NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 566 of 2015

- State of Chhattisgarh Through : The Deputy Director, Agriculture Department, Near State Bank, Old Bus Stand, Jail Road, Jagdalpur, Tahsil Jagdalpur, District Bastar (C.G.)

---- Appellant

Versus

1. Ram Singh Baghel S/o Sukhdas Baghel, aged about 39 years, (Claim Curiae for Applicant No.2 & 3).....Claimant No.1
2. Smt. Malti Bai W/o Ramsingh Baghel, aged about 35 years.............Claimant No.2.

   Respondents No. 1 & 2 both are R/o Mawaligudapara, village Mundagaon, Police Station Bhanpuri, District Bastar (C.G.)
3. Sirpat Kashyap S/o Ramchand Kashyap, aged about 25 years, Occupation Driver, R/o Chiurgudapara, village Ratenga, Post Ratenga, Police Station Ghotiya, District Bastar (C.G.)................Defendant No.3/Driver of vehicle No.CG-04-G-0479
4. The United India Insurance Company Limited, Through : Branch Manager, Anupma Chowk, Jagdalpur, District Bastar (C.G.)...............Defendant No.4

---- Respondents

For Appellant/State	:	Mr. Vimlesh Bajpai, G.A.
For Respondents 1 & 2	:	Mr. Praveen Dhurandhar, Adv.
For Respondent No.3	:	None though served.
For Respondent No.4	:	Mr. Pankaj Agrawal, Adv.

Hon'ble Smt Justice Rajani Dubey

Order On Board

22/06/2021

Proceeding through video conferencing.

1. The appellant (owner of the offending vehicle) has

preferred this appeal being aggrieved by the impugned award dated 18.08.2014 passed by III Motor Accident Claims Tribunal (for short the "Tribunal"), Bastar at Jagdalpur (C.G.) in Motor Accident Claim Case No.105/2014, whereby the Tribunal has directed the appellant and respondent No.3-driver of the offending vehicle to pay award of Rs.4,42,200/- to the claimants (respondents 1 & 2) jointly or severally.

2. Brief facts of the case are that on 18.04.2013 at about 11.00 pm, the vehicle Tractor Massey No.1035 in which deceased Damru Ram Baghel was going to collect wood from forest Ratenga, turn turtle due to rash and negligent driving of driver-respondent No.3 herein as a result of which Damru Ram Baghel along with other came under the tractor, he sustained grievous injuries and succumbed to the same. The FIR was registered with the Police Station Lohandiguda, Bastar being case No.29/2013. A site map (Ex.A-3) was drawn up, post-mortem of the deceased was conducted and post-mortem Report was marked as Ex.A-6. The claimants, being the parents, who have lost their son at the age of 19 years in the motor vehicle accident and the vehicle was insured with respondent No.4 – United India Insurance Company Limited, preferred claim petition under Section 163 (A) of the Motor Vehicles Act, 1988 (in

short the 'M.V. Act') claiming compensation for Rs.7,96,800/- under the headings of loss of dependency, mental agony, loss of love and affection, expenses incurred for carrying dead body and performing last rites of the deceased son as per Hindu customs.

3. Notices were served upon appellant and respondent Nos.3, the owner and the driver of the offending vehicle. Despite service of notice upon them they did not choose to appear and contest the proceedings and therefore, they were placed ex-parte in the claim proceedings before the Tribunal.

4. The Insurance Company appeared and filed its statement of counter denying the various averments of the claim petition and pleaded that the accident took place due to the fault of the deceased and the driver did not have a valid and effective license at the time of incident and the vehicle was being used by the appellant in contravention of the terms and conditions of the insurance policy issued in favour of the owner of the offending vehicle. Therefore, it is not liable to pay compensation as claimed by the claimants. On the basis of pleadings, five issues were framed by the Tribunal for its determination.

