NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1239 of 2014

{Arising out of order dated 20.10.2014 passed by the learned 3rd Additional Motor Accident Claim Tribunal, Surajpur, District Surajpur (C.G.) in Claim Case No. 359/2011}

- Makhadu Prasad Gupta, S/o Gopichand, aged about 65 years, R/o Village Tarkeshwarpur, Police Station & Tahsil Premnagar, District Surguja (C.G.)

---- Appellant

Versus

1. Mannraj, S/o Maniram, aged about 45 years.

2. Shrimati Manbasia, W/o Mannraj, aged about 40 years.

   Both 1 and 2 Caste Gond, R/o Village Tarkeshwarpur, Police Station & Tahsil Premnagar, District Surguja (C.G.)

3. Shivnath, S/o Amarnath, aged about 27 years, Caste Gond, Occupation-Driver, R/o Villaged Tarkeshwarpur, Police Station & Tahsil Premnagar, District Surguja (C.G.)

4. United India Insurance Company Limited, Branch Office – Brahmroad Ambikapur, Police Station & Tahsil Ambikapur, District Surguja (C.G.)

---- Respondents

For Appellant	:	Shri Rajeev Bharat, Advocate.
For Respondents No. 1 to 3	:	None.
For Respondent No. 4	:	Shri Dashrath Gupta, Advocate.

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

Per P. R. Ramachandra Menon, Chief Justice

24.09.2020

1. Fixation of the liability to the tune of Rs. 3,44,000/- as compensation payable in respect of the demise of the deceased in a road traffic accident; mulcting the liability upon the owner of the offending vehicle, after sparing the Insurer, is the subject matter of challenge in this appeal.

2. The appeal arises from the Claim Case No. 359 of 2011 filed before the 3rd Additional Motor Accidents Claims Tribunal, Surajpur, District Surajpur (C.G.) (for short, 'Tribunal'). In fact, the claim petition was filed by the Respondents No. 1 and 2 herein, who were the parents of the deceased boy by name Sukhram, aged 19 years. It was the case of the Claimants before the Tribunal that, on the ill-fated day *i.e.* on 06.05.2010, the deceased was travelling by sitting in the Tractor and because of the rash and negligence driving, he fell down and was run over by the Tractor causing fatal injuries leading to his death. It was stated that the deceased aged 19 years was pursuing the studies in the 10th standard and was also helping the father in agriculture and thus was having an annual income of Rs. 1,50,000/-. The loss was sought to be compensated in the said circumstance.

3. The Appellant/owner and the 3rd Respondent/Driver of the Tractor filed a written-statement disputing all the averments and allegations in the claim petition, raising the plea of 'total denial', disputing the involvement of the Tractor in the accident. It was, however, stated that the Tractor/Trolly was insured with the 4th Respondent/Insurer and that if at all any liability was found against, it was to be fixed upon the Insurer. The 4th Respondent/Insurer contended before the Tribunal that the deceased was travelling by sitting in the Tractor at the relevant time, who hence does not come within the purview of “3rd party”, whose liability alone is intended to be covered under the policy. It was also pointed out that there was no seat in the Tractor/Trolly for carrying any passenger and that the 'one' and only seat in the vehicle was exclusively for the driver and nobody else. The Insurer took up a further contention that the policy was actually issued to cover the vehicle's use for 'agricultural' purposes, whereas at the relevant time, it was being used for the 'commercial'

purpose and hence there was violation of the policy conditions. Absence of valid and effective driving licence to the driver and also the lack of permit and fitness certificate were raised to contend that there was clear violation of the statutory/policy conditions and hence that the Insurer was not liable to satisfy the claim under any circumstance.

4. Based on the pleadings and evidence, the Tribunal arrived at a finding that the accident was solely because of the negligence on the part of the driver of the Tractor. Fixing the notional monthly income of the deceased as Rs. 3,000/- and reducing 50% towards the personal expenses and reckoning only the remaining 50% as contribution to the family, the loss of dependency was worked out adopting a multiplier of '18' and fixing the same at Rs. 3,24,000/-. Awarding further amounts of Rs. 5,000/- towards the funeral expenses, another Rs. 5,000/- towards the loss of estate and a sum of Rs. 10,000/- towards the loss of love and affection, the total compensation was fixed as Rs. 3,44,000/- payable with interest @ 9% per annum from the date of filing the claim petition, till satisfaction. However, observing that there was no coverage under the policy in respect of the deceased who was travelling in the Tractor at the relevant time; the 4th Respondent/Insurer was exonerated and the liability was mulcted upon the Appellant/owner of the Tractor/Trolly; correctness of which is put to challenge in this appeal.

5. There is no dispute as to the scope of the policy issued by the 4th Respondent/Insurer, which was to cover the statutory liability in terms of Section 147 of the Motor Vehicles Act, 1988. The said provision does not envisage or extend any coverage to the passenger in a goods carriage or in the Tractor/Trolly. The offending vehicle (Tractor) involved herein was having only 'one seat', which was exclusively for the driver and no other

seat was provided to carry any passenger. Even though, the owner accompanying the goods or the employees (of the specific category) of the Insured are also entitled to travel in a goods carriage, it has been made clear by the Apex Court in ***National Insurance Company Limited vs. Cholleti Bharatamma & Others*** reported in **(2008) 1 SCC 423** that such persons, so as to obtain coverage, should be travelling in the 'cabin' of the vehicle, depending upon the number of seats provided and that there will not be any coverage to any person who is travelling on the platform of the goods carriage. The legal position was reiterated by the Supreme Court in ***Shivraj vs. Rajendra & Another*** reported in **(2018) 10 SCC 432** (paragraph 10) as well. This being the position, the finding and reasoning given by the Tribunal to exonerate the Insurance Company, fixing the liability upon the Appellant/owner of the vehicle does not suffer from any infirmity.

6. The learned counsel for the Appellant, however, submits that the deceased was actually a 'pedestrian' and that the Tractor, on losing control fell upon him, causing fatal injuries leading to his death. This fact, that the deceased was not a passenger in the Tractor, but a pedestrian, was sought to be introduced by the driver who was examined before the Tribunal. We do not find any pith or substance in the said submission, for the obvious reason that the specific case put forth by the Claimants before the Tribunal was that the deceased was sitting in the Tractor at the relevant time. It is also to be noted that, though the Appellant/owner of the vehicle had filed a written-statement before the Tribunal, no plea was ever raised that the deceased was only a 'pedestrian' and not a passenger. Similarly, there is total absence of plea in this regard in this appeal as well; where the specific case of the Claimants has been clearly adverted to in paragraph 2 (of the memorandum of appeal) to the effect

that the deceased was sitting in the Tractor, when he fell down and the Tractor ran over of him causing his death. The Appellant repeats the said version in the 'Synopsis' in the appeal memorandum as well (in paragraph 4), as signed and presented by the learned counsel.

7. Evidence is to support the pleadings. There is no pleading that the deceased was only a pedestrian and not a passenger in the Tractor. The version of the driver as deposed before the Tribunal, contrary to the pleadings, is not liable to be accepted as a valid piece of evidence. The Tribunal has correctly rejected it and arrived at a finding, based on the pleadings and legally acceptable evidence on record.

8. In the above circumstances, we are of the view that the challenge raised by the Appellant fails. The appeal is devoid of any merit. None of the grounds raised in support of the same could be held as tenable.

The appeal stands dismissed accordingly.

Sd/- Sd/-

(P. R. Ramachandra Menon)
Chief Justice

(Parth Prateem Sahu)
Judge

Brijmohan