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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 941 of 2008

The Oriental Insurance Co. Ltd., through Branch Manager, Manendragarh Road, Near Ambedkar Chowk, Ambikapur, District Sarguja --- Appellant

Versus

1. Sanjay Kumar Sinha, son of Late S.C. Sinha, aged about 44 years, resident of Haldibadi Chirmiri, P.S. Chirmiri, District Koriya (C.G) – *Claimant.*

2. Pawan Agarwal, son of Shri Shiv Agarwal, resident of Near Bus Stand, Ambikapur, District Surguja *Owner of the vehicle*

---- Respondents

MAC No. 949 of 2008

Oriental Insurance Co. Ltd., through Branch Manager, Manendragarh Road, Near Ambedkar Chowk, Ambikapur, District Sarguja

---- Appellant

Versus

1. Somdat Hatekar, son of Late D.T. Hatekar, aged about 38 years, resident of Haldibadi, Chiribiri, Tehsil Manendragarh, District Koriya (C.G) – ***Claimant.***

2. Pawan Agarwal, son of Shri Shiv Agarwal, resident of Near Bus Stand, Ambikapur, District Surguja ... ***Owner of the vehicle***

---- Respondents

For Appellant : Shri Abhishek Sinha, Advocate

For Respondent No. 1 : Shri J.A. Lohani, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Judgment on Board

12.10.2015

1. Both these appeals are being decided together as they are arising out of the same accident.

2. M.A(C).No. 941 of 2008 is against the award dated 29.02.2008 passed in Claim Case No.34 of 2007 filed by Sanjay Kumar Sinha wherein Second Additional Claims Tribunal Manindragarh has passed an award of Rs.1,30,000/-.

3. M.A(C).No.949 of 2008 is filed against the award dated 29.02.2008 passed in Claim Case No.33/2007 filed by Somdat Hatekar wherein the Tribunal has passed an award of Rs.3,74,000/-.

4. The common facts which are involved in both these cases are that that the applicants after completion of their election duty on 21.04.2004 were returning from Ambikapur to Haldibadi Chirimiri in offending vehicle Tata Sumo bearing Regn.No. C.G.15-A/2128. It was stated that the said vehicle having been driven in rash and negligent manner struck against a tree whereby the driver of the vehicle namely Munna @ Rajeev Ranjan died on the spot whereas the other occupants of the vehicle had sustained grievous injuries and admitted to hospital. The claimants were admitted to hospital and subsequently operated for the injuries. At last, the claim petitions were filed. In the said claim petitions, the Tribunal after evaluating the evidence, came to a finding that at the relevant time, the offending vehicle was being driven in rash and negligent manner due to which, the accident took place. The said vehicle was owned by Non-Applicant No.1 Pawan Agrawal, The learned Tribunal has passed two separate awards on 29.02.2008 which are under challenge in these appeals.

5. Learned counsel for the appellant Insurance Company would submit that the learned Tribunal has committed illegality in

fastening the liability over the insurance company. He submits that the vehicle though was registered as LMV Taxi but Ex-D-2 shows that it was a package policy meant for private car and consequently the occupants who were travelling in the car cannot be directed to be compensated by the Insurance Company. He further submits that if the vehicle is being used as taxi and was being driven by the driver without any valid and effective driving licence, it will lead to breach of terms of policy and consequently the Insurance Company is not liable to make good the payment. He further submits that the claim amounts have been inflated which could not have been awarded.

6. Per contra, learned counsel for respondent No.1 submits that the impugned awards are well merited which do not call for any interference. He further submits that arising out of the same accident, 3 claim cases were filed. It is contended that the award passed in claim case No.35/2007 (Malay Kumar Devnath Vs. Pawan Agrawal and another) is also filed on record wherein claimant Malay Kumar Devnath had also sustained injuries in the said accident. A claim petition having been filed, the Tribunal has passed the award of Rs.1,20,000/-. He further submits that in such award, the insurance Company was saddled with liability and complying the said award, the amount was deposited by the Insurance Company before the Claims Tribunal. Therefore, the Insurance Company being a public sector undertaking cannot take a different stand in these appeals by adopting pick and choose policy as the insurer having not filed any appeal against such award. Therefore, they are estopped to raise any ground in these two appeals. Hence, he submits that

both the appeals filed by the Insurance Company having no merit, deserve to be dismissed.

