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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 790 of 2014

{Arising out of order dated 19.06.2014 passed by learned Additional Motor Accident Claims Tribunal, Khairagarh, District Rajnandgaon, Chhattisgarh in Claim Case No.59 of 2012}

1. Dayalu Ram Dewangan (Owner) S/o Garudram Dewangan Aged About 36 Years
2. Mansukh Lal Dewangan (Driver) S/o Sadhuram Dewangan Aged About 25 Years

   Both R/o Village Markamtola, Tahsil Khairagarh, Revenue/Civil District Rajnandgaon, Chhattisgarh

---- Appellants

Versus

1. Divisional Manager Oriental Insurance Company Ltd. Regd./Head Office-Oriental House A 25/27, Asif Ali Road, New Delhi, Divisional Office-Parmanand Bhawan, Near Dr. Rajendra Prasad Chowk, Durg, Revenue/Civl District Durg, Chhattisgarh
2. Smt. Demin Bai Sahu W/o Late Goutriha Sahu Aged About 21 Years
3. Abhishek Sahu (Minor) S/o Late Goutriha Sahu Age- 4 Months (Minor represented by Natural Guradian Mother Smt. Demin Bai Sahu)
4. Gaindlal @ Gendlal S/o Biren Sahu Aged About 60 Years
5. Smt. Ancleheen Bai W/o Gaindlal @ Gendlal Aged About 58 Years

   All R/o Village Markamtola, P.O. Maharumkala, Tahsil Khairagarh, Revenue/Civil District Rajnandgaon, Chhattisgarh

---- Respondents

For Appellants	: Shri H.S. Ahluwalia, Advocate.
For Respondent No.1	: Shri Anumeh Shrivastava, Advocate.
For Respondents No.2 to 5	: Shri A.L. Singroul, 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

05.10.2020

1. Appellants are the owner and driver respectively of the offending vehicle (Tractor and Trolley bearing No.CG-04/ZG/1351 and CG-04/ZG/1352), which got involved in a road traffic accident leading to the death of a

person claimed as Labourer travelling in the offending vehicle at the relevant time. Grievance is in respect of the award passed by the Tribunal whereby the Insurer of the offending vehicle has been exonerated from satisfying the liability, which hence stands mulcted on the shoulders of the Appellants.

2. Admittedly, on 22.05.2012, the deceased by name, Goutriha Sahu was travelling in the Tractor/Trolley, owned by the 1st Appellant, driven by the 2nd Appellant and insured by the 1st Respondent. When the vehicle reached the place of occurrence, allegedly because of the rash and negligent driving by the driver of offending vehicle, the deceased fell down and was run over by the vehicle, causing fatal injuries leading to his death. This was sought to be compensated by filing claim petition before the Tribunal by the widow, minor children and parents of the deceased.

3. The claim was resisted by the Appellants mainly on negligence on the part of the 2nd Appellant and it was contended that the 2nd Appellant was having valid and effective driving license to drive the vehicle at the relevant time, and further that the offending vehicle was covered under a valid insurance policy issued by the 1st Respondent/Insurer. The Insurance Company contended that the driver of the offending vehicle was not having valid and effective driving and there was violation of the statutory/policy conditions, under which circumstance, the claim was not liable to be satisfied by them.

4. On the basis of pleadings and evidence, the Tribunal arrived at a finding that the accident was because of the sole negligence on the part of the 2nd Appellant, who was driving the Tractor at that relevant time. With regard to the quantum of compensation payable, the Tribunal took only a

sum of Rs.45,000/- as the notional annual income of the deceased. After deducting 1/3rd of the income towards personal expenses, multiplier of 17 was applied to work out the loss of dependency as Rs.5,10,000/-. Awarding a sum of Rs.5,000/- towards funeral expenses and a further sum of Rs.10,000/- towards loss of love and affection and loss of consortium, the total compensation was fixed as Rs.5,25,000/-. This was required to be satisfied with interest at the rate of 6% per annum from the date of application and that in case of any failure, it would attract 'penal interest' of 9%.

