(2018) 01 CHH CK 0137

In the Chhattisgarh High Court

Case No : Miscellaneous Appeal (C) No. 274 Of 2011

Kailash Yadu And Ors APPELLANT

Vs

Ku. Padmini Pradhan And Ors RESPONDENT

Date of Decision : 12-01-2018

Acts Referred:

Citation : (2018) 01 CHH CK 0137

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : Shivendu Pandya, Ghanshyam Patel, Chitra Shrivastava

Final Decision : Allowed/Disposed Of

Judgement

P. Sam Koshy, J

1. Present is an appeal filed by the owner and driver of a Tractor under Secion 173 of the Motor Vehicles Act assailing the award dated 24/07/2010

passed by the learned Additional Motor Accident Claims Tribunal, Gariyaband, District Raipur (C.G.) in Motor Accident Claim Case No.36/2007.

2. Vide the said impugned award, the Tribunal in a death case has awarded a compensation of Rs.2,35,000/- with interest @ 7.5% per annum from

the date of application.

3. While passing the impugned award, the Tribunal has exonerated the Insurance Company of the Tractor involved in the accident, owned and driven

by the present appellants and the liability was equally distributed between the Insurance Company of the Truck involved in the accident and the

present appellants that is the owner of the Tractor of 50% of the awarded amount i.e. Rs.1,17,500/- each.

4. The counsel for the appellants submits that, it is a case where the accident

took place on 05/07/2007 and that the accident occured because of the

head on collision between the Truck and the Tractor bearing registration Nos. CG-04-J-7461 and N.Y.T.7663 respectively. He further contended that,

the Tractor belonging to the present appellants were duly insured with the Bajaj Allianz General Insurance Company Limited (In short Bajaj Allianz)

and therefore the liability which has been fastened upon the present appellants should had been shifted upon the Bajaj Allianz. He further submits that,

the Tractor was not being operated beyond the sitting capacity and that the Tractor was duly insured by the Bajaj Allianz is not in dispute as the

Insurance Company themselves had in their written statement admitted this aspect as is reflected from the impugned judgment. It was further

contended by the counsel for the appellants that, since, there was a valid policy and that there was no sufficient evidence led by the Bajaj Allianz to

prove any breach of policy condition, the Tribunal ought to have fastened the liability upon the Bajaj Allianz so far as the share which has fallen to be

paid by the present appellants.

5. The counsel appearing for the respondent No.4/Bajaj Allianz opposing the appeal submits that, it is a case where there was a categorical finding of

contributory negligence. He further submits that, if the contributory negligence factor goes, even then there appears to be a definite case of composite

negligence on part of the appellant No.1 for which the entire liability of payment of compensation should had been shifted upon the present appellants.

It was further argued that, there was a clear breach of policy condition as the claimants themselves has not been able to establish their case that, the

vehicle was being used for an agricultural purpose. It was further contended that, the owner himself has not produced before the Tribunal the nature

of policy issued where the deceased in the instant case was covered under the risk of the policy.

6. Perusal of record would show that, there is a categorical finding of there being a head on collision between the two vehicles i.e. the Truck and the

Tractor. The Tribunal has therefore taken the view of there being an apparent contributory negligence between the two vehicles.

7. The Oriental Insurance Company Limited (In short Oriental Insurance) has not challenged the judgment. As such, the liability which has been fallen

upon them stands affirmed.

8. So far as the Insurance Company of the Tractor is concerned, if we look into the record, the Bajaj Allianz has not led any evidence to substantiate

any breach of policy condition. On the contrary, there is a categorical admission by them in their Written Statement before the Tribunal that, the

Tractor and Trolley was duly insured.

9. Further from perusal of record it appears that, the deceased in the instant case was traveling sitting in the Trolley of the Tractor when the accident

occurred.

10. Considering the facts and circumstances of the case, particularly taking note of the Written Statement and the admission on part of the Bajaj

Allianz of having duly insured the vehicle and there being no evidence led by the Bajaj Allianz to prove the breach of policy condition on part of the

appellants this Court is of the opinion that, the liability which has fallen upon the present appellants ought to have been shifted upon the Bajaj Allianz

i.e. the Insurance Company which had insured the Tractor.

11. Accordingly, the appeal stands allowed and the portion of share which the appellants have to pay i.e. of Rs.1,17,500/- is now ordered to be paid by

the respondent No.4/Bajaj Allianz. If any amount has been deposited by the present appellants, they shall be entitled for refund of the same from the

Bajaj Allianz.

12. However, it is made clear that the Bajaj Allianz shall deposit only the balance of amount left after the amount which has been deposited by the

present appellants before the Tribunal.

13. The appeal stands allowed and disposed off.

