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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1238 of 2014

(Arising out of Award dated 04.09.2014 passed by the Additional Motor Accident Claims Tribunal (F.T.C.) Jagdalpur, Distt. Bastar in Claim Case No. 17/2013)

- United India Insurance Company Limited, Jagdalpur, Distt. Baster (C.G.), through its Divisional Manager, Divisional Office - 2nd Floor Gurukripa Towers, Vyapar Vihar Road, Bilaspur, Distt.- Bilaspur (C.G.)

---- Appellant

Versus

1. Lakhmi, Wd/o Late Sonu, aged about 35 years,
2. Neharu, S/o Late Sonu, aged about 22 years,

   Respondents No.1 & 2 are Muria by Caste, R/o village Bade Murma, Chandali Para, Tah. Jagdalpur, Distt. Baster, Jagdalpur (C.G.)
3. Udaya Gilas, S/o Agnis Gilas, aged about 48 years, Caste - Mahra, R/o Manjhiguda, P.S. Kotpad Chandli, P.O. Murtahandi, Distt. Korapur (Orissa), Hall Bade Murma Dumarguda, Jagdalpur, Distt.- Baster (C.G.)
4. Agnitio Gilas, S/o Johnson Gilas, aged about 58 years, R/o Majhiguda, P.O. Murtahandi, Via-Kotpad, Distt.- Koraput, Orissa-764058.

---- Respondents

For Appellant/Insurer	:	Mr. Dashrath Gupta, Advocate
For Respondents No.1 & 2/Claimants	:	Mr. Vikash Shrivastava, Advocate
For Respondents No. 3 & 4	:	None present

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per, P. R. Ramachandra Menon, Chief Justice

31.08.2020

1. Correctness and sustainability of the Award passed by the Tribunal, granting a total compensation of Rs.3,74,440/- and fixing the liability upon the shoulders of the Appellant/Insurer, is put to challenge in this appeal.

2. Heard Mr. Dashrath Prajapati, the learned counsel appearing for the Appellant/Insurance Company as well as Mr. Vikash Shrivastava, the learned counsel appearing for the Respondents No.1 & 2 / Claimants.

3. The Appellant is the Insurer of the Tractor-Trolley bearing Nos. 24-A/1597 and 24-A/1598 respectively, which is owned by the 4th Respondent. The said vehicle was being driven by the 3rd Respondent on 10.12.2008 carrying the deceased by name Sonu in the Trolley. It is stated that the deceased Sonu was travelling in the capacity as a labourer and while so, when the Vehicle reached the place of occurrence, because of the alleged rash and negligence driving, the Tractor-Trolley overturned, causing fatal injuries to the traveller Sonu, who succumbed to the same. The loss was sought to be compensated by filing Claim Petition by the Respondents No.1 and 2 herein.

4. The Owner and Driver of the offending Tractor-Trolley denied the claim and contended that the Vehicle was being driven by the Driver with a valid driving license and further since it was insured by the Appellant, the liability, if any, was liable to be satisfied by the Insurer of the Vehicle. The Appellant/Insurer filed a written statement, denying the liability on various counts including absence of coverage and also that the Driver was not having a valid and effective driving license. It was also contended that the Vehicle was having no permit to be operated in the State of Chhattisgarh, but for the permit available to have it plied in the State of Orissa. On conclusion of evidence, the Tribunal held that the accident was only because of the negligence on the part of the Driver of the Vehicle and proceeded to fix the compensation accordingly. Taking the relevant facts and figures, the loss of dependency was fixed as Rs.2,68,800/- and awarding amounts under

relevant heads, the total compensation payable was fixed as Rs.3,74,400/-. This was directed to be satisfied with interest @ 9% per annum from the date of filing claim petition till its satisfaction and the liability was fixed upon the Insurer of the Vehicle, which made them to feel aggrieved and hence the appeal.

5. With regard to the absence of driving license, the learned counsel for the Appellant submits that, the driver was having only a license to drive LMV (Non Transport), whereas the Offending Vehicle involved was a Tractor (Commercial) with Trolley and hence, he was never authorized to drive such Vehicle. The learned counsel, however, fairly concedes that by virtue of the law declared by the Apex Court in ***Mukund Dewangan Vs. Oriental Insurance Company Limited*** reported in ***(2017) 14 SCC 663,*** a person having license to drive LMV is authorized to drive any such Light Motor Vehicle (having weight not exceeding 7500 kilograms) can drive such Vehicle without any specific authorization in this regard and as such, the said aspect is not pressed much. The claim petition was filed conceding that the deceased at the relevant time was travelling in the Tractor-Trolley. The question is whether a person travelling in a Tractor-Trolley comes under the coverage of the policy.

6. There is no dispute as to the nature and type of vehicle involved, which is “Tractor-Trolley”. Admittedly, there was only 'one seat' in the Tractor, which is exclusively for the driver. Nobody else is intended to be

carried in the Tractor or Trolley, but for carrying the goods for the agriculture purpose (in the Trolley). Whether the risk of a person travelling in any goods vehicle could be covered under the policy issued in terms of Section 147 of the Motor Vehicles Act, 1988 had come up for consideration before the Apex Court in ***New India Assurance Co. Ltd. v. Asha Rani & Others****;* reported in (2003) 2 SCC 223. Overruling the decision rendered by the Apex Court in ***New India Assurance Company vs. Satpal Singh And Others*** reported in ***(2000) 1 SCC 237***, it was categorically held that no passenger is entitled to travel in a goods carriage, except in the capacity as the owner/representative of the goods carried in the vehicle or as the employee of the insured.

7. The Apex Court has made it clear, as per the decision reported in ***National Insurance Co. Ltd. v. Cholleti Bharatamma and Others*** reported in ***(2008) 1 SCC 423***, that if at all the authorised person (owner/representative of the goods or employee of the insured) is travelling in the goods vehicle, he has to be in the 'Cabin' of the vehicle, depending upon the number of seats provided and not on the platform or anywhere else. Admittedly, in the instant case, the vehicle involved is a 'Tractor-Trolley' which does not have any cabin or seats for carrying any passenger, but for the one any only seat available for the driver of the vehicle. This being the position, the deceased, stated as a labourer and travelling in the Trolley at the relevant time, was not authorized to have undertaken any such travel and such an instance

does not come within the purview of the policy issued by the Appellant, in view of the law declared by the Apex Court.

8. In the above circumstance, we hold that the Tribunal went wrong in mulcting the liability upon the Insurance Company, despite the fact that the policy provided no coverage to a passenger in a Tractor-Trolley. As it stands so, no further consideration with regard to the absence of permit is necessary and the liability cannot be mulcted upon the Appellant/Insurer. It has to be satisfied by the Owner and Driver of the Vehicle.

9. In the above circumstance, we interdict the Award passed by the Tribunal to the extent it has fixed liability upon the Appellant/Insurance Company of the Offending Vehicle and the same is directed to be satisfied by the Owner and Driver of the Tractor-Trolley. If any amount deposited by the Appellant/Insurer is still lying in deposit before the Tribunal, it shall be caused to be returned to the Appellant immediately. If the amount deposited by the Appellant has already been disbursed to the Claimants, such amount need not be recovered and the remedy of the Appellant/Insurer will be to get it recovered from the Owner and Driver, by way of appropriate proceedings, in accordance with law. It is ordered accordingly.

The appeal stands allowed to the said extent.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Chandra