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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 354 of 2015

1. Deepti Sharma son of Harish Sharma, aged about 20 years, resident of C/o Kailash Pawar, Chikhli, Tahsil and District- Rajnandgaon (C.G.), through Supurddar Hotri Nandan Mishra son of late Baldou Prasad Mishra, resident of Rajapara Doudilohara, Ward No. 8, Police Station- Doundilohara, District- Balod (C.G.)

   (Registered Owner of offending vehicle Matador bearing registration No. C.G.-04-J.A. 7682)

   (Non-applicant No.2)

2. Ravishankar Thakur son of Fakirrram Thakur, aged about 28 years, resident of Jatadah, P.S. Doundilohara, District Balod (C.G.)

   (Driver of offending vehicle Matador bearing registration No.C.G.-04-J.A..7682)

   (Non-applicant No.1)

---- Appellants/Owner& Driver

Versus

1. Smt. Lomas Bai wife of late Bisru Ram Sinha, aged about 33 years
2. Ku. Reetu daughter of late Bisru Ram Sinha, aged about 16 years
3. Rajesh Kumar son of late Bisru Ram Sinha, aged about 14 years
4. Nitesh Kumar son of late Bisru Ram Sinha, aged about 12 years

   Respondents No. 2 to 4 are minor, through legal guardian mother Smt. Lomas Bai wife of late Bisru Ram Sinha

5. Mohanlal son of late Dayaram, aged about 67 years
6. Goutarhin Bai wife of Mohan Lal, aged about 60 years

   (Claimants)

   All are resident of Village- Jamgaon, Police Station and District Balod (C.G.)

7. Shriram General Insurance Company Limited, through the Authorized Officer, Address E-8, Rico Industrial Area Sitapur, Jaipur, District- Jaipur (Rajasthan) 302022

   (Insurer of offending vehicle Matador bearing registration No. C.G.-04-J.A. 7682)

   (Non-applicant No.3)

---- Respondents

For Appellants/ Owner & Driver	:	Smt. Hamida Siddiqui, Advocate
For Respondents No. 1 to 6/ Claimants	:	None
For Respondent No. 7/ Insurance Company	:	Shri Sachin Singh Rajput, Advocate

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<u>Hon'ble Shri Justice Gautam Chourdiya, J</u>

<u>Judgment on Board</u>

<u>16.05.2019</u>

1. Head on admission.

2. This appeal is by the Owner & Driver/non-applicants No.2 & 1/Appellants under Section 173 of the Motor Vehicles Act, 1988 against the award dated 24.01.2015 passed by the Second Additional Motor Accident Claims Tribunal, Baloud, District Baloud (C.G.) in Claim Case No. 43 of 2013 awarding total compensation of Rs.6,32,500/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants No.1 & 2/Driver & Owner jointly and severally.

3. As per claim petition, on 15.04.2013 deceased Bisruram, 35 years of age earning Rs.6,000/- per month by working in brick-kiln, was travelling along with other labours in the Tractor-trolley No. CG-04/DA/4733, when the said Tractor reached near Village Sivni, the offending vehicle Matador bearing registration No. CG-04/JA/7682, owned by non-applicant No.2 and insured with non-applicant No.3, which was being driven by non-applicant No.1 Ravishankar Thakur in a rash and negligent manner, dashed the Tractor. As a result thereof, Bisruram sustained grievous injuries and died during the treatment in the hospital.

4. On claim petition being filed Claimants, wife, three minor children and parents of the deceased, under Section 166 of the Motor Vehicles, Act, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

5. Learned counsel for the Appellants/owner & driver submits that in the present case, deceased along with 20-25 person was sitting in the Tractor-trolley when the accident had taken place and it is a case of contributory negligence on the part of driver of the Tractor in which the deceased was travelling. However, driver, owner and insurer of the Tractor have not been made party by the Claimants. She further submits that there is no evidence against the owner of the offending vehicle that there was breach of policy conditions on the part of the owner. The owner of the offending vehicle has having a valid permit. Therefore, the Tribunal was not justified in exonerating the Insurance Company/non-applicant No.3 from its liability to pay compensation to the Claimants. She further submits that the accident occurred in the month of April and the work of brick-kiln was closed for about 3 to 4 months and the Tribunal has wrongly considered the income of the deceased as Rs.4,500/- which is on the higher side and deserves to be reduced.

