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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL

ON THE 18th OF AUGUST, 2022

MISC. APPEAL No. 2859 of 2014

Between:-

**HDFC ERGO GENERAL INSURANCE COMPANY
LTD. ITS MANAGER D.M. TOWER FLAT NO. 10
205, 206, SECOND FLOOR, NEW PALASIA ROAD,
INDORE, M.P. (THROUGH ITS MANAGER)**

.....APPELLANT

(BY SHRI RAKESH KUMAR JAIN, ADVOCATE)

AND

1. **SMT. BISRATI BAI WD/O LATE VEERAN SINGH,
AGED ABOUT 30 YEARS**
2. **KRISHNA KUMAR S/O LATE VEERAN SINGH,
AGED ABOUT 4 YEARS**
3. **LAXMAN KUMAR S/O LATE VEERAN SINGH,
AGED ABOUT 3 YEARS**
4. **LAXMI BAI S/O LATE VEERAN SINGH, AGED
ABOUT 3 YEARS**

**RESP NO.2, 3 AND 4 ARE MINOR THROUGH
GUARDIAN MOTHER SMT. BISRATI BAI, WD/O
LATE VEERAN SINGH**

5. **SMT. PANE BAI WD/O LATE BHANGI LAL, AGED
ABOUT 55 YEARS**

**ALL R/O GRAM POTLAL (MAJHGAON), POLICE
STATION- TIKARIA THSIL NIWAS, DISTT-
MANDLA, M.P.**

6. **MANGAL SINGH ULADI S/O SHRI S.R. ULADI,
AGED ABOUT 21 YEARS, R/O GRAM KUMHA,
TEHSIL NIWAS
.....VEHICLE DRIVER**
7. **JAWAHAR SINGH S/O SHRI KUNWAR SINGH
R/O GRAM MAJHGAON, POST NARAYANGANJ**

TEHSIL NIWAS, DISTT- MANDLA

8. SMT. SHAKUN BAI W/O MUKUNDI LAL SAHU
R/O GRAM KARARI, TEHSIL PATAN DISTT-
JABALPUR, M.P.

.....RESPONDENTS

(BY SHRI DEVENDRA SINGH BAGHEL, RESPONDENT NO.8)

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This appeal coming on for hearing this day, the court passed the following:

ORDER

Heard on I.A. No.2400/2015, an application seeking condonation of delay in filing of the appeal.

It is mentioned that there is delay of 61 days in filing this appeal.

For the reasons stated in the application, I.A. No.2400/2015 is allowed and the delay in filing the appeal is hereby condoned.

This Miscellaneous Petition is filed by the Insurance Company being aggrieved of award dated 19.07.2014 passed by learned Second Additional Motor Accident Claims Tribunal, Mandla in Claim Case No.74/2009 (Smt. Bistrati Bai and Others Vs. Mangal Singh Uladi and others) on two grounds namely that the thresher attached to the insured tractor bearing registration No.MUJ-2274 was not separately insured and was used for commercial purpose.

It is submitted that driver of the tractor was having learner license and not the regular license, therefore, Insurance company should have been exonerated.

It is also submitted that compensation awarded under non pecuniary heads be reduced as per schedule attached to Section 163-A of Motor Vehicle Act.

Reliance is placed on the judgment of a Coordinate Bench of this High Court in case of **Manglesh S/o Chironji Namdeo Vs. Jaykishan (since dead) through L.Rs. and another, 2022(2) MPLJ, 550** where it is held that since thresher was not insured, in absence of Insurance Policy for thresher, insurer is not liable to satisfy the award and owner of the thresher will be liable to satisfy the award.

Learned counsel for respondents No.1 and 8, in his turn, submits that there is no illegality in the impugned award calling for any interference.

After hearing learned counsel for the parties and going through the record, it is evident that four grounds have been raised by the learned counsel for the Insurance Company namely; Non Insurance of thresher, secondly, use of the thresher for commercial purpose as it was used in the field of somebody else, thirdly; driver of the insured tractor was having learners license and fourthly; non pecuniary amount of compensation should be as per schedule attached to Section 163-A.

As far as, last ground is concerned that needs to be rejected and is rejected because claim petition was filed under Section 166 and not under Section 163-A, therefore, schedule under Section 163-A will not have any meaning and application.

As far as, issue of learner's license is concerned, Section 2(19) of the Motor Vehicle Act, 1988 provides that "learner's license" means the license issued by a competent authority under Chapter II authorising the person specified therein to drive as a learner, a motor vehicle or a motor vehicle of any specified class or description.

Thus, it is not evident from the evidence lead by the Insurance Company that there was any violation of the terms and conditions of the learner's license.