5. Shri H.S. Ahluwalia, the learned counsel for the Appellants submits that the 2nd Appellant was having valid and effective driving license to drive the 'Light Motor Vehicle' at that relevant time and that, the Tractor and Trolley having the “unladen weight of less than 7500 Kgs.” as defined in Section 2(21) of the Motor Vehicles Act, 1988, it was very much a 'Light Motor Vehicle' and hence the license to drive 'Light Motor Vehicle' possessed by the 2nd Appellant was valid enough. The learned counsel submits that the said issue had come up for consideration before the Apex Court in **Mukund Dewangan v. Oriental Insurance Company Limited** reported in **(2017) 14 SCC 663,** whereby it has been held in categorical terms that no separate authorization is necessary to drive 'Transport Vehicle', if it is of less than 7500 Kgs. and that the license to drive 'Light Motor Vehicle' is enough. Though the correctness of the said decision has been doubted by the Apex Court in a subsequent ruling (for not referring to various provisions in the statute including the relevant rules), the matter has been referred to the Larger Bench, the legal position as it stands today is to the effect that the Insurer cannot be exonerated under this ground.

6. However, another important aspect, involving a 'question of law' is very much evident from the admitted pleadings and the materials on record. It has been conceded by the Appellant that the deceased was actually travelling in the Tractor/Trolley at that relevant time. The Tractor/Trolley is not a 'passenger carrying vehicle'. No passenger is intended to be carried in a 'goods carriage vehicle' except in the capacity of owner or his representative of the goods or as the employee of the insured, to the extent it is permissible. This is the law declared by the Apex Court in **New India Assurance Company Limited v. Asha Rani and Others** reported in **(2003) 2 SCC 223**.

7. It is the case of the Claimants that the deceased was a Labourer/employee of the owner of the vehicle. It has been held by the Apex Court in unequivocal terms that if at all anybody is carried in the goods carriage, either in the capacity as owner or his representative of the goods or as the employee of the insured, he has to be carried <u>only in the 'cabin'</u> of the vehicle, based on the seating capacity, as permitted. As such, the liability in the instant case does not come within the purview of the statutory policy issued by the 1st Respondent/Insurer, in view of the law declared by the Apex Court in **National Insurance Company Limited v. Cholleti Bharatamma and Others** reported in **(2008) 1 SCC 423.**

8. It is to be noted that there is no case for the Appellants that the Tractor/Trolley was having any seat to carry passengers, either as a Labourer or otherwise and there is no 'cabin' to carry any such person in the Tractor or Trolley. The certificate of registration of the Tractor bearing

No.CG-04-ZG/1351 is forming part of the file and marked as Ex.D-2(c), which shows the entry at Column No.13 that the seating capacity (including driver) is only 'one' i.e. exclusively for the driver and nobody else. Similarly, the certificate of registration of the Trolley bearing No.CG-04/ZG/1352 is also forming part of the file and marked as Ex.D-3(c) and Column No.13 dealing with seating capacity (including driver) has been marked 'blank'. The insurance policy issued by the 1st Respondent/Insurer has been marked as Ex.D-1 and the 'Schedule' clearly shows that the seating capacity (including driver) is only 'one'.

9. The Apex Court had made it clear that no person is entitled to travel in the Tractor/Trolley as the seating capacity is only 'one', which is exclusively for the 'driver' of the Tractor/Trolley. This being the position, in view of the undisputed factual position that the offending vehicle was a 'Tractor/Trolley' and that the no seat is provided other than for the driver, no further fact finding exercise is required to be done for deciding the question of coverage. As it stands so, we are of the view that no purpose would be served for remanding the matter to the Tribunal for consideration of this aspect, as it can only be a futile exercise.

10. With regard to the quantum of compensation payable, we do not find any tenable ground to interfere with the finding rendered by the Tribunal as to the negligence fixed on the 2nd Appellant/driver of the offending vehicle or as to the quantum of compensation awarded. It is also worthwhile to note that the Tribunal, after fixing the annual income of the deceased, has not considered the 'future prospects' for working out the compensation in spite of the decisions rendered by the Apex Court in **Sarla Verma v. Delhi Transportation Corporation** reported in **(2009) 6 SCC 121** and the Constitution Bench in **National Insurance Company Limited v.**

Pranay Sethi & Others reported in **(2017) 16 SCC 680** as well as the subsequent verdict in **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram & Others** reported in **(2018) 18 SCC 130**. The total compensation awarded by the Tribunal under the conventional heads is only to the tune of Rs.15,000/-, whereas it could have been much more, as per the above rulings.

In the above circumstance, we do not find any merit in the appeal. However, the interest payable shall remain to be @ 6% per annum from the date of the claim petition, till satisfaction. The penal interest ordered by the Tribunal stands modified.

Sd/-	Sd/-
(P. R. Ramachandra Menon) **Chief Justice**	**(Parth Prateem Sahu)** **Judge**

Anu