

MA-1642-2015

(UNITED INDIA INSURANCE CO.LTD. Vs SMT JAISHREE)

22-03-2017

Shri Suresh Raj, learned counsel for the appellant.

Shri Ishteyaq Hussain, learned counsel for respondent Nos.1 to 5/original claimants.

Shri Sandeep Kachhi, learned counsel for respondent Nos.6 & 7.

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Whether approved for reporting: Yes/No

O R D E R
(Pronounced on **03/2017**)

1. The appellant-Insurance Company/original non-claimant No.1 has filed this miscellaneous appeal under Section 173(1) of the Motor Vehicles Act against an award dated 11.05.2015 passed by the Member M.A.C.T, Harda in Claim Case No.39/2013, whereby the appellant and present respondent Nos.6 & 7/original non-claimant Nos.2 & 3 have been jointly and severally ordered to pay the compensation of Rs.9,44,625/- with interest at the rate of Rs.7% per annum from presentation of claim petition till payment to the claimants/present respondent Nos.1 to 5.d

2. Original claimants have filed claim petition under Section 166 of the Motor Vehicles Act against three non-claimants on pleadings that on 10.03.2013 Arun Kumar alias Kalu was doing his labour work of cutting of narwai (wheat crop) on rotovator machine which was attached to a tractor. During the work, narwai got entrapped in the rotovator machine, then tractor driver non-claimant No.3 Sudhir Kumar Jain asked Arun Kumar alias Kalu to expel the entrapped narwai from the rotovator machine and simultaneously Sudhir Kumar Jain suddenly started the rotovator machine and tractor in rash and

negligent manner, thus Arun alias Kalu came in contact with rotovator machine attached with tractor and sustained fatal injuries on head and died on the spot in few seconds. The matter was reported at police station, Timarni, where an offence punishable under Section 304-A of the IPC was registered against the tractor driver Sudhir Kumar Jain. Non-claimant No.2 Pawan Kumar Paliwal was registered owner of tractor and the relating tractor was insured with the appellant-Insurance Company. Claimants were depended on the income of the deceased. Arun was 30 years old and was having annual income of Rs.3 lacs from labor and agricultural work. Thus, under various heads mentioned in the claim petition, compensation of Rs.17,08,000/- was demanded with interest from the non-claimants.

3. Non-claimant No.1 Insurance Company in its written statement filed before the tribunal pleaded that actually the accident had occurred due to negligence of the deceased Arun himself. No any intimation of incident was given by tractor owner and driver to the Insurance Company. The tractor driver Sudhir Kumar Jain was not having any valid driving license on the date of incident, thus the tractor was being driven by Sudhir Kumar Jain in contravention of the terms of insurance policy. Thus, the Insurance Company is not liable to pay any compensation to the claimants.

4. The tractor owner and driver non-claimant Nos.2 & 3 in their joint written statement filed before the tribunal pleaded that there was no any fault of non-claimant Nos.2 & 3 in the accident. The deceased was present on the spot only as a viewer and he himself without any cause tried to expel the entrapped narwai from the rotovator machine and introduced his hands in rotovator machine. Sudhir Kumar Jain was having driving license and the tractor was insured with the appellant. Thus, if any liability is found, then the Insurance Company only would be liable to pay the compensation to the

claimants.

5. The tribunal framed issues on pleadings of the parties. Before tribunal, for claimants Arvind Kumar (PW-1), Ganesh (PW-2) and for Insurance Company Alok Mehta (NA.W-1) were examined. The learned tribunal recorded its finding in award that due to rash and negligent driving of the questioned tractor which was attached to the rotovator machine by non-claimant No.3 Sudhir Kumar Jain, the deceased Arun alias Kalu had received fatal injuries and resultantly died; it was not proved that at the time of accident, the tractor was being driven in contravention of the terms of the insurance policy; claimants are entitled for receiving compensation from all the three non-claimants jointly and severally. Deceased Arun Kumar alias Kalu's monthly income was estimated to Rs.4,625/-, its 1/4th was deducted as expenses of the deceased on himself, thus the annual loss of the dependency of the claimants was calculated as Rs.41,625/- and looking to the age of the deceased, a multiplier of 17 was applied and above-mentioned award was passed.

6. The learned counsel for the appellant-Insurance Company vehemently contended that the accident was not caused by the tractor, but the deceased got injured by the rotovator machine, thus placing reliance on a citation of **Branch Manager, National Insurance Company Ltd. Vs. Ramalingegowda & another** (2012 ACJ 1595), it has been contended that Karnataka High Court has held in above-mentioned case that thresher was an independent machine and it cannot be considered as an extension of the tractor and the injury suffered by the victim cannot be considered as injury due to use of tractor, thus the Insurance Company of the tractor could not be held liable to payment of compensation to the claimants. Thus, it has been prayed that the appellant-Insurance Company be exonerated from liability of payment of compensation to the claimants.

7. On the other hand, the learned counsel for present respondent Nos.1 to 5/original claimants placing reliance on cases of **Kishore Vs. Shahid Shah & another** [2011(1)M.P.H.T. 196] and **United India Insurance Company Ltd. Vs. Anandi Devi & others** (2010 ACJ 1002), contended that this Court has held in these cases that tractor was being used by the owner and driver to run rotovator machine and tractor was insured for agricultural purpose and it was being used for agricultural purpose at the time of incident and as the deceased was working on a thresher machine which was attached to the tractor and due to sudden stoppage and restart of tractor and thresher, the deceased received fatal injuries, then relating Insurance Company of tractor could not be exonerated. In the above-mentioned case of *United India Insurance Company Ltd. Vs. Anandi Devi & others*, an another case of **Oriental Insurance Company Ltd. Vs. Savthanji Khodaji Thakor** (2008 ACJ 2486), decided by Gujrat High Court has been followed. Thus, in the light of previous decided cases by this Court, the contention of learned counsel for the appellant-Insurance Company could not be accepted. It is clear in the light of above-mentioned cases decided by this Court previously, that the learned tribunal has not committed any error in fastening liability also on the appellant-Insurance Company. In the light of above-mentioned cases decided by this Court, the appeal filed by the appellant-Insurance Company appears to be meritless. It is also clear that on other points, learned tribunal has properly estimated the income of deceased and applied proper multiplier and has properly and legally calculated the compensation awardable to the claimants.

8. Consequently, the appeal filed by the appellant-Insurance Company is **dismissed** being meritless. There shall be no order as to costs.

(ASHOK KUMAR JOSHI)
JUDGE

Amjad