

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1379 of 2014**

- Sevasingh Oberoi and Company R/o Quarter no. MIG/C/325 District Durg C.G.

-----Appellant**VERSUS**

1. Smt. Jamuna Majumdar W/o late Susen Majumdar aged 30 years
2. Sanju Majumdar aged 5 years
3. Nandini Majumdar D/o late Susen Majumdar aged about 02 years (for minor Smt. Jamuna Majumdar)
4. Shantiranjan Majumdar aged 57 years S/o late Santram Majumdar
5. Smt. Kanchan Majumdar aged 54 years W/o Shantiranjan Majumdar
6. Suresh Majumdar aged 25 years S/o Shantiranjan Majumdar
7. Sumant Majumdar aged 23 years

All above resident of Village P.V. 126, Pakhanjur, Thana Pakhanjur Distt. North Bastar Kanker C.G.

-----Claimants

8. Dasrath Ram Sahu S/o Gandhi Ram Sahu, aged about 28 years Resident of Gidhali Thana Balod, District Durg, presently R/o Avasparapuri Thana Charama, Dist. North Baster Kanker C.G. **(Driver of Road Roller OIC-2)**
9. Oriental Insurance Company Limited, Near Adarsh Bal Mandir, Main Road, Dhamtari District Dhamtari C.G.

-----Insurer**----Respondents****WITH****MAC No. 1378 of 2014**

1. Sevasingh Oberoi and Company R/o Quarter no. MIG/C/325 Padmanabhpur District Durg C.G.

---- Appellant**Versus**

1. Smt. Kanchan Das W/o late Vishwanath aged 50 years
2. Vichitra Das aged about 20 years,
3. Anirudh Das S/o late Vishwanath, aged 16 years
(Respondent 3 minor through Smt. Kanchan Das Respondent 1)
All R/o Village Pakhanjur, District North Bastar Kanker C.G.

-----Claimants

4. Dashrath Ram Sahu S/o Gandhi Ram Sahu aged 28 years Resident of Dihali Thana Balod, District Durg, presently R/o Avasparapuri Thana Charama, Dist. North Baster Kanker C.G. **(Driver of Road Roller OIC-2)**
5. Oriental Insurance Company Ltd. Near Adarsh Bal Mandir, Main Road Dhamtari, District Dhamtari C.G.

---- Respondents

MAC 1379/2014

For Appellant : Mr. Shakti Raj Sinha, Advocate
For Respondent 1 to 7 : Mr. Pravin Dhurandar, Advocate.
For Respondent 9 : Mr. Raj Awasthi, Advocate

MAC 1378/2014

For Appellant : Mr. Shakti Raj Sinha, Advocate
For Respondent 5 : Mr. Raj Awasthi, Advocate

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

Order on Board

Per Parth Prateem Sahu, J.

02/09/2020

1. Both these appeals preferred by owner of the offending vehicle are arising out of one and the same accident on similar grounds, hence both these appeals are being disposed of by this common order.
2. In MAC No. 1379/2014 challenge is to the impugned award dated 31-10-2012 passed by learned Additional Motor Accident Claims Tribunal, Bhanupratappur, District Kanker C.G. in claim case no. 52/2012 whereby learned Claims Tribunal allowed the application filed under Section 166 of the Motor Vehicles Act, 1988 (for short "Act of 1988") filed by Respondent 1 to 7/ claimants against the death of late Susen Majumdar driver of motor cycle and awarded Rs. 5,10,800/- as total compensation.
3. In MAC No. 1378/2014 challenge is to the impugned award dated 31-10-2012 passed by learned Additional Motor Accident Claims Tribunal, Bhanupratatpur, Kanker C.G. in claim case no. 51/2012 whereby learned Claims Tribunal allowed the application filed under Section 166 of the Act of 1988 in part filed by Respondent 1 to 3/ claimants against the death of Ku. Gangadas and awarded Rs. 3,81,000/- as compensation.

4. Facts relevant for disposal of these appeals are that on 18-10-2010 at about 05:00 pm, Susen Majumdar was travelling on a motor cycle along with Ku. Gangadas, when they reached near village Kokanpur road, non-applicant 1/ Respondent 8 driver of the road roller drove the roller rashly and negligently and dashed the motor cycle driven by Susen Majumdar and caused accident. In the said accident, Susen Majumdar and pillion rider Ku. Gangadas suffered grievous injuries and died. Accident was reported to concerned police station based upon which crime was registered against non-applicant 1/ driver of road roller and after investigation final report was also submitted before the Court of jurisdictional Magistrate.
5. Claimants, in claim case no. 52/2012 and Respondent 1 to 7 in MAC No. 1379/2014 are widow, children and other legal representatives of late Susen Majumdar filed an application under Section 166 of the Act of 1988 seeking compensation of Rs. 14,14,000/- mentioning therein that on the date of accident, deceased was an able-bodied person aged about 34 years working as Mason and earning Rs. 8,000/- per month. Claimants in claim case no. 51/2012 (Respondent 1 to 3) are mother and siblings of deceased Ku. Gangadas filed an application under Section 166 of the Act of 1988 pleading therein that on the date of accident deceased was working as labourer and earning Rs. 3,000/- per month. They have claimed Rs. 4,41,000/- as total compensation on different heads.
6. Non-applicant 1 and 2 who are driver and owner of road roller submitted reply to the claim application. In reply to claim case no. 52/2012 pleaded that on the date of accident, non-applicant 1-driver after completion of work of construction of road parked the road roller on side of the road, it is the deceased Susen who drove his motor cycle rashly and negligently and dashed the road roller and suffered injuries. The accident was on account of rash and negligent driving of the motor cycle. Non-applicant 1 was possessed with valid and effective driving licence and the road roller was

insured with non-applicant 3-Insurance Company. The liability, if any, to pay the compensation would be upon Insurance company.