In fact, witness of the Insurance Company Ramraj Vishwakarma, Manager, claims, admitted in his cross-examination that though company got investigation carried out but no investigation report was filed on record. He admits that he has not produced any document to show either commercial use of the Tractor or any violation of the terms and conditions of the policy, therefore, issue of tractor being driven by a person holding learner's license loses its sheen, specially when it is shown that driver was not accompanied with a duly license regular driver, thus these two arguments namely person driving it with learner's license and Tractor being used for commercial purpose are not made out.

The only question which now survives for adjudication is whether it is necessary to have separate insurance for the thresher.

As far as, thresher is concerned, it is a piece of farm equipment that threshes green, i.e., it removes the seed from stalks and husks by beating the plant to make a seed fall out.

The Division Bench of this High Court in case of **National Insurance Company Ltd., Indore Vs. Kanha and another, 2008 SCC Online 710** has held that if the accident occurred while the tractor is in operation then the risk of insured is covered if any person whether third party or his employee suffered any injury with the vehicle.

Under such facts and circumstances Madhya Pradesh High Court held that policy was issued for use of the vehicle for agricultural purposes and affixing of thresher being part of the agricultural purposes, cannot be said to be violation of the insurance policy.

It is further held that the onus was on the Insurance Company to have produced and proved the terms and conditions of the insurance policy as held

by the High Court of M.P. in **Ambaram and another Vs Satyendra Singh and others, 2011 (II) MPWN 72.**

Similarly, in case of **IFFCO Tokio General Insurance Co. Ltd Vs. Dashrath** passed by the Madhya Pradesh High Court on 28.08.2015 in M.A. No.1078/2015, it is held that if tractor was duly insured and it was not driven in violation of the insurance policy and the argument raised was that thresher was not insured and only tractor was insured then relying on the judgment of this High Court in case of **United India Insurance Co.Ltd Vs. Anandi Devi and others, 2010 ACJ 1002**, it is held that when accident is caused by the thresher attached with the tractor, insurance company is held to be liable when it is admitted that tractor was insured for agricultural purposes by the insurance company.

Same is the view of Division Bench of Gujarat High Court in **Oriental Insurance Co. Ltd Vs. Savthanji Khodaji Thakor and Others, 2008 ACJ 2486 (Gujarat)**. In that case facts were that accident in question took place when not only the thresher was attached to the tractor, but when the thresher was being moved with the help of the tractor. It is held that if the person was working on the thresher machine which was being operated with the help of a tractor for agricultural purpose then the deceased was third party in the accident and in such circumstances Insurance Company was held to be liable to make payment of compensation.

In **Kishore s/o Nandlal Gayre Vs. Shahid Shah and Another, 2011 (1) MPHT 196** it is held that insurance company is liable in a case where the accident was caused by the thresher attached with the tractor.

Similarly, in case of **United India Insurance Co.Ltd Vs. Rajendra and Others, 2010(1) ACCD 444**, placing reliance on the judgments in case of

United India Insurance Company Ltd. Vs. Surinder 2006 ACJ 1285 and judgment of Andhra Pradesh High Court in case of **Gunti Devaiah and Others Vs. Vaka Peddi Reddy and Others, 2004 ACJ 1881** company has been held liable to suffer the liability arising out of accident occurred with thresher.

In **Krishnaji@Kisanji Ramaji Tadas Vs. Umesh Rambhau Shrirame and Others**, decided by **Bombay High Court on 30th April, 2016**, it is held that when definition of a motor vehicle as provided under Section 2(28) and that of tractor provided under Section 2(44) is read then in light of the judgment of Supreme Court in **Chairman, Rajasthan State Road Transport Corporation and Others vs. Santosh and Others, 2013(7) SCC 94**, thresher being energized by a tractor and being operated through the tractor is to be considered to be a motor vehicle as power of propulsion to the thresher is transmitted from an external source namely a tractor. And then placing reliance on the judgment of this High Court in case of **United India Insurance Company Ltd Vs. Smt. Anandi Devi (supra)**, it is held that insurance company is liable to compensate.

In view of such facts and legal provisions, I have no iota of doubt that Claims Tribunal has committed any error and since law laid down by the Division Bench of this High Court in **National Insurance Company Ltd., Indore Vs. Kanha and another (supra)** in binding on this Court, therefore, single Judge decision in case of **Manglesh S/o Chironji Namdeo (supra)** which has not taken into consideration Division Bench decision of this High Court will not be a binding precedent, therefore, is not applicable to the facts and circumstances of the case, therefore, appeal fails and is **dismissed**.

**(VIVEK AGARWAL)
JUDGE**

Tabish

