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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No.983 of 2013

The Oriental Insurance Company Ltd., Branch Office, Manendragarh Road, Near to Ambedkar Chowk, Ambikapur, District Surguja, Chhattisgarh (Insurer).

---- Appellant

Versus

1. Karn Singh, S/o Ramsahay Ram, Aged About 50 Years, R/o Bhakura, Thana & Tahsil Ambikapur, District Surguja, Chhattisgarh (Claimant).

2. Gamla Devi, W/o Karn Singh, Aged About 46 Years, R/o Bhakura, Thana & Tahsil Ambikapur, District Surguja, Chhattisgarh (Claimant).

3. Sunil Devi, W/o Late Jaidev Singh, Aged About 28 Years, R/o Bhakura, Thana & Tahsil Ambikapur, District Surguja, Chhattisgarh (Claimant).

4. Ku. Geetanjali, D/o Jaidev Singh, Aged About 6 Years, Minor Through Mother Smt. Sunil Devi, R/o Bhakura, Thana & Tahsil Ambikapur, District Surguja, Chhattisgarh (Claimant).

5. Ku. Chhoti, D/o Late Jaidev Singh, Aged About 3 Years, Minor Through Mother Smt. Sunil Devi, R/o Bhakura, Thana & Tahsil Ambikapur, District Surguja, Chhattisgarh (Claimant).

6. Smt. Kunti Devi, W/o Ram Sai, Ram Aged About 70 Years, R/o

Bhakura, Thana & Tahsil Ambikapur, District Surguja, Chhattisgarh (Owner).

7. Gopal Ram, S/o Shyamlal, Aged About 22 Years, R/o Vishrampur Near to ITI Office, Present Address Parsa Thana, Ambikapur, District Surguja, Chhattisgarh (Driver).

---- Respondents

For Appellant	:	Shri Sudhir Agrawal, Advocate.
For Respondent Nos.1 & 5	:	None, though served.
For Respondent Nos.6 & 7	:	Shri Atanu Ghosh, Advocate.

Hon'ble Shri Justice Sanjay S. Agrawal

Award/Order on Board

14.02.2020

1. This Miscellaneous Appeal has been preferred by Non-Applicant No.3/The Oriental Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988'), questioning the legality and propriety of the award dated 31.07.2013 passed by the Motor Accident Claims Tribunal, Surguja (Ambikapu) (C.G.) (for short 'the Claims Tribunal') in Claim Case No.57/2007, by which, the learned Claims Tribunal while allowing the claim in part has awarded the total amount of compensation to the tune of Rs.4,47,000/- with 6% interest per annum from the date of filing of the claim petition till its realization while fastening the liability upon the Insurance Company. The parties to this appeal shall be referred hereinafter as per their

description in the Claims Tribunal.

2. Briefly stated the facts of the case are that on 15.02.2006, deceased Jai Dev Singh was travelling in the offending vehicle 'Tractor' attached with its trolley bearing Registration No.CG 15 A 3556, and CG 15 A 3557, respectively and was returning to his village. It was owned by Non-Applicant No.1 Smt. Kunti Devi and was insured with Non-Applicant No.3, the insurance company. At the relevant time, the vehicle in question was being driven rashly and negligently by its Driver/Non-Applicant No.2 namely, Gopal Ram, as a result of which, he lost his control over it and owing to which the alleged accident occurred and the deceased, who was travelling on it, came under it and expired on the way when he was being taken to the hospital.

3. On account of the aforesaid accident, the claimants being legal representatives of the deceased, instituted a claim petition enumerated under Section 166 of the Act of 1988, alleging *inter alia* that the deceased was a shopkeeper and was engaged in the agricultural work also and used to earn Rs.8,000/- per month and, thus, total amount of compensation to the tune of Rs.57,08,000/- has been claimed under various heads.

4. The aforesaid claim has been contested by the Non-Applicants and the Claims Tribunal after considering the evidence led by the parties, arrived at a conclusion that the alleged accident occurred on 15.02.2006 due to the rash and negligent driving of the driver of the offending vehicle, resulting into the sad demise of said Jai Dev Singh. It held further that vehicle in question was not being

used in violation of the insurance policy and while fastening the liability upon the insurance company and that by considering the monthly income of the deceased at Rs.3,000/- awarded total amount of compensation as mentioned hereinabove.

5. Being aggrieved, the Non-Applicant No.3/Insurer has preferred this appeal. Shri Sudhir Agrawal, learned counsel appearing for the Appellant, while inviting attention to paragraph 24 of the award impugned submits that the Claims Tribunal has erred in observing while referring to the evidence led by the claimants that a definite finding could not be made that the deceased was travelling in the alleged tractor and if he would not be in the tractor then he cannot be held to be a third party and while drawing the presumption as such has fastened the liability upon the insurance company. However, the claimants themselves have pleaded in their claim petition as evidenced by its paragraphs 10 & 11 that the deceased was travelling while sitting in the alleged 'Tractor'. Observation of the Tribunal as such while fastening the liability upon the insurance company is, therefore, apparently contrary to the materials available on record.

6. On the other hand, Shri Atanu Ghosh, learned counsel for the Respondent Nos.6 & 7, has supported the award impugned.

7. I have heard learned counsel for the parties and perused the entire record carefully.

8. The main contention of the Appellant/Insurance Company herein, is that the deceased at the time of the alleged accident was

travelling in the alleged offending vehicle 'Tractor' insured exclusively for the agricultural purposes and, since it was being used in violation of the insurance policy, therefore, no liability, as such could be fastened upon the insurance company.

9. The aforesaid contention of the Appellant/Insurer appears to be acceptable as, according to the averments made in the claim petition itself, as evidenced from paragraphs 10 & 11, the deceased Jai Dev Singh was travelling in the alleged vehicle, when the alleged accident occurred. The said fact is duly corroborated from the contents made in the FIR (Ex.P-1) lodged by deceased's father Karn Singh. Despite, the said admitted facts, the Tribunal has observed contrary to it at paragraph 24 of its award impugned and that too without any iota of evidence available on record. The finding so recorded is, therefore, perverse in nature and cannot be upheld. It is accordingly, set aside and it is held that the deceased Jai Dev Singh was travelling in the alleged offending vehicle 'Tractor' insured exclusively for the agricultural purposes in specific violation of the insurance policy (EX.D-2). The Appellant/Insurance Company is, thus, entitled to be and is hereby exonerated from its liability. Since the vehicle in question was admittedly insured by the Non-Applicant No.3/The Oriental Insurance Company Ltd., therefore, by applying the principles laid down by the Supreme Court in the matter of ***National Insurance Co. Ltd. Versus Swaran Singh And Others*** reported in **(2004) 3 SCC 297,** it would be just and proper to issue a direction to the said company to first pay the awarded sum to the claimants with a direction to

recover the said awarded sum from the owner (Smt. Kunti Devi) and Driver (Gopal Ram) of the vehicle in question in execution proceedings arising in this very case.

10. Consequently, the appeal is allowed with the aforesaid observations and rest of the observations made by the Tribunal shall remain intact. No order as to costs.

Sd/-
(**Sanjay S. Agrawal**)
Judge

Deepti Jha