7. Non-applicant 3-Insurance Company submitted reply to the claim application, pleaded that the accident was result of rash and negligent driving of motor cycle by late Susen Majumdar, he dashed with the stationary road roller. On the date of accident, non-applicant 1 driver of the road roller was not possessed with a valid and effective driving licence. Insurance Company has not insured the road roller equipment/ machinery as motor vehicle but issued the insurance policy under "Machinery Insurance Policy", road roller machine was not registered with any of the RTO. Road roller does not fall within the definition / category of motor vehicle, hence, the application under Section 166 of the Act of 1988 seeking compensation is not maintainable. Road roller was being used in breach of policy conditions as such the Insurance company is not liable to pay any amount of compensation.
8. Learned Claims Tribunal upon appreciation of pleadings and evidence placed on record by the respective parties allowed both the claim applications in part, while exonerating Insurance Company fastened liability upon the appellant/ non-applicant 1 and 2 driver and owner of the road roller. Learned Claims tribunal arrived at a finding that as per Ext. D1, the road roller was insured under the "Contractor's Plant and Machinery under the Floater Policy", road roller was not insured with non-applicant 3-Insurance Company as motor vehicle.
9. Mr. Shakti Raj Sinha, learned counsel for the appellant submits that the owner/ non-applicant 2 has obtained the insurance policy and paid the premium. Insurance Company after accepting the premium had issued the policy Ext. D1 for a period from 12-12-2009 to 11-12-2010 covering the risk of the plant and machinery of the appellant owner of the road roller. He submits that the premium of Rs. 53,496/- was paid and under the schedule of

premium, for covering risk/ premium of 3rd party Rs. 7,500/- was paid. Total coverage is of Rs. 30 lac. Vehicle which is involved in the accident is a road roller and it is being used for construction of road. There is specific pleading that after construction of road, it was parked on the side of the road. The Claims Tribunal only considering the exception Clause-h, held that the accident took place during the course of transit of the road roller from one place to another hence the Insurance Company is not liable which is erroneous in the facts and circumstances of the case. It is further contended that the road roller is a vehicle which is being used for construction of road, further, he pointed out that under the policy, there is specific mention of 3rd party liability which clearly shows that the risk of third party is also covered. Deceased persons were third party, hence, risk of the deceased person is covered under the policy. Road roller is a road construction equipment vehicle and it has to be used on roads only. Appellant has specifically pleaded in their reply that after construction of the road, vehicle was parked on side of the road. The finding arrived by learned Claims Tribunal exonerating the Insurance Company from its liability is perverse to the evidence available on record, hence, not sustainable.

10. Mr. Raj Awasthi, learned counsel for the Insurance Company submits that the insurance policy is issued under the specific head i.e. Contractor Plant And Machinery Floater Policy, risk of the machinery is covered as per the terms and conditions as mentioned in the Standard Policy Form attached to the insurance policy. In the attached Standard Policy Form under exception clause, it is specifically mentioned under 'Clause-h' that "loss or damage whilst in transit from one location to another" and further it is mentioned that Public Liability will not be payable while Contractors Plant and Machineries are on Public Roads. He submits that the Claims Tribunal taking into consideration the entire contents of the insurance policy has passed the impugned award which does not call for any interference.

11. Mr. Pravin Dhurandhar, learned counsel for the Respondent-claimants while supporting the impugned award to the extent of awarding amount of compensation further submits that though the road roller was insured under the head of Contractors Plant And Machinery but all the equipments which are mentioned in the policy showing coverage of risk are being used for the construction of road, claimants have very categorically stated that when the deceased Susen Majumdar was travelling on a motor cycle and going slowly on his own side, driver of the road roller dashed the motor cycle.
12. We have heard learned counsel for the respective parties and perused the record of Claim case no. 52/2012.
13. It is not in dispute that the road roller was insured under the policy "Contractors Plant and Machinery Floater policy", under the risk details, it is mentioned as *Location of Risk*: Sewa Singh Oberoi & Co. whole CG and MP" ten machineries which are movable machineries have been shown to have insured under the policy out of which there are two DISPOSAL ROAD ROLLER OIC-1 and OIC-2, JCB, COMPECTOR, PAVER, TATA HITACHI EX-70, VIBRATORS COMPECTOR etc. Under the Cover Description as mentioned under SCHEDULE OF PREMIUM, Third Party Liability Coverage of Rs. 30 Lac total has been mentioned for which the premium of Rs. 7,500/- was charged. In the policy, it is also mentioned that the insurance under this policy is extended to cover risk of (as per forms attached). The policy schedule and form attached is placed on record as Ext. D1. Under the form Exception 'Clause-h' reads as under