6. On the other hand, learned counsel for Respondent No.7/Insurance Company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has right awarded compensation which needs no interference by this Court.

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

8. As submitted by learned counsel for the parties, no counter appeal has been filed by the Respondents.

9. So far as contributory negligence is concerned, as per evidence of Claimant Lomas Bai who was examined as AW-1, she specifically states that the offending vehicle Matador was being driven by non-applicant No.1 in a rash and negligent manner and dashed the Tractor in which her husband was sitting, due to which her husband sustained injury and died during the treatment. In cross-examination, she has also stated about number of Metador and name of driver as is mentioned in her claim petition. As per statement of Uttam Kumar examined as AW-2, he states that on the date of accident i.e. 15.04.2013, he was also sitting in Tractor-trolley and specifically mentioned that the offending vehicle Metador was driven by non-applicant No.1 in a rash and negligent manner and dashed the Tractor-trolley due to which deceased Bisuram sustained grievous injury and died during his treatment. In cross-examination, AW-2 also admits this fact that he cannot tell the number of Metador, but it was red-browny coloured (*Geru* colour), which colour of Metador was also stated by AW-1 in para-2 of her statement. F.I.R (Ex.-P/2) was lodged against non-applicant No.1, driver of offending vehicle Metador, and after investigation, Charge-sheet (Ex.-P/1) was filed. However, non-applicant No.1, driver of the offending vehicle was not examined before the Tribunal who could have narrated about the manner in which the accident occurred. Even, non-applicant No. 2, owner of the offending vehicle, was also not examined before the Tribunal. No any evidence adduced before the Tribunal by non-applicants No. 1 & 2 regarding contributory negligence on the part of the driver of the Tractor. Therefore, the Tribunal was justified in not assessing the contributory negligence on the part of the driver of the Tractor and the deceased was sitting in Tractor-trolley.

10. As regards breach of policy conditions, as per Ex.-D/2 i.e. insurance policy, the gross weight of offending vehicle is 4790 kg and the same is goods carrying commercial public carriers vehicle. As per provisions of Section 66 of the Motor Vehicles Act, permit is required for plying vehicle in the public place. As per permit Ex-D-1C, it was valid from 24.02.2008 to 23.02.2013 and accident occurred on 15.04.2013, therefore, it is clear that on the date of accident, the owner of the offending vehicle was not having a valid permit to ply the offending vehicle in public place. As per statement of NAW-1 Durgeh Narayan, Assistant Grade-III in RTO, Raipur, no permit was issued by its Office in favour of the owner of the offending vehicle which was in force on the date of accident. Non-applicants No. 1 & 2 did not enter the witness box and not filed any document to show that on the date of accident the offending vehicle being plied with valid and effective permit. The aforesaid issue of breach of policy conditions on the ground of permit arose before the

Hon'ble Supreme Court in the matter of ***Amrit Paul Singh and Another*** Vs. ***Tata AIG General Insurance Company Limited and Others, (2018) 7 SCC 558***, wherein the Hon'ble Supreme Court having regard to Section 66(1) of the Motor Vehicles Act, 1988 held that use of a vehicle as a transport vehicle in public place without a permit is a fundamental statutory infraction and in that case insurer can not be held liable for paying compensation to the claimant. Therefore, the Tribunal has rightly exonerated the Insurance Company from its liability and fastened the same on non-applicants No. 1 & 2/driver & owner on account of breach of policy condition (Ex.-D/2).

11. It was also argued that about 3-4 months, the work of brick-kiln was closed and income cannot be considered of that period. Looking to the job of deceased, he was a labour, therefore, 3-4 months' income could not be deducted from the annual income of the deceased because during that period he can earn money from other place by doing labour work.

12. As regards quantum of compensation, considering the facts and circumstances of the case, the fact that accident occurred in the year 2013, the income of the deceased assessed by the Tribunal as Rs.4,500/- per month, looking to the price index at the relevant time, the minimum wages and the amount awarded under other permissible heads, the same cannot be faulted with. Likewise, the rate of interest ordered by the Tribunal in this case also appears to be just and proper.

13. In the result, the appeal being without any substance is liable to be dismissed and is accordingly dismissed at the admission stage.

14. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

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