IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SMT. JUSTICE SUNITA YADAV

MISC. APPEAL No. 868 of 2004

BETWEEN:-

SMT. KAMAR BAI (KOMAL) @ W/O RAMCHARAN RAWAT, AGED ABOUT 45 YEARS, R/O VILLAGE BAMODA, DISTRICT SHIVPURI (MADHYA PRADESH)

……..APPELLANT

(BY SHRI AKSHAT JAIN - ADVOCATE)

AND

1. **SMT. VIMLA CHIRAD W/O HARI CHIRAD, OCCUPATION HOUSEWIFE, R/O VILLAGE NIVODA, P.S. KOLARAS, DISTRICT SHIVPURI (MADHYA PRADESH).**

2. **DURGESH CHIRAD S/O LATE HARI CHIRAD, AGED ABOUT 6 YEARS MINOR, THROUGH NATURAL GURADIAN SMT. VIMLA CHIRAD W/O HARI CHIRAD, OCCUPATION HOUSEWIFE, R/O VILLAGE NIVODA, P.S. KOLARAS, DISTRICT SHIVPURI (MADHYA PRESESH).**

3. **UNITED INDIA INSURANCE CO. LTD. THROUGH BRANCH MANAGER, OPPOSITE FOOLBAG, DISTRICT GWALIOR (MADHYA PRADESH).**

4. **JAY SINGH S/O RAM CHARAN, R/O VILLAGE BAMODA, DISTRICT SHIVPURI (MADHYA PRADESH).**

5. **GIRWAR SINGH S/O RAM CHARAN RAWAT R/O VILLAGE BAMODA,**

DISTRICT SHIVPURI (MADHYA PRADESH).

6. **DATA RAM S/O MOHAN LAL RAWAT, R/O VILLAGE BAMODA, DISTRICT SHIVPURI (MADHYA PRADESH).**

……..RESPONDENTS

(SHRI AJAY SINGH RATHORE- ADVOCATE FOR THE RESPONDENT NO.1 & MS. VANDANA KEKRE- ADVOCATE FOR THE RESPONDENT/INSURANCE COMPANY)

Reserved on : 02.03.2023

Whether approved for reporting :

J U D G M E N T

(Passed on 17.03.2023)

Present miscellaneous appeal has been filed against the award dated 04.09.2004 passed by 2nd Additional Motor Accident Claims Tribunal, Shivpuri (M.P.) in Claim Case No.180/2003.

The facts in brief to decide this appeal are that the respondents no.1 & 2 as well as Ajuddi Bai filed a claim application under Section 166 of Motor Vehicles Act on 18/08/2003 alleging that the husband of claimant no.-1 and father of rest of the claimant Hari Chirad sustained injuries on account of rash and negligent driving of Tractor bearing registration No.MP-08-A-8748 and Trolley No. MP-08-D-0128 by the respondent no.4/non-applicant no.1 Jay Singh. The deceased was taken on the said Tractor to erect an electric pole by respondents no.4 to 6/non-applicants

no.1 to 3 on 29-01-2002. The Tractor was owned by appellant/non-applicant no.4. It was alleged by the claimants that the vehicle mentioned herein above was owned by appellant and was insured with the respondent no.3/non-applicant no.5 at the relevant date. The claimants alleged in their claim petition that while pulling the pole, the driver drove the tractor in a rash and negligent manner on account of which, the electric pole fell down on the ground causing serious injuries to Hari Chirad who was standing near the electric pole.

It was alleged that the appellant and respondents no.4 to 6 threw the body of Hari Chirad near village Padora. The village Chokidar Khachhu S/o Monahara Parihar lodged a report bearing Crime No.25/02 for the offence punishable u/Ss.304-A, 201/34 of IPC and case is under trial before learned JMFC, Kolaras. It was alleged that the Hari Chirad was a labour and earning Rs.2500/- per month.

The appellant and respondents no.4 to 6 filed their written statement denying the incident as a false incident, not a vehicle incident. The respondent no.3 has submitted its written statement on 20/04/2004 denying the allegations made in the claim petition and it was submitted that the claim has been filed by the claimants in collusion with appellant and respondents no.4 to 6. It is also submitted that no accident has taken place.

The learned Claims Tribunal framed the issues and recorded the evidence adduced by the parties. After hearing the arguments, the learned Claims Tribunal allowed the claim application filed by the claimants and awarded the compensation to the tune of Rs.1,87,000/- along with interest @ 5% per annum to be given by appellant along with the respondents no.4 to 6.

Aggrieved by the compensation awarded by the learned Claims Tribunal, the appellant has preferred this appeal.

