NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 214 of 2007

Senior Manager, National Insurance Company Limited, Giill Complex, Near Gurudwara, Station Road, Durg (C.G.).

---- Appellant

Versus

1. Smt. Shikha Ghosh, Wd/o. Sapan Kumar Ghosh, Age 45 years.
2. Anshuman Ghosh, S/o. Late Sapan Kumar Ghosh, Age 19 years.

   Address- Both are through- House of Bhola Prasad Chaubey, Neharu Nagar, Chaubey Floor Mill, Neharu Nagar, Raipur (C.G.).
3. Ku. Shruti Ghosh, D/o. Late Ranjan Ghosh, Legal Representative of Late Shyamali Ghosh, R/o. Chaudhary Bhawan, In front of House of Shri Vidya Charan, Budhapara, Tashil & District Raipur (C.G.).

---- Respondents

For Appellant	:	Mr. Dashrath Gupta, Advocate
For Respondents	:	None.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

31.08.2015

1. The instant appeal is against the award dated 26.08.2006, passed in Claim Case No.09/2006 by the learned Fourth Additional Motor Accident Claims Tribunal (F.T.C.), Raipur. The instant appeal is by the Insurance Company.

2. Briefly stated facts are that a petition under Section 163-A of the Motor Vehicle Act was filed by Smt. Sikha Ghosh and Anshuman Ghosh for death of one Sapan Kumar Ghosh. It was pleaded that on 30.12.2003, the deceased Sapan Kumar Ghosh was traveling with his sister-in-law Smt. Shyamli Ghosh in a Maruti-1000 Car bearing No.C.G.-04-ZD-0661.

At the relevant time, the vehicle was being driven by one Ranjeet Singh. In the said vehicle, the deceased was going to Dallirajhara and on the road they were dashed by an unknown vehicle whereby the vehicle fell down to 5-6 feet and the deceased Sapan Kumar Ghosh and Syamli Ghosh sustained severe injuries and consequently he succumbed to the injuries.

3. The petition was preferred under Section 163 of the Motor Vehicle Act and the learned Tribunal after adjudicating the issue had passed an award of Rs.1,42,835/- and fastened the liability to pay the entire amount of compensation over the Insurance Company.

4. The instant appeal is by the Insurance Company and it is contended that the deceased was traveling in the Car which was insured for Private Car and the policy was a Liability Only policy. The Insurance Company therefore was not covered for third party. It was further stated that only premium of Rs.25/- was paid for the accident of the other person apart from the third party and since the deceased was siting in the vehicle itself he should not be within the ambit of third party. Learned counsel further submits that as per the premium paid of Rs.25/- the quantum of liability would be up to Rs.50,000/- over the insurance company as per terms of the policy. It is therefore submitted that the insurance company cannot be directed to pay the entire amount of compensation.

5. No representation is made on behalf of the respondents.

6. The instant appeal is only by the Insurance Company wherein the quantum of liability is under challenge. Perusal of the record would show that the policy has been filed as Ex.C-1. The policy captioned as Certificate Of Insurance of Private Car and it is Liability Only policy. Admittedly, the deceased was traveling in the Car which was owned by

Smt. Syamli Ghosh and the deceased was related to Syamli Ghosh. The accident happened on 30.12.2003 at about 8:30 p.m. Perusal of the policy would show that it was a Private Car Liability Only Policy and according to the premium paid in respect of the passengers up till four the amount of Rs.100/- was paid and the liability was limited upto Rs.50,000/-. The question therefore falls for consideration as to whether the deceased who was traveling in the Car can be treated as third party or the passenger.

7. In case of ***New India Assurance Co. Ltd. v. Asha Rani*** reported in ***AIR 2003 SC 607,*** a Bench of three Hon'ble Judges of Apex Court has interpreted provision of Section 147 of the Motor Vehicle Act. The Apex Court had occasion to compare provision of Section 95 of the Motor Vehicles Act, 1939 with the provision of Section 147 of the Act. The Apex Court was also required to consider the ratio laid down in the case of ***New India Assurance Co. v. Satpal Singh***, reported in ***1999 AIR SCW 4337***, which was decided by the Bench of two Hon'ble Judges of the Apex Court. In the case of *Satpal Singh* interpretation of the term "any person" used in the provisions of Section 147 was made and indirectly it was held that the Insurance Company is liable to pay compensation in respect of passengers traveling in goods carrier. In the case of *Asha Rani*, the Apex Court has overruled this decision and the Apex Court has laid down that the term "any person" used in this provision mean "third party" not passenger.

8. Perusal of the insurance policy in this case would show that it was a Liability Only policy. The amount of premium paid further shows that for passengers upto number 4, an amount of Rs.100/- was charged as a premium and Rs.50,000/- was a limit under the terms of the policy. Therefore, perusal of the policy would show that no special premium is

paid to cover the risk of the inmates of vehicle for more than of Rs.50,000/-.

9. The passenger in the vehicle cannot be termed as "third party" and therefore, if the inmates i.e. passenger has suffered any broadly injury or death, the insurance company cannot be held liable more than the amount agreed to be paid under the policy.

10. Therefore, after careful consideration, in the opinion of this Court, the payment of liability in its entirety over the insurance company cannot be held good. The liability of the insurance company would be limited to the extent of Rs.50,000/- and remaining amount of award after deduction from the total award of Rs.1,42,835/- the owner shall be liable to make good the payment of compensation.

11. With such observation, the appeal is partly allowed. No order as to costs.

Sd/-
(Goutam Bhaduri)
Judge

Ashok