7. I have heard learned counsel for the parties and have also perused the documents and evidence on record.

8. In appeal MAC No.941 of 2008, a certified copy of the award dated 29.02.2008 which was passed in Claim Case No.35 of 2007 which arose out of the same accident was filed. The learned counsel for the Insurance Company on an enquiry submits that as per his instructions, no appeal has been filed against the same award though the same arise out of the same accident and permission in such case was not obtained under section 170 of the Motor Vehicles Act.

9. The primary challenge of the Insurance Company is based on the Insurance Policy and the registration of vehicle. The claim cases were decided simultaneously, as such, the documents exhibited in one case were considered in another case before the Claims Tribunal.

10. The insurance policy is marked as Ex.D-2 which is a package policy meant for private car whereas document of registration of the Car is filed and marked as Ex.D-1(C) wherein the description of the vehicle was shown as LMV Taxi. It is categorically stated by the claimants in their evidence that they were travelling in the offending vehicle out of mutual relations with the owner and no charge was paid for the use of vehicle. Witness Shiv Kumar Agrawal, who is father of owner of the offending Vehicle Pawan Agrawal has stated that he wanted to bring back his sister from Chirimiri as such because of the mutual relation, the

vehicle was given to the claimants as the occupants , who also wanted to go to Chirimiri. Therefore, according to the evidence on record, the vehicle was being used as a private service vehicle at the time of accident. It is not expected that because of personal relations with the owner the occupants who want to travel in the vehicle would examine the particulars of registration of vehicle as also the insurance policy before boarding the vehicle. Therefore, as per the evidence of the claimants as well as the owner of the vehicle, it is proved that the vehicle was exclusively used for the private purpose.

11. Now if we come back to the insurance policy Ex.D-2, it would show that it was a package policy meant for a private car wherein the extra amount of Rs.250/- for covering the risk of PA was paid by the owner. The witness examined on behalf of behalf of the Insurance Company is M.P. Gupta. He has stated that initially the vehicle was insured for private use but the said vehicle was being used as Taxi as the registration was done afterwards. But if the oral evidence is seen, it would be clear that at the time when the insurance policy was issued it was a private car and therefore considering the evidence of the claimants and that of the owner, which has come on record, this fact cannot be denied or disowned that that at the relevant time, the vehicle was being used as private car. Therefore, if the policy was existing wherein the extra premium was also paid for the occupants, the Insurance Company cannot disown its liability in respect of the occupants who are traveling in the car. Thus in the facts of the present case, it is evident that at the time of accident, the registration of the vehicle according to

Ex.D-1"C" was for LMV Taxi since the description of vehicle in Certificate of Registration shows as LMV-Taxi whereas the insurance policy (Ex.D-2) shows that it was a package policy meant for a private car. Therefore, certainly there appears contradiction which would lead to breach of terms of policy. However, in the facts of the case, since the occupants of the car sustained injuries and as per the Insurance Policy, extra premium of Rs.250/- was paid for covering the risk of PA, therefore, the insurance Company cannot avoid its responsibility and the the occupants cannot be put to suffer because of the existing contradiction between the policy and the registration.

12. In my opinion, it would be appropriate to direct the insurance Company to pay the amount of compensation to the claimants and thereafter to recover the same from owner of the vehicle. Consequently, the Insurance Company shall make good the payment of compensation and in turn it would be entitled to recover the same from the owner.

13. In the result, both these appeals are partly allowed with the above observations.

Sd/-
GOUTAM BHADURI
JUDGE

Rao