before competent Claims Tribunal claiming Rs.23,50,000/- in total mentioning therein that the deceased on the date of accident was aged about 48 years and earning daily wage of Rs.50/- from labour work and they were dependent on the income of deceased Chhabiram.

4. Appellants herein are owner and driver of offending vehicle. They submitted reply to the claim application in which they stated that deceased at the time of accident was not occupant of the offending vehicle and they have pleaded further that as the claim application filed after limitation prescribed and therefore, the said application liable to be dismissed. It is also pleaded that on the date of accident, offending vehicle was insured with respondent- 1 HDFC Ergo General Insurance Company Limited and

therefore, liability for payment of compensation, if any, shall be on the Insurance Company.

5. Insurance Company submitted its reply separately and denied the pleadings made in claim application and further pleaded that on the date of accident the deceased was not third party, in fact, he was occupant of offending vehicle and therefore, due to violation of conditions of Insurance policy, Insurance Company is not liable for payment of any amount of compensation. Other ground taken in the reply was that on the date of accident, driver of offending vehicle was not having a valid and effective driving license to drive the vehicle and prayed for exoneration from its liability, if any.

6. Learned Claims Tribunal while appreciating the pleadings and evidence available on record held that the offending vehicle is being used in violation of conditions of policy and exonerated the Insurance Company from payment of any compensation. It awarded a total sum of Rs.4,76,000/- as total compensation and directed for its recovery from driver and owner of offending vehicle.

7. Learned counsel for the appellants submits that deceased was travelling on offending vehicle as labour on the date of accident and was returning to their house after completion of agriculture work. It is further argued that the Insurance Company has taken premium amount towards labourers and therefore, deceased being labour travelling on the offending vehicle will not violate the conditions of Insurance Policy. He further argued that in the facts and circumstances of the case, particularly when

premium has been paid towards labourers, Insurance Company is bound to pay the amount of compensation.

8. I have heard learned counsel for the appellants, perused the records. FIR was lodged on 08.02.2010, on the date of accident itself at 18.40 hours, whereas the time of accident as mentioned in FIR was 16 hours. FIR was lodged by Umesh Kumar, son of deceased and marked as Ex.P/2. A bare perusal of FIR shows that some persons travelling on the offending vehicle along with Umesh Kumar went to Khallari temple from village Singhanpur and at the time of their return, offending vehicle met with an accident, whereas in the claim application which was also filed by Umesh Kumar, son of deceased along with other legal heirs it has been mentioned that when they were returning from Khallari temple, offending vehicle met with an accident.

9. Umesh Kumar has been examined as AW-1. In his evidence it is stated that they went to Khallari for labour work by the offending vehicle and while returning to their village Singhanpur, due to rash and negligent driving of driver, offending vehicle turned turtle. In the said accident, Chhabiram received grievous head injury and succumbed to the injury. He also stated that at the time of accident, deceased was sitting on the tractor engine.

10. Looking to the contents of FIR (Ex.P/2) lodged by Umesh Kumar, wherein it is specifically mentioned that the offending vehicle was returning from Khallari temple with persons sitting in it. Therefore, the evidence of Umesh Kumar is not reliable, in fact, he is making false statement before

the Tribunal. The contents of FIR are to be taken into evidence as it is because it was lodged by the person who himself was one of the occupant of the offending vehicle and also claimant of the claim application being son of deceased. He cannot be permitted to revert back from the contents of FIR and take some other plea/ground for the accident.

11. Above issue has been considered by Hon'ble Supreme Court in the matter of **Oriental Insurance Company Limited Vs Premlata Shukla and others** reported in **2007 AIR SCW 3591** in which it is held that :

> "13. However, the factum of an accident could also be proved from the First Information Report. It is also to be noted that once a part of the contents of the document is admitted in evidence, the party bringing the same on record cannot be permitted to turn round and contend that the other contents contained in the rest part thereof had not been proved. Both the parties have relied thereupon. It was marked as an Exhibit as both the parties intended to rely upon them.
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> 14. Once a part of it is relied upon by both the parties, the learned Tribunal cannot be said to have committed any illegality in relying upon the other part, irrespective of the contents of the document been proved or not. If the contents have been proved, the question of reliance thereupon only upon a part thereof and not upon the rest, on the technical ground that the same had not been proved in accordance with law, would not rise."

12. The other witnesses NAW-1 and NAW-2, who are owner and driver in their evidence developed a new story that on the date of accident driver of the offending vehicle was returning alone and on the way offending vehicle turned turtle and deceased Chhabiram who was standing on the

side of road came under it. The other witnesses NAW-2, driver of the vehicle also stated the same fact as stated by NAW-1 and denied that the deceased was travelling on the offending vehicle.

13. Insurance Company examined Ramraj Vishwakarma, Law Officer as NAW-3(1). He proved the Insurance Policy (Ex.NA/4). It was stated that as per Policy, there was no risk coverage of passenger and further there was seating capacity only for one person in the vehicle, that too for driver whereas in the present case deceased was also sitting along with driver.

14. From the contents of FIR (Ex.P/2) lodged by Umesh Kumar, son of deceased, immediately after the accident, who himself was occupant of offending vehicle at the time of accident as well as the pleadings made in claim application in para-1, the evidence of owner and driver of offending vehicle cannot be accepted. In fact, it is very clear from the pleadings and the evidence available on record that along with the deceased, several other persons were also travelling on the offending vehicle along with driver. Therefore, in the opinion of this Court, learned Claims Tribunal did not commit any error in holding that there is violation of conditions of Insurance Policy and in exonerating Insurance Company from its liability of payment of compensation.

15. Appeal being devoid of merit, liable to be and it is hereby dismissed.

16. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma