HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1221 of 2014

The Oriental Insurance Company Limited, Divisional Office, Rama Trade Centre, Old Bus Stand, In Front Of Rajiv Plaza, Bilaspur C.G., Through- Its Divisional Manager.

---- Appellant

Versus

1. Mahesh S/o Hirma Aged About 22 Years caste-Madiya, R/o Koriras, Block- Kuwakonda, Distt. South Bastar Dantewada C.G.
2. Mundru @ Ghasiram Sinha S/o Ram Prasad Sinha R/o Palnar, P.S. Kuwakonda, Distt. South Bastar Dantewada C.G.
3. Balmiki Singh W/o R.C. Singh Aged About 60 Years R/o Nakulnar, P.S. Kunwakonda, Distt. South Bastar Dantewada C.G.

Respondents

MAC No. 1222 of 2014

The Oriental Insurance Company Limited, Divisional Office, Rama Trade Centre, Old Bus Stand, In Front Of Rajiv Plaza, Bilaspur C.G., Through- Its Divisional Manager.

---- Appellant

Versus

1. Somdu S/o Pandu Aged About 50 Years caste- Madiya R/o Tikanpal (Dongripara), Block- Kuwakonda, Distt. South Bastar Dantewada C.G.
2. Mundru @ Ghasiram Sinha S/o Ram Prasad Sinha R/o Palnar, P.S. Kuwakonda, Distt. South Bastar Dantewada C.G.
3. Balmiki Singh W/o R.C. Singh Aged About 60 Years R/o Nakulnar, P.S. Kunwakonda, Distt. South Bastar Dantewada C.G.

Respondents

And

MAC No. 1223 of 2014

The Oriental Insurance Company Limited, Divisional Office, Rama Trade Centre, Old Bus Stand, In Front Of Rajiv Plaza, Bilaspur C.G., Through- Its Divisional Manager.

---- Appellant

Versus

1. Vaman S/o Kola Aged About 50 Years caste – Madiya R/o Gongpal, Block- Kuwakonda, Distt. South Bastar Dantewada C.G.
2. Mundru @ Ghasiram Sinha S/o Ram Prasad Sinha R/o Palnar, P.S. Kuwakonda, Distt. South Bastar Dantewada C.G.
3. Balmiki Singh W/o R.C. Singh Aged About 60 Years R/o Nakulnar, P.S. Kunwakonda, Distt. South Bastar Dantewada C.G.

---- Respondents

For appellant – Shri R.N. Pusty, Advocate.
For Respondent No.1 – Shri Awadh Tripathi and Shri Wasim Miyan Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

11/08/2015

1. All the three appeals are decided together being arising out of award dated 28/08/2014 passed by the Additional Motor Accident Claims Tribunal, South Bastar, Dantewada. By said award three claim cases were decided i.e. (i) claim case No.270/2014 was filed by Mahesh, (ii) claim case No.271/2014 was filed by Somdu and (iii) claim case No.272/2014 was filed by Baman.

2. The claim petitions were preferred *inter-alia* alleging that offending vehicle bearing No. C.G. 17-H/1204 met with an accident on 6/02/2007 at about 8'O clock. It was stated that at the time of accident, the said offending vehicle was driven by non-applicant No.1 in a rash and negligent manner, consequently, it caused the accident. It was stated that the offending vehicle was owned by one Balmik Singh. All the applicants contended that they were discharging their job in the said vehicle as labour and while they were travelling in such vehicle, it met with an accident and separate claim cases were filed, learned tribunal has awarded different amount of claim and held that the insurance company would be liable for the payment of the amount of compensation.

3. Instant appeals are by the insurance company. Shri R.N. Pusty, learned counsel for the appellant/insurance company would submit that as per evidence according to the licence which is proved by the insurance company, driver of the offending vehicle was holding a licence for driving a

light motor vehicle and it was not endorsed for commercial purpose, therefore it would amount to breach of the terms of the policy as the driver was not authorized to drive such vehicle. It is further contended that the injured were traveling in the offending vehicle as gratuitous passenger, therefore they would not be entitled for any compensation from the insurance company. Learned counsel further submits that the FIR if is taken into account, it reveals that on the date of accident the claimants were traveling along with other 10 to 12 passengers. Consequently, when passengers were carried in goods vehicle, the insurance company cannot be held liable. He further submits that the claimants in this case were passengers. Therefore, they cannot be said to be within the ambit of the insured persons for whom the premium was paid.

4. Per contra, learned counsel appearing for respondent No.1/claimant opposes the submission. He would submit that by evidence of the parties nothing has been proved. Therefore, award passed is well merited which do not call for any interference.

5. Learned tribunal after evaluating the evidence and facts came to a conclusion that at the relevant time, offending vehicle i.e. Pick Up van bearing No. C.G. 17-H/1204 was driven by original non-applicant No.1 Mundru in a rash and negligent manner. There is no challenge to such finding. In absence of challenge to such finding of rash and negligent driving by the driver of the offending vehicle, same is affirmed.

6. Since appeal is only by the insurance company, therefore limited question which falls for consideration is as to whether liability which is been fastened over the insurance company is correct or not?

7. In order to appreciate the argument raised by learned counsel for the appellant/insurance company, initially statement of the claimants are

seen. Claimant Mahesh in his statement has averred that he was working as a labour in the offending vehicle bearing No. C.G. 17-H/1204. Likewise the other claimant Baman had also stated that he was also working as labour in said vehicle whereas claimant Somdu stated that he was working as conductor/cleaner. In the cross examination of these witnesses nothing has come to revert such facts. Though reference was made that of the FIR which is Ex.A-2 which purports that though 10 to 12 persons had boarded the said vehicle but the statement given by the claimants that they were working in said vehicle as labourer is not negated. Therefore inference by the FIR cannot be drawn against the statement of the claimants that the claimants were gratuitous passengers.

8. Insurance company on their behalf had examined one Vikram Pal Singh. He has proved the policy which is marked as Ex.D-1. Said policy was for goods carrying commercial vehicle. Perusal of such policy Ex.D-1 would show that sitting capacity in said vehicle was shown as three. Premium of legal liability of the employee/driver was also paid. Statement of the claimants that they were employee in the said vehicle could not have been negated. Therefore, necessarily they would be within the definition of employee according to the insurance policy. Further more, the licence which is proved and marked as Ex.D-4 was examined. Ex.D-4 is neither a certificate issued by the RTO nor the witness DW-1 is the author of the same. The document Ex.D-4 is a photo copy of a licence which is stated to be that of the driver. Perusal of Ex.D-4 shows that it was neither compared with the original nor any person from the RTO was summoned and authenticity of the same was proved. By mere marking the said document as exhibit, same cannot be accepted to be a valid document in evidence. Therefore, the person from the insurance though had marked the licence of the driver as Ex.D-4 to project that it was for light motor

vehicle. Contents of the same cannot be read in evidence as it has not been proved according to the law of evidence.

9. In view of the discussion made herein above, I am of the opinion that insurance company has failed to prove the facts pleaded by proper evidence before the court so as to establish that licence was not proper and further it has also failed to prove by evidence that claimants were traveling as gratuitous passengers.

10. In a result, finding arrived at by the learned tribunal cannot be disturbed. Consequently, appeals have no merit and they are dismissed.

Sd/-
(Goutam Bhaduri)
JUDGE

Gouri