NAFR

HIGH COURT OF CHHATTISGARH BILASPUR
M. A. (C) No. 1136 of 2013

Cholamandlam MS General Insurance Company Limited, Divisional Office, T.P. Nagar, In-front of R.B. Traders, Korba Tah. & Dist. Korba, At present- Opposite LIC Office, Near Railway Line, Vidhansabha Road, Pandri, P.S. Pandri, Civil and Revenue Dist. Raipur, C.G.

---- Appellant

Versus

1. Smt. Anju Kasera (Mirjapuri) age 31 years, W/o Late Sunil Kasera (Mirjapuri).
2. Ku. Sachi Kasera (Mirjapuri) age 06 years, (Minor) D/o Late Sunil Kasera (Mirjapuri).
3. Ku. Shubhi Kasera (Mirjapuri) age 08 months, (Minor) D/o Late Sunil Kasera (Mirjapuri). Both minor through their mother Smt. Anju Kasera (Mirjapuri) age 31 years, W/o Late Sunil Kasera (Mirjapuri).
4. Krishn Chand Kasera (Mirjapuri) age 68 years, W/o Late Mahavir Prasad Kasera (Mirjapuri)

   All R/o Plot No.289, T.P. Nagar, Korba, PS Korba, Tah. and Dist. Korba, Civil and Revenue Dist. Korba, C.G.
5. Sujit Kumar urf Santosh Das age 41 years, S/o Premdas, R/o Vill. Bhaisma, Tah. and Dist. Korba, P.S. not mentioned in cause title, Civil and Revenue Dist Korba, C.G.
6. Mukhtar Singh, age 38 years, S/o Gurbaksha Singh, R/o Parasbhata Balco, Tah. and Dist. Korba, PS not mentioned in cause title, Civil and Revenue Dist. Korba, C.G.

---- Respondents

For Appellant	: Shri Rohitashva Singh, Advocate
For Respondents No.1 to 5	: None
For Respondents No. 6	: Shri Samir Singh, Advocate

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

Judgment on Board

Per Parth Prateem Sahu, Judge

04.01.2021

1. Appellant/Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the impugned award dated 21.03.2013 passed by Motor Accident Claims Tribunal, Korba, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.113 of 2010 whereby learned Claims Tribunal allowed the application filed under Section 166 of the M.V. Act in part and awarded Rs.22,72,760/- as total compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal, are that, on 20.05.2010, Sunil Kumar Kasera went to Raipur for selling his utensils from Korba on Mahindra Pick-up vehicle bearing No.CG-12/E/1098 (hereinafter referred to as 'offending vehicle'). When he was returning from Raipur to Korba on the offending vehicle in night at about 12.00 – 12.30 AM, non-applicant No.1/driver of offending vehicle drove his vehicle rashly and negligently and dashed one Truck parked on side of the road. In the said accident, Sunil Kumar Kasera suffered grievous injuries over his person and died on spot.

3. Respondents No.1 to 4/claimants have filed an application under Section 166 of the M.V. Act pleading therein that on the date of accident, deceased was doing the business of selling utensils and earning Rs.35,000/- per month. Claimants were dependent upon the income of deceased for their livelihood and claimed Rs.1,23,60,000/- as total compensation.

4. Non-applicants No. 1 and 2/driver and owner of offending vehicle did not appear before the learned Claims Tribunal and they were proceeded *ex parte*.

5. Appellant/non-applicant No.3/Insurance Company submitted reply to claim application denying the pleadings made in claim application. It was further pleaded that deceased was travelling on the offending vehicle as a passenger. Licence of driver of offending vehicle was not produced which means that on the date of accident, non-applicant No.1/driver of offending vehicle was not possessed with valid and effective driving licence. There was breach of policy conditions. Income of deceased has not been proved by placing any document in support of it. Owner and Insurance Company of Truck, with which, offending vehicle dashed has not been arrayed as party non-applicants.

6. Learned Claims Tribunal upon appreciation of pleadings and evidence placed on record by the respective parties held that the accident was a result of rash and negligent driving of

offending vehicle by non-applicant No.1 and in the said accident, Sunil Kumar Kasera died. Occupation of deceased to be business of selling of utensils has been found to be proved, income of deceased has been assessed as Rs.18,773/- per month, breach of policy conditions was not found to be proved and awarded Rs.22,72,760/- as total compensation.

7. Shri Rohitashva Singh, learned counsel for the appellant/Insurance Company submits that learned Claims Tribunal erred in not considering the fact that there was breach of policy conditions, deceased was travelling on the offending vehicle as a passenger whose risk was not covered under the policy, hence, deceased cannot be treated as third party for the offending vehicle i.e. Mahindra Pick-up. Driver and owner of offending vehicle remained *ex parte*, copy of driving licence has not been placed on record and learned Claims Tribunal has not conducted enquiry in terms of Section 168 and 169 of the M.V. Act read with Rule 226 of the Chhattisgarh Motor Vehicles Rules, 1994. He further submits that there was breach of policy conditions, hence, Insurance Company cannot be saddled with liability to satisfy the amount of compensation.

8. Per contra, Shri Samir Singh, learned counsel for respondent No.6/owner of offending vehicle submits that submission made by learned counsel for the

appellant/Insurance Company is not correct. During the course of investigation, Police has seized licence of non-applicant No.1/driver of offending vehicle, which is available in the record of criminal case, but appellant/Insurance Company has not made any effort to prove the licence issued in the name of non-applicant No.1. He further submits that learned Claims Tribunal has given sufficient opportunity to prove the pleadings and grounds raised by the appellant in their reply, but appellant/Insurance Company has not led any evidence in support of their case, neither appellant/Insurance Company has proved the copy of insurance policy in accordance with law.