Learned counsel for the appellant argued that the learned Claims Tribunal erred in awarding the compensation to the tune of Rs.1,87,000/- to be given by the appellant and the respondents no.4 to 6 and not to be paid by the respondent no.3/Insurance Company. It is further argued that the award passed by learned Claims Tribunal is without any basis and is against the principles establish by law. The respondents no.1 to 2 did not prove the incident. According to the FIR, no vehicular accident was there and no eyewitness was produced before the learned Claims Tribunal in spite of that, it was considered as a vehicular accident. The Tribunal has wrongly allowed the application and exempted the respondent no.3/Insurance Company from its liability. The further argument is that the said vehicle was insured before respondent no.3/Insurance Company from 07/02/2002 to 06/02/2003, therefore, the respondent no.3 has to bear all

the liability occurred in the vehicular accident. It is further argued that the evidence available on record duly proved that the deceased was working as a labour in an agricultural field and erection of pole was for irrigation purpose. Therefore, the learned Claims Tribunal has wrongly exonerated the Insurance Company. Hence, the appeal be allowed and the award passed by learned Claims Tribunal be set aside.

On the other hand, learned counsel for the respondent no.1 as well as respondent no.3/Insurance Company supported the impugned award and prayed for rejection of this appeal.

Heard the learned counsel for the rival parties and perused the record.

On perusal of record reveals that the claimant no.1 – Smt. Vimla Chirad got herself examined as claimant witness no.1 and she has supported the facts narrated in her claim petition and also proved relevant papers filed with the charge-sheet related to this accident which are copies of charge-sheet Exh.P/1, FIR Exh.P/2, Spot Map Exh.P/3, *Post Mortem Report* Exh. P/4, Seizure Memo Exh. P/5, *Supurduginama* Exh. P/6 to P/8, Seizure Exh.P/9 so also, copy of Insurance Policy Exh.D/1, Driving License and registration of the offending vehicle.

Claimant No.1 – Smt. Vimla Chirad in her cross-examination stated that her husband was a labour and used to work with Jai Singh. She has

further stated at para-7 of her statement that her husband was working with Jai Singh as *Bataidaar* and used to sell grains in *Krishi Mandi.*

In the present case, Insurance Company as well as the appellant/owner of the offending vehicle have not examined any witness to rebut the facts in respect to the death of Hari Chirad in a motor accident. Therefore, in the light of oral and documentary evidence, the learned Tribunal has rightly held that the death of Hari Chirad was a vehicular /motor accident on account of rash and negligent driving of the offending vehicle.

The learned counsel for the appellant argued that the Tribunal has wrongly exonerated the Insurance Company from the liability to pay compensation holding that there was breach of policy condition as the offending Tractor was insured for agricultural purpose, however, at the time of accident, it was being driven for non-agriculture purpose i.e. erection of an electric pole. As per the argument of learned counsel of appellant, the spot map Exh.P/3 reveals that the electric pole was being raised in the field of Ram Charan Rawat and the same was being erected to supply the electricity for water pumps etc. for irrigation which comes within the purview of agricultural operation. In support of this submissions counsel for the appellant has relied upon the decision of this Court in the case of **Poonam Singh Vs. Kamla and Ors. [(1995) 2 ACC**

72]. However, the above argument of the learned counsel for the appellant is not acceptable because there is no pleading in the written statement filed by the appellant/owner of the vehicle that the electric pole was being erected for the purpose of supply of electricity to water pumps etc.. The appellant even did not bother to get herself examine before the learned Claims Tribunal to defend her case. She has not produced any evidence to prove that the electric pole was being erected for the purpose of supply of electricity to water pumps etc. Consequently, it is not proved that at the time of accident, the electric pole was being erected to supply the electricity for water pumps etc. for irrigation.

In the light of above discussion, the learned Tribunal has rightly exonerated the Insurance Company from its liability to pay compensation.

It is well settled that the Insurance Policy is a contract between the insured and the insurer and the insurer agrees to indemnify the insured against all the claims arising out of use of vehicle, however, such contract is subject to the conditions that the vehicle shall not be plied or driven contrary to the provisions of law as well as Insurance Policy. Thus, it is clear that the insurer/Insurance Company can get away from its liability of indemnifying the insured by proving that the vehicle was being used contrary to the Insurance Policy. However, the claimants are completely stranger to the contract between the insured and the insurer. Once, the

Insurance Company had agreed to indemnify the insured, then it would be a dispute between the insured and the insurer as to whether the vehicle was being used contrary to the conditions of Insurance Policy or not? But the claimants cannot be made to suffer because of *inter se* dispute between the insured and the insurer. Once, the vehicle is insured, then the Insurance Company must satisfy the award and if it is found by the Claims Tribunal that the vehicle was being used contrary to the conditions of Insurance Policy, then the right to recover the amount has been given to the Insurance Company without filing a separate suit against the insured. Therefore, keeping in view the benevolent object of the Motor Vehicle Act, in the light of the case of **National Insurance Company Ltd. Vs. Swarn Singh reported in 2004 ACJ (1) Supreme Court**, affirming the findings given by the Tribunal, it is hereby directed that the insurance company shall pay the compensation amount within a period of three months from today to the claimants with liberty to recover the same from the owner and the driver of the offending vehicle, failing which, the award amount shall carry interest @ 12 % per annum from today till realization of the award. Rest of the conditions imposed by the learned Claims Tribunal shall remain intact.

With aforesaid modification, the impugned award 04/09/2004 passed by 2nd Additional Motor Accident Claims Tribunal, Shivpuri (M.P.) in Claim Case No.180/2003 is hereby affirmed.

(SUNITA YADAV)
JUDGE

vpn