NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 510 of 2014

1. Dheer Das Gayakwad S/o Samaru Das Gayakwad aged about 40 years
2. Ku. Budhara D/o Dheer Das Gayakwad, aged about 15 years.
3. Santosh Kumar S/o Dheer Das Gayakwad, aged about 12 years

Appellants no. 2 to 3 are minor sister and brother and his natural guardian father Dheer Das Gayakwad. All R/o Village- Prem Nagar Mova Raipur, P.S. Pandri, District Raipur C.G.

------Appellants/Claimants

VERSUS

1. Madhusudan Das Banjare S/o Ganesh Ram Banjare, aged about 29 years, R/o Kodwa, P.S. Palary Distt. Raipur C.G. Tractor No. CG04DM2426 and Trolley No. CG04DM4948. **-----Driver**
2. Heera Lal Chaturvedi S/o Sanat Chaturvedi R/o Kodwa, P.S. Palary, Dist. Raipur C.G. **-----Owner**
3. Iffco Tokiyo General Insurance Co. Limited, Branch Manager, 3rd Mall Lal Ganga Shopping Mall, G.E. Road, Raipur C.G.

-------**Respondents**

For Appellants	:	Mr. A.L. Singroul, Advocate
For Respondent 1 & 2	:	None
For Respondent 3	:	Ms. Tessy Abraham on behalf of Mr. Amrito Das, Advocate

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

Order on Board

Per Parth Prateem Sahu, J.

04/01/2021

1. Appellants-claimants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "Act of 1988"), challenging the impugned award dated 16.12.2011 passed by learned Fifth Additional Motor Accident Claims Tribunal, Raipur, Chhattisgarh in claim case no. 104/2011, whereby learned Claims Tribunal allowed the application filed under Section 163-A of the Act of 1988 and awarded total sum of Rs. 4,47,000/- as compensation.

2. Facts relevant for disposal of this appeal are that on 25.04.2010, Tularam

Gayakwad was travelling on tractor bearing registration no. CG04DM2426 and Trolley bearing no. 4948 (hereinafter referred to as “offending tractor”), in the capacity of labourer (coolie) and going to village Godwa Basti from village Kodwa Khar. On the way, when offending tractor reached near Kodwa channel crossing, non-applicant 1/ driver of the offending tractor, drove the tractor rashly and negligently, on account of which, Tularam fell down from the trolley, suffered grievous injuries and died on spot.

3. Claimants who are parents and siblings of the deceased filed an application under Section 163-A of the Act, pleading therein that on the date of accident late Tularam was aged about 19 years, earning Rs. 3,000/- per month as labourer, claimed compensation of Rs. 10,50,000/- along with interest.

4. Non-applicant 1 and 2/ driver and owner of the offending tractor submitted reply to the application denying the pleadings made therein, it was further pleaded that, deceased, on account of his own negligence, suffered injuries and died. Offending tractor was insured with non-applicant 3/ Insurance Company and on the date of accident, non-applicant 1/ driver was possessed with valid and effective driving licence. Liability to pay the amount of compensation is upon the Insurance Company.

5. Non-applicant 3/ Insurance Company submitted reply to the claim application while denying the pleadings made therein, further pleaded that the offending tractor was registered for agricultural purpose but on the date of accident, it was being used as commercial vehicle. Income of the deceased as shown to be highly exaggerated. Vehicle was being driven in breach of policy conditions. On the date of accident, Non-applicant 1/ driver was not possessed with valid and effective driving licence, as such, there was breach of policy conditions.

6. Claims Tribunal, on appreciation of pleadings and evidence brought on record by the respective parties, held that, on the date of accident

deceased was travelling on trolley bearing no. 4948. On account of rash and negligent driving of the offending vehicle by non-applicant 1, late Tularam fell down from the tractor trolley. Death of Tularam on account of motor accidental injuries was proved. Age, income and breach of policy conditions were also found to be proved. Claims Tribunal calculated Rs. 4,47,000/- as total compensation, while exonerating the Insurance Company from its liability, fastened the liability upon non-applicant 1 and 2 to satisfy the amount of compensation.