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

10. Perusal of claim application under Section 166 of the M.V. Act would show that claimants have pleaded that deceased went to Raipur for selling his utensils, from there, he was returning in the night of 20.05.2010. Offending vehicle dashed with stationery/parked Truck on side of the road. The pleadings made in paragraph-19 of the application under Section 166 of the M.V. Act has been denied in general by the appellant/Insurance Company in their reply. They have not denied specifically the ground pleaded in paragraph-19 of claim application. Anju Devi Kasera (widow of the deceased) was examined as AW-1, who in her evidence

stated that her husband was engaged in the business of selling of utensils in weekly market and earning Rs.30,000-40,000/- per month. On the date of accident, deceased (her husband) went to Raipur for selling of utensils and while returning, he met with an accident. Mukhtar Singh (non-applicant No.2/owner of the offending vehicle) was examined as AW-2 who in his evidence has stated that Sunil Kumar Kasera is known to him. He frequently hires his vehicle for the purpose of transporting utensils. Deceased was engaged in the business of selling of utensils in weekly market. On the date of accident, Mukhtar Singh (AW-2) was also travelling in the offending vehicle along with driver and deceased. Deceased was sitting on left side of door of offending vehicle and on account of accident, he fell down from the offending vehicle. Amit Agrawal was examined as AW-3 to prove Ex.P/8, the business and purchase of articles/utensils from his shop. Claimants have placed on record Ex.P/7, which is a seizure memo showing seizure of driving licence of Sujeet alias Santosh Das Manikpuri. Learned Claims Tribunal in paragraphs-21 to 24 have discussed the issue with regard to breach of policy conditions. Learned Claims Tribunal has recorded that as per Ex.P/6, Police has seized the copy of insurance policy, fitness, R.C. book and under Ex.P/7 driving licence of non-applicant No.1. Appellant/non-applicant No.3/Insurance

Company has not produced any evidence controverting the documents seized by the Police. Learned Claims Tribunal has further taken into consideration sub-section 3 of Section 66 of M.V. Act and held that as offending vehicle is under 3,000 Kilogram weight i.e. gross vehicle weight of offending vehicle to be 2820 Kilogram, as such, there is no requirement of permit. It was further recorded that appellant/Insurance Company has not examined any witness to prove the pleadings of breach of policy conditions.

11. Perusal of proceedings drawn by the Claims Tribunal dated 12.02.2013 would show that counsel representing the appellant/Insurance Company before learned Claims Tribunal has made statement that they do not want to examine any witness in their support. In absence of any evidence brought on record by the appellant/Insurance Company, it cannot be said that on the date of accident, driver of the offending vehicle was not possessed with valid and effective driving licence when it is a case where copy of driving licence is available with the record of criminal case and not a case that driver and owner of offending vehicle has not produced the copy of licence before any forum, hence, statement made by learned counsel for the appellant/Insurance Company that claimants have not produced copy of driving licence and learned Claims Tribunal has not granted proper opportunity to prove their

case to the appellant/Insurance Company is not sustainable and it is hereby repelled.

12. Other ground raised by learned counsel for the appellant/Insurance Company that offending vehicle is a goods vehicle and deceased was travelling in the vehicle as a gratuitous passenger, hence, there was breach of policy conditions.

13. To appreciate the submission made by learned counsel for the appellant/Insurance Company, we have perused the record of claim case wherein we have found the copy of registration certificate available on record at page No.19 with unexhibited documents. In the registration certificate of offending vehicle, it is mentioned unladen weight as 1690 Kilogram, gross vehicle weight as 2820 Kilogram and seating capacity to be 1 + 2. Copy of insurance policy is also available on record at page No.20 along with unexhibited documents wherein type of policy has been shown to be Package Policy for Goods Carrying Vehicle. Under the head of 'Licensed Passenger Carrying Capacity', it is mentioned as 2, driver and others 1, cleaner 0 and coolies 2, total seating capacity including driver is 3. Schedule of premium is not available on record nor Insurance Company has proved insurance policy though not specifically denied insurance of offending vehicle. As per material and evidence available on record, particularly, evidence of Mukhtar Singh

(AW-2) wherein it is mentioned that deceased was frequently using his vehicle for transporting his utensils for business. Anju Devi Kasera (AW-1) widow of deceased has stated that deceased went to sell old utensils at Raipur and while returning from Raipur, he met with an accident. As per evidence available on record, it is very clear that deceased was travelling on cabin of the vehicle where there was seating space of two persons except driver and at the time of accident, two persons except driver were travelling including owner of offending vehicle.

14. Taking into consideration overall facts and circumstances of the case and evidence brought on record by the claimants, we do not find any infirmity in the impugned award passed by learned Claims Tribunal fastening liability upon the appellant/Insurance Company to satisfy the amount of compensation, more so, when appellant/Insurance Company has willfully not chosen to examine any witness in support of their pleadings. It is a settled law that pleadings itself cannot be accepted as an evidence, but it is required to be proved by placing acceptable and reliable piece of evidence to prove the same.

15. In case of **National Insurance Co. Ltd. v. Cholleti Bharatamma and others** reported in **(2008) 1 SCC 423**, Hon'ble Supreme Court in very categorical terms held that no person can be carried in a goods carriage vehicle and if

owner of the goods or his authorised representative carried in the vehicle, then he has to travel in the 'cabin' of the vehicle and held thus :

> “19. It is now well settled that the owner of the goods means only the person who travels in the cabin of the vehicle.”

16. In view of aforementioned discussions, ruling of Hon'ble Supreme Court in case of **Cholleti Bharatamma** (supra) and the fact that appellant/Insurance Company has not brought any evidence on record to prove their case, we do not find any merit in this appeal. The appeal being devoid of substance, which is liable to be and is hereby dismissed.

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

Yogesh