NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 498 of 2014

The Oriental Insurance Company Ltd. Through - Branch Manager, Branch Office- Main Road, Jagdalpur (C.G.)

---- Appellant

Versus

1. Smt. Madkami Pandey, W/o. Chamru @ Ganga, Aged About 45 Years, R/o. Patel Para, Bade Gurbe, Thana- Kukanar, Tah. Darhava, Distt. Bastar, C.G.
2. Yogendra Singh Bhdhoria, S/o. Vijay Singh Bhdhoria, Aged About 22 Years, R/o. Dengpara, Kukanar, Distt. Bastar, C.G.
3. Ram Bharosa Singh, S/o. Sunder Singh, Aged About 46 Years, R/o. Thana Kukanar, Dengpara, Distt. Bastar, C.G.

---- Respondents

And

MAC No. 499 Of 2014

The Oriental Insurance Company Ltd. Through- Branch Manager, Branch Office- Main Road, Jagdalpur (C.G.)

---- Appellant

Versus

1. Smt. Tulsi Bai, W/o. Mahru, Aged About 45 years, R/o. Patel Para, Bade Gurbe, Thana- Kukanar, Tah. Darhava, Distt. Bastar, C.G.
2. Yogendra Singh Bhdhoria, S/o. Vijay Singh Bhdhoria, Aged About 22 Years, R/o. Dengpara, Kukanar, Distt. Bastar, C.G.
3. Ram Bharosa Singh, S/o. Sunder Singh, Aged About 46 Years, R/o. Thana Kukanar, Dengpara, Distt. Bastar, C.G.

---- Respondents

For Appellants : Ms. Chitra Shrivastava, Advocate

For Respondent No.1. : Mr. Amiyakant Tiwari, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

05/08/2015

1. Both the appeals are being heard and decided together by this common order as they are arising out of the award dated 19.12.2013 passed in Claim Cases No.225/2010 & 226/2010 and similar facts are involved. Both the appeals are by the Insurance Company.

2. The facts in brief are that on 25.12.2009, the claimant namely Madkami Pandey who filed the Claim Case No.225/2010 and another claimant named Smt. Tulsi Bai who filed the Claim Case No.226/2010 were going to market of village Kukanar in the Commander Jeep bearing No.C.G.17 D/0105. While they were traveling in such vehicle, which was driven by the original Non-applicant No.1, Yogendra Singh Bhadoria, in rash and negligent manner dashed a stationary vehicle whereby both the applicants sustained severe injuries. The vehicle was owned by Ram Bharose Singh, Non-applicant No.2 and was insured with the Oriental Insurance Co. Ltd, Non-applicant No.3. It was contended by the claimant Madkami Pandey in Claim Case No.225/2010 that she was earning Rs.100/- per day working as labour and after the accident, she had suffered a permanent total disability, an amount of Rs.6,40,000/- was claimed as against this, an amount of Rs.56,800/- was awarded. In other Claim Case No.226/2010, the claimant Smt. Tulsi Bai stated that she was also working as labour and used to earn Rs.100/- per day and after the accident, she had suffered permanent total disability and she claimed an amount of Rs.6,40,000/- and as against that, an amount of Rs.96,800/- was awarded.

3. The owner and driver of the offending vehicle refuted the avements of the claim petition and further contended that at the time of accident, the vehicle was insured with the Oriental Insurance Co. Ltd., the original Non-applicant No.3, therefore, the liability, if any, has to be made good by the insurance company.

4. The insurance company too refuted the averments of the claim petition and it was stated that at the time of accident, the driver of the vehicle was not holding a valid license and the claimants were traveling as passengers after payment of amount; therefore, it would amount to breach of condition of the insurance policy. The insurance company further pleaded that the premium was paid for 9 unnamed passengers and they were only entitled for the amount of compensation according to the schedule of injury if sustained in the policy, which is maximum to the extent of Rs.1,00,000/-. Therefore, it was stated that the insurance company, in the facts of the case, is not liable to pay the amount of compensation and the liability has been wrongly fastened over it.