7. Mr. A.L. Singroul, learned counsel for the appellants-claimants submits that the Claims Tribunal erred in awarding meagre amount of compensation, no amount towards loss of future prospects has been awarded and the amount of compensation awarded on other conventional heads is much on lower side. He further contended that the Claims Tribunal erred in exonerating the Insurance Company, even if, Tribunal has arrived at a conclusion that there was breach of policy conditions then also Claims Tribunal ought to have issued direction to Insurance Company to first satisfy the amount of compensation and thereafter to recover the same from non-applicant 1 and 2/ driver and owner of the offending tractor. He places his reliance on case of ***Amrit Paul Singh and another v. Tata AIG General Insurance Company*** reported in **(2018) 7 SCC 558.**

8. Ms. Tessy Abraham, learned counsel appearing for Respondent 3/ Insurance Company, opposing the submissions made by learned counsel for the appellants, submits that as per pleadings made in claim application, deceased was travelling on tractor trolley as labourer. There was no seating capacity of any person other than driver in the tractor trolley. Tractor trolley was being used as Goods Carrying Vehicle. Deceased was traveling as gratuitous passenger, hence, there was breach of policy conditions which the Claims Tribunal has rightly considered and decided in favour of the Insurance Company. He further contended that under the

policy, no premium is paid for covering risk of labourer, hence, direction of pay and recover be not issued.

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

10. Perusal of the application seeking compensation filed by the appellants-claimants would show that the application has been filed under Section 163-A of the Act of 1988. There was specific pleadings that on the date of accident deceased was traveling on tractor trolley as labourer. Tractor trolley was driven by non-applicant 1/ driver rashly and negligently on account of which late Tularam fell down from the trolley and suffered injuries. Non-applicant 1 and 2 submitted reply to the claim application but have not denied the fact in the manner of which the accident took place pleaded in the claim application, in very specific terms, but they have made general denial and further pleaded that the liability to pay the amount of compensation would be upon non-applicant 3/ Insurance Company. Insurance Company has taken very specific ground that deceased was traveling as gratuitous passenger in Goods Carrying Vehicle (offending Tractor). Claims Tribunal has considered the issue with regard to breach of policy conditions in paragraphs 14 to 19 elaborately and held that the deceased was traveling on tractor trolley, whereas there is no seating capacity in the tractor trolley except the driver, in the registration certificate, there is no mentioned of seating capacity of any other person, no premium was paid for any passenger and held that non-applicant 1 and 2, plied the vehicle in breach of policy conditions.

11. Sofar as the first submission made by the learned counsel for the appellants with regard to enhancement of amount of compensation. Upon going through the pleadings made in the claim application, it is apparent that the application is filed under Section 163-A of the Act, amount of compensation to be awarded in the application under Section 163-A of the

Act is to be strictly in accordance with the Second Schedule. Perusal of Second Schedule appended to Section 163-A of the Act would show that it does not provide for award of any amount of compensation towards future prospects, hence, the submission made by the learned counsel for the appellant that the Claims Tribunal erred in not awarding any amount of compensation towards future prospects, is not sustainable and it is hereby repelled.

Similarly, in the 2nd Schedule, award of compensation on other conventional heads is provided under 'three heads' ie. loss of consortium, loss of estate and funeral expenses. Amount on the aforementioned heads has also been quantified as Rs. 5,000/-, Rs. 2,500/- and Rs. 2,000/- Learned Claims Tribunal, while accepting the income pleaded in the claim application has deducted 1/3rd towards personal and living expenses, awarded Rs. 5,000/- each on funeral expenses, loss of estate and love and affection. Total amount of compensation on other conventional heads as provided under Second Schedule is of total Rs.9,500/- whereas the Claims Tribunal has already awarded Rs. 15,000/-.

12. In view of the above, the submission made by the learned counsel for the appellants-claimants that the Claims Tribunal awarded meagre amount of compensation on other conventional heads is also not sustainable and it is hereby repelled. The last ground raised by the learned counsel for the appellants with regard to issuance of direction to Respondent-Insurance Company to first pay the amount of compensation and thereafter to recover the same. Perusal of insurance policy would show that the Insurance policy was issued as Commercial Vehicle Package Policy, seating capacity has been mentioned in the column as 'one'. Under the schedule of premium, no premium was paid towards the liability/ coverage of any other passengers etc. but for PA- Owner and Driver Rs. 100/- and Legal Liability to Driver Rs. 25/- was paid. Insurance Company has not

accepted any premium covering the risk of person like deceased. In above circumstances, Insurance Company could not be directed to pay the amount of compensation calculated by the Claims Tribunal. Direction of pay and recover can be issued in cases where the Insurance Company charged and accept the premium covering the risk of victims, but the exoneration of Insurance Company was on account of breach of policy conditions on other ground like no licence, permit etc. The case law relied upon by the learned counsel for the appellants of **Amrit Paul Singh (supra),** is on different facts. There the breach of conditions was found on account of vehicle not having the permit, but the risk of the victim therein was covered under the insurance policy. The case law relied upon by the learned counsel for the appellants of ***Shivaraj v. Rajendra and another*** reported in ***(2018) 10 SCC 432***, in our opinion, direction of pay and recover might have been issued by the Supreme Court invoking the jurisdiction under Article 142 of Constitution of India.

13. For the foregoing reasons, we do not find any merit in this appeal which is liable to be and is hereby dismissed accordingly.

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

Pawan