5. The learned Tribunal calculated the compensation of Rs.4,42,200/- recording its finding that the offending

vehicle was insured from 29.02.2012 to 28.02.2013 with the insurance company (respondent No.4) only for agricultural and forestry purpose and at the time of incident the vehicle was being used by the driver/respondent No.3 in contravention of the terms and conditions of the insurance policy issued in favour of the owner of the offending vehicle. Therefore, the learned Tribunal directed the owner of the offending vehicle (appellant) to pay the awarded sum to the claimants and exonerated the insurance company. Hence, this appeal by the owner of the offending vehicle.

6. Submission on behalf of appellant/owner is that the accident did not occur due to rash and negligent driving of the driver-respondent No.3. The compensation amount has been assessed by the claimants on a fictitious basis. Further submission is that the learned Tribunal has committed gross error in directing the appellant to pay the compensation for the reason that the office of the appellant/State had purchased the offending vehicle i.e. Tractor Massey, Cage Wheel, Cultivator, Levelor but the same were allotted to the Samiti namely "Prathamik Krishak Vikas Vistar Sahakari Samiti Maryadit", village Ratenga-Kumhali, Vikas Khand Bastar for onward supply of the same to the Samiti for implementation of the scheme formulated by the

Government of India under the name and style "Integrated Action Plan" in Naxal affected areas for their welfare and therefore, the State authorities are not liable for any damages/compensation as there is no fault on their part. Further submission is that the offending vehicle was being driven by respondent No.3 and the role of the appellant/State is that the vehicle was insured in the name of the appellant, but the fact remains that on the date of incident the offending vehicle was in the possession of the Samiti and it has failed to renew the period of insurance.

7. Respondent No. 3 was not represented before this Court though served.

8. Learned counsel for respondent Nos.1, 2 and 4 supported the order of learned Tribunal.

9. I have heard learned counsel for the parties and perused the record.

10. To appreciate the submission of learned counsel for the appellant, this Court has gone through the material on record. With regard to the fact whether the offending vehicle was allotted to Samiti namely 'Prathamik Krishak Vikas Vistar Sahakari Samiti Maryadit' by the appellant/State for implementation of the scheme formulated by the Government of India under the "Integrated Action Plan", this Court does not find any

documentary evidence on record which could establish this fact. That apart, no witness from the said '*Samiti*' has been examined to substantiate this fact.

11. In the case in hand, the accident took place on 18.04.2013 and the owner of the offending vehicle Tractor Massey is appellant/State i.e. Deputy Director, Department of Agriculture. The insurance policy of the offending vehicle (Ex.D-1) was issued in the name of Deputy Director, Agriculture, and the same was valid from 29.02.2012 to 28.02.2013. Thus, it is clear from the insurance policy that on the date of incident the offending vehicle was not insured with the insurance company. The learned Tribunal neither touched upon this fact nor framed any issue in this regard.

12. The learned Tribunal has framed issue No.3 - “whether the offending vehicle was being driven in contravention of the terms of the insurance policy at the relevant time of incident. While deciding this issue, the learned Tribunal exonerated the insurance company from its liability recording its finding in para 6 of the award that the offending vehicle was being driven in contravention of the terms of the insurance policy as it was only for agricultural and forestry purpose and on the date of incident the offending vehicle was used for transporting wood for construction of house as is evident from FIR

(Ex.A-1). This fact remains unrebutted in cross-examination of NAW-1. Thus, it can safely be inferred that there was breach of policy condition. That apart, the appellant did not produce any insurance policy except Ex.D-1 which could prove this fact that on the date of incident the offending vehicle was insured with the insurance company. The finding of the learned Tribunal on the breach of policy condition is perfectly in accordance with law, which does not call for any interference by this Court. The learned Tribunal, after appreciating oral and documentary evidence available on record, has rightly fastened the liability upon the appellant/State to pay the compensation of Rs.4,42,200/- to the claimants.

13. The appeal being devoid of merit is liable to be and is hereby dismissed.

Sd/-

(Rajani Dubey)
Judge

PKD