"h) loss or damage whilst in transit, from one location to another location. (Public Liability will not be payable while Contractors Plant & Machineries are on Public Roads)."
14. From the aforementioned clause h, liability of Insurance Company has been excluded when the Contractor's Plant and Machineries are on public road. Appellant in his reply to the claim application have pleaded that after completion of the work of construction of road, driver of road roller had parked

his vehicle on side of the road, but has not placed any document on record or any evidence to show that he has been awarded a contract for construction of road from any public authority of the road on which accident took place. The appellant has not entered into the witness box to prove its pleadings nor placed any documents. In absence of any admissible piece of evidence, the submission made by the learned counsel for the appellant that the vehicle was engaged in the construction of road cannot be accepted, particularly, the construction of road where accident took place. True it is that under the Policy Schedule, coverage of third party risk is there but in view of specific exclusion clause it was burden of the appellant/ owner of road roller that as plant and machinery of the appellant are for its use at work place and the road roller met with an accident at work place and not in a routine transit of the machineries from one place to another. Owner of the road roller even before this Court has not placed any document to show that he was engaged for construction of road of the place of accident. For the foregoing reasons the submissions made by the learned counsel for the appellant that the policy covers the risk of third party in the accident took place at the place of construction of road cannot be accepted without any evidence, hence it is repelled.

15. So far as, the submission made by Mr. Shakti Raj Sinha, learned counsel for the appellant with regard to the quantum of the amount of compensation. Perusal of the record would show that the accident took place in the year 2010, Claims Tribunal upon assessing the income of the deceased persons as Rs. 3,000/- per month only in case of Susen Majumdar and after deducting $\frac{1}{5}^{\text{th}}$ towards personal and living expenses and applying the multiplier of 16 awarded total sum of Rs. 4,60,800/- towards loss of dependency and Rs. 50,000 on other conventional heads awarded Rs. 5,10,800/- as total compensation. Deceased was survived by widow, two children, parents and brothers where father and brothers cannot be treated as dependents upon the deceased and the appropriate deduction should be $\frac{1}{4}^{\text{th}}$ instead of $\frac{1}{5}^{\text{th}}$. But

looking to the fact that there is no addition of amount towards future prospects as held by Supreme Court in the case of **National Insurance Company Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680** and further awarding only Rs. 50,000/- towards other conventional heads whereas the claimants are entitled for much more ie Rs. 1,50,000/-, we are not inclined to interfere with the quantum of the award of amount of compensation.

16. In MAC 1378/2014, deceased Gangadas was 18 years of age. Claims Tribunal has assessed the income as Rs. 3,000/- per month deducted 1/4th towards personal and living expenses instead of 1/2 and by applying the multiplier of 13 calculated the amount of compensation towards loss of dependency as Rs. 3,51,000/-. Claims Tribunal further awarded Rs. 30,000/- towards other conventional heads, in total awarded Rs. 3,81,000/- as compensation. True it is that the Tribunal instead of deducting 1/2 towards personal and living expenses has deducted 1/4th only but looking to the other fact that the Claims Tribunal has not added any amount towards future prospects, applied multiplier of 13 instead of 18 and awarded only Rs. 30,000/- on other conventional heads which is on lower side, we are not inclined to interfere with the award passed in MAC No.1378/2014.
17. The other submission made by learned counsel for the appellant that the Claims Tribunal erred in not considering that it is the deceased Susen Majumdar who dashed his motor cycle with the stationary road-roller and has not held the deceased to be contributory negligent. Except the pleading made by the owner of the offending road-roller, in reply that deceased Susen Majumdar dashed his motor cycle with the stationary road-roller no other evidence has been brought on record by examining the driver or himself as witness before the Tribunal, pleadings require to be proved by placing evidence on record. Perusal of copy of F.I.R. placed on record as Ext. P-2 lodged by one Ganesh alias Mithun would show that accident took place due to rash and negligent driving of road-roller by its driver. After completion of

investigation, police submitted final report/ charge-sheet against non-applicant driver of road-roller wherein it is mentioned that the accident was a result of rash and negligent driving of offending road-roller by its driver and dashing with the motor cycle driven by late Susen Majumdar.

18. In view of the aforementioned facts and circumstances of the case, particularly, taking into consideration document Ext. P-1 and P-2 ie. copy of final report and copy of F.I.R. and further considering that neither the appellant-owner nor the driver entered into the witness box to prove their pleadings, in absence of specific evidence with regard to contributory negligence of deceased driver of motor cycle, the submission made by the learned counsel for the appellant that deceased was also contributory negligent in the accident cannot be accepted and it is hereby repelled.
19. For the foregoing reasons, we are not inclined to interfere with the quantum of amount of compensation awarded by the Claims Tribunal in both these appeals.
20. The appeals being devoid of any substance which are liable to be and are hereby dismissed accordingly. No order as to costs.

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

Sd/-
(Parth Prateem Sahu)
Judge