NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 393 of 2015

1. Wahid Ansari (Driver) Dead Through Lrs

1(A) Sultana, Wd/o Late Wahid Ansari, Aged About 40 Years

1(B) Nazir Ansari S/o Late Wahid Ansari, Aged About 18 Years

Both are R/o Village Jur, Police Chowki Basdai, Tahsil And District Surajpur, Chhattisgarh

2. Khairul Anwar S/o Sher Mohammad Aged About 33 Years R/o Village Jur, Police Chowki, Basdei, Tahsil And District Surajpur, Chhattisgarh (Owner)

---- Appellants/NAs

Versus

1. Jawahar Lal, S/o Kanshi Ram, Aged About 35 Years, Caste- Panika, R/o Village Biramtal, Police Chowki, Basdei, Tahsil And District Surajpur, Chhattisgarh (Claimant)

2. United India Insurance Company Limited Through The Branch Manager, Office- United India Insurance Company Ltd. Bramh Road, Ambikapur, District Surguja, Chhattisgarh (Insurer)

----Respondents

For Appellants	:	Shri Ashok Kumar Shukla, Advocate
For Respondent- 1	:	None appears
For Respondent- 2	:	Shri Dashrath Gupta, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
05.02.2021

1. Challenge in this appeal is to the award dated 13.12.2014 passed by the 3rd Additional Motor Accident Claims Tribunal, Surajpur (for short, 'Claims Tribunal') in Claim Case-335 of 2011, whereby learned Claims Tribunal allowed the application filed under Section 166 of the Act of 1988 in part, and awarded compensation of Rs.3,44,000/-, while exonerating Insurance Company from its liability, fastened liability upon NA2 and 3/appellants herein jointly and severally ie Driver and Owner of offending vehicle to satisfy the amount of compensation.

2. Facts relevant for disposal of this appeal are that on 10.06.2011, Sagar @ Raju along with other five persons went to load the Tractor bearing No. CG 15 A-2689 and Trolley bearing No. CG 15A-2752 (hereafter referred to 'offending vehicle') with Murum-soil. When the offending vehicle was half loaded with Murum-soil, its driver (NA2) drove the vehicle rashly and negligently towards front and rear side, on account of which, offending vehicle fell into a ditch and Murum-soil fallen over Sagar @ Raju, who was digging Murum-soil and met with an accident. In the aforesaid accident, he suffered grievous injuries and died.

3. Claimant, who is father of deceased Sagar @ Raju filed an application under Section 166 of the Motor Vehicle Act,1988 pleading therein that the deceased was working as labourer and earning Rs.6,000/- per month. On the date of accident, he went to work as labourer, while loading the offending vehicle with Murum-soil, he met with an accident due to rash and negligent act of its driver and Murum-soil fallen over the deceased. He suffered grievous injuries and succumbed to the injuries on the spot. Claimant sought Rs.16,00,000/- as total compensation on different heads.

4. NA1/ Insurance Company submitted reply to the claim application, while denying the pleadings made therein, it was further pleaded that offending vehicle was insured for a period from 15.10.2010 to 14.10.2011 for agriculture purpose. Accident took place in mining area, where labourers including the deceased were digging Murum-soil for transporting the same for construction of road. There was illegal digging of Murum-soil, and while so, offending vehicle turned turtle and Murum-soil fallen over the deceased. There was breach of policy conditions as the offending vehicle was being used for other than agriculture purpose. Driver of

offending vehicle was not possessed with valid and effective driving license on the date of accident.

5. NA3, owner of offending vehicle submitted reply to the claim application, denying the facts pleaded therein. It was further pleaded that offending vehicle was engaged for transporting Murum-soil for construction of boundaries of agriculture fields (Medh). It was pleaded that the deceased came on the spot at the time of accident, suddenly fell down in the ditch and suffered head injury. Offending vehicle was insured with NA1/Insurance Company and it was being driven by the person, possessed with valid and effective driving license on the date of accident.

6. Learned Claims Tribunal upon appreciation of pleadings and evidence brought on record by respective parties, held that Sagar @ Raju died on account of motor accidental injuries suffered by him and awarded Rs.3,44,000/- as total compensation, exonerated the Insurance Company and fastened liability upon NA-2 and 3, driver and owner of offending vehicle for satisfying the amount of compensation.

7. Shri Ashok Kumar Shukla, learned counsel for the appellants submits that learned Claims Tribunal erred in arriving at a finding that there was breach of policy conditions. Transporting Murum-soil on the offending vehicle was being done for agriculture purpose. In this regard, Tribunal has not considered the entire pleadings and evidence available on record and arrived at a wrong finding that offending vehicle was being used for othr than agricultural purpose contrary to the terms and conditions of Insurance Policy. He submits that in the FIR, place of accident and material loaded in the vehicle is mentioned apart from the fact of

deceased being minor. Similar fact also mentioned in Final report submitted by the Investigating Agency. There is no material to arrive at a finding that offending vehicle was being used for commercial purpose. He submits that claimant in his claim application specifically pleaded that on the date of accident offending vehicle was being engaged for transporting Murum-soil for construction of boundaries of agriculture fields ie *Medh.* Claimant has proved the pleadings in evidence. He further pointed out that deceased being 3rd party and Insurance of offending vehicle is not in dispute, learned Claims Tribunal ought to have held the Insurance Company liable to satisfy the amount of compensation.

8. Shri Dashrath Gupta, learned counsel for the respondent-2/ Insurance Company submits that Tribunal has taken into consideration the fact that offending vehicle was being used for transporting Murum-soil which is other than agriculture purpose. He further contended that even if case of the appellants is accepted, then also, as per the eyewitness, who is co-labourer working along with the deceased, has stated that when they were loading Murum-soil on the offending vehicle, one of its wheels stuck into mud and the vehicle turned turtle, which clearly shows that there was breach of policy conditions. He submits that the award passed by learned Claims Tribunal is just and proper in the facts and circumstances of the case, which does not call for any interference.

9. We have heard learned counsel for the respective parties and also perused the records of claim case.

10. So far as the submissions made by learned counsel for the appellants with regard to the use of offending vehicle on the date of accident, perusal of copy of FIR would show that accident took place when the labourers were loading

Murum-soil on offending vehicle, one of its wheels got stuck up in the pit. Thereafter, due to rash and negligent act of the driver while driving offending vehicle forward and backward, trolley turned turtle, Murum-soil fallen over Sagar @ Raju and he died on the spot.

11. After completion of investigation, Police submitted charge-sheet in which place of accident has been shown as murum mining area. In claim application, claimant has very specifically pleaded with regard to place of accident and the manner in which accident took place. AW1/Claimant before the Claims Tribunal stated similar facts in his evidence also. Perusal of Ex.A1 FIR and A2 Final Report, and pleadings made in the claim application, clearly show that accident took place when labourers were loading Murum-soil on the trolley.

12. Devnarayan, co-labourer who was working along with deceased was examined as AW2. He stated in his evidence that accident took place when offending vehicle turned turtle while loading Murum-soil and deceased came under it. There is no pleading or evidence available on record that deceased on the date and at the time of accident, was travelling on offending vehicle, or occupant, or it was being used for commercial purpose ie for transporting Murum-soil for construction of road.

13. Driver of offending vehicle was not examined before the Claims Tribunal.

14. Owner of offending vehicle ie NA3 entered into witness box as NAW1 and submitted that offending vehicle was being engaged for transporting Murum-soil for the purpose of construction of boundaries of agriculture fields (Medh). This witness further stated that when the labourers were digging Murum-soil, at that

relevant time, offending vehicle turned turtle and met with an accident. He further admitted that deceased was working as labourer with him in agriculture fields.

15. NA1/Insurance Company examined one GP Bada, Dy Manager as NAW2. He admitted that Anup Mehta was engaged as Investigator. Offending vehicle was insured for a liability only (third party). The Tractor-trolley can be used anywhere for agriculture purposes. And further admitted that he did not went to the place of accident.

16. NAW3/1 Anup Mehta (Investigator) appeared as witness and stated that he was not present on the spot at the time of accident; he has not recorded the evidence of claimant and one Vijay Kashi. He further admitted that he had not obtained any document or certificate from the village Panchayat for transporting Murum-soil for construction of road.

17. Above witness was engaged by the Insurance Company to investigate the accident. Offending vehicle was being used for commercial purpose ie transporting Murum-soil for construction of road, comes only in the investigation report and the statement of investigator NAW3/1. Insurance Company has not examined Sarpanch or Secretary of village Panchayat in their support to prove the fact, that offending vehicle was engaged in road construction. Further, there is no material available on record to arrive at a finding that deceased was travelling on Tractor-trolley. It is the Insurance Company, who pleaded that the offending vehicle was being used in breach of policy conditions then, liability was on the Insurance Company to place on record clinching and acceptable piece of evidence, in support of its plea,in which, in the opinion of this Court, Insurance Company has utterly failed.

18. In view of the facts and evidence available on record and further taking into consideration the evidence of AW1, we are of the view that learned Claims Tribunal erred in arriving at a finding that on the date of accident offending vehicle was being plied in breach of policy conditions. It is not sustainable and is hereby set aside.

19. In the result, appellants are exonerated form their liability and further, now, liability to satisfy the amount of compensation is upon NA1/Respondent-2/Insurance Company.

20. Now it is the liability upon NA2/ Insurance Company to satisfy the amount of compensation of Rs.3,44,000/- .

21. The appellants/ Owner and Driver of offending vehicle will be at liberty to recover the amount so deposited by them in pursuance to the impugned award before the Claims Tribunal, upon depositing the entire Amount of compensation by NA1/Insurance Company.

22. In view of above, appeal is allowed in part and the impugned award is modified to the extent as indicated above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

padma