5. Learned counsel for the appellant/ insurance company would submit that the policy in this case do not contemplate the payment of compensation unless the injury is according to the schedule of the policy. It is further submitted that the claimants were traveling as passengers after payment of amount in the vehicle and since as many as 15 passengers were traveling, therefore, it can be inferred that the injured were traveling as a passenger after payment of amount. In a result, the insurance company cannot be held liable to make good the payment.

6. Despite notice, no representation is made on behalf of the claimants i.e. Respondent No.1 in both the appeals. Mr. Amiyakant Tiwari, learned counsel, who is present in the Court, is requested to assist the Court and he rendered his valuable assistance on behalf of the claimants. The counsel would submit that the statement of the witness of the insurance company would reveal that factually wrong submission was made by the witness of insurance company as against the document i.e. policy which is placed on record. He further submits that the entire pages of policy so produced cannot be treated as part of the original policy in absence of any further averments. It is contended that

even the first three pages of policy are taken into account, it would reveal that the premium of Rs.450/- for 9 unnamed passengers for vehicle was paid. It is further contended that it is not a case of the insurance company that the insurance company has paid the amount of compensation to the other 9 passengers and two claimants are out of that 9th benchmark and are 10th and 11th passengers. He therefore submits that in the facts and circumstances of the case, the award passed by the learned Claims Tribunal is well merited which do not call for any interference.

7. I have heard the learned counsel appearing for the parties, perused the pleadings, documents & evidence on record.

8. Admittedly, there is no challenge to the fact that at the relevant time the offending vehicle was being driven in rash and negligent manner which caused the accident. There is no challenge to the quantum of compensation and in absence of that, the same do not require any reconsideration. Now coming back to the question of liability whether the insurance company was rightly held liable to pay the amount, the evidence adduced by the insurance company of NAW-1, Shiv Subramanium Iyyar, was examined. The witness has stated that the policy was Liability Only Policy for private car and according to such policy, the passengers who are traveling in the car were not covered. The claimants in the case have stated in evidence that they were traveling in such offending vehicle without payment of any amount. This fact has not been rebutted anywhere by the insurance company in the cross-examination of the claimants. Now considering the statement of NAW-1, though he has stated that in such policy it did not cover the risk of the passengers traveling in the vehicle, such fact is negated by the policy which is marked as Ex.NA-1. According to such policy, it shows that premium of Rs.450/- was paid for unnamed passengers. It is not a case of the insurance company that the claimants were out of the figure of 9 and the compensation has been paid to the other people. The statement of the witness appears to

have wrongly made as the policy itself shows that the amount was paid for the passengers. The policy further shows that the seating capacity in the policy was that of 9 + 1 i.e. 10. The claimants were traveling as passenger in the said vehicle has been established. It is also not disputed that while traveling as passenger in such vehicle, the claimants sustained injuries. Therefore, the oral evidence adduced by the insurance company appears to be contradictory to the terms of policy according to their own document i.e. policy which fortifies that the amount of premium was paid for the passengers.

9. Reading the contents of the policy would show that the passengers up-till number 9 were covered under such policy. The insurance company though has taken the defence that the claimants were traveling after payment of amount in the said Jeep has not been established, therefore, in absence of that the claimants will certainly be within the ambit of passengers for which the separate premium was paid to the insurance company.

10. In view of this, taking into fact and evidence on record, the finding arrived at by the learned Tribunal do not appears to be wrong. Consequently, both the appeals have no merit and it is accordingly dismissed.

11. Before parting, the Court extend it thanks to Mr. Amiyakant Tiwari and the copy of the said order be referred to the Legal Aid Committee so that the remuneration can be paid to the counsel for his valuable assistance in two appeals.

Sd/-
(Goutam Bhaduri)
Judge

Ashok