**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**M.A.(C) No. 261 of 2007**

1. The Oriental Insurance Company Ltd, by Divisional Manager, Divisional Office on the top floor of UTI Bank, Opposite Rajiv Plaza, Bus Stand, Bilaspur (C.G.)

**---- Appellant.**

**Versus**

1. Radhelal Alias Rajaram, S/o. Melauram Alias Ramphal Rohitas, aged about 18 years, Resident of Village – Mohatari, Police Station Ratanpur, District Bilaspur (C.G.).

2. Shiv Kumar Sahu, S/o. Sadhuram Sahu, Resident of Village Mohatarai, Police Station – Ratanpur, District Bilaspur (C.G.) (Driver of Jeep No.C.G-04/ZD-1922

3. Smt. Sangeeta Fesh, W/o. Shri Rajendra Rao Fesh, Resident of Chandani Chowk, Kududand, District Bilaspur (Owner of the Jeep No.C.G.-04/ZD-1922.

**---- Respondents**

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| For Appellant | : | Mr. Sudhir Agrawal, Advocate. |
| For Respondent No.1 | : | Mr. S.D. Singh, Advocate |
| For Respondent No.3 | : | Mr. Ravindra Sharma, Advocate |

**Hon'ble Shri Justice Goutam Bhaduri**

**Order On Board**

**08/07/2015**

1. Challenge in this appeal is to the award dated 31.10.2006, passed in Claim Case No.55/2006, by the 6th Additional Motor Accident Claims Tribunal, Bilaspur, District Bilaspur whereby an award of Rs.75,000/- was passed.

2. The appeal is by the insurance company.

3. Briefly stated facts of the case as was pleaded by the claimant are that on 28.06.2005, the claimant, Radhelal @ Rajaram was going to his village named Mohatarai from Bilaspur in the vehicle jeep bearing No.C.G.-04/ZD-1922. At the relevant time, the vehicle was being driven by the original non-applicant No.1, Shiv Kumar Sahu in a rash and negligent manner, whereby it dashed against stationary truck, as an impact of said, the claimant sustained severe injuries and lost his conscious. Thereafter, he was treated and was operated and on different heads an amount of Rs.6,00,000/- was claimed for permanent disability caused to him.

4. The original non-applicant No.1, 2 & 3, the driver, owner and the insurer of the offending vehicle filed their written statement separately. The driver of the offending vehicle, denied the happening of the incident while the non-applicant No.2 admitted that the offending vehicle belongs to her and it was stated that at the relevant time, the offending vehicle was insured with the original non-applicant No.3, the insurance company, consequently, the liability is to be made good by the insurance company.

5. The insurance company, in its reply contended that at the relevant time, the driver of the offending vehicle was not having the valid and effective driving license. In written statement, it was further stated that the insurance was made for private vehicle and the third party, consequently, since the claimants were traveling in the vehicle, the insurance company is not liable to make good the payment.

6. Learned claims Tribunal on the basis of the pleadings and the evidence adduced, passed an award of Rs.75,000/- in favour of the claimant and held that the non-applicants are jointly and severally liable to make good the payment.

7. The instant appeal is by the insurance company. There is no challenge to the finding of the issue by either of the parties that at the relevant time, the offending vehicle was being driven in rash and negligent manner, consequently, the accident happened, therefore, in absence of challenge to such finding, the same is affirmed.

8. Learned counsel for the appellant/insurance company would submit that according to the policy, the insurance was with respect to the liability only policy and therefore, the insurance company can not be directed to make good the amount. He further submits that the claimants were traveling on the jeep, therefore, the learned Claims Tribunal has wrongly held that the insurance company is liable to make good the payment. He further submits that the claimants was traveling in the offending vehicle can not be treated as a third party, the award passed against the insurance company is liable to be set-aside.

9. Per contra, learned counsel for the respondent No.1 and 2 i.e. the claimant and owner, supported the award and would submit that the award is well merited which do not call for any interference.

10. I have heard the learned counsel for the parties at length, perused the documents and the evidence on record.

11. The only question which was pressed into motion by the insurance company that as to whether the liability has been rightly fastened over the insurance company, the insurance company can be held liable to make good the amount. In this case, this fact is not in dispute that at the relevant time, the vehicle was insured with the insurance company, the appellant.

12. The insurance policy of the vehicle is marked as Ex.P-4. Perusal of the insurance policy, Ex.P-4 shows that the vehicle was insured for a period of 31.12.2004 to 30.12.2005. Only one page of the insurance policy has been placed on record, which captioned with Certificate-Cum-Policy-Schedule. Policy type has been shown as liability only policy for zone-B private Car, nothing has been placed on record what was the terms of the policy. The insurance company had examined one Anil Kumar Yadav (NAW-2). He in his deposition has stated that persons, who were traveling in such vehicle, their risk was not covered under the policy, but in the cross-examination, he admitted that in such policy, risk of the third party were included. Except one statement, no efforts has been taken to place the terms of the policy. The insurance company in his written statement had stated that the claimant was traveling as gratuitous passenger. It is further stated in the written statement that the driver of the offending vehicle have not proved the fact that at the relevant time, he was holding the valid driving license.

13. As against the defence with respect to the evidence adduced by the insurance company, the witness of the insurance company, Anil Kumar Yadav, however he has not supported such contention that

the claimant was traveling in the offending vehicle as gratuitous passenger. If the statement of the claimant is further perused, it is stated in the cross-examination, when the specific question was asked that he was traveling after payment of amount, it was denied. In view of the specific denial that at the relevant time, he was not traveling as gratuitous passenger, this fact can not be appreciated on presumption that the claimant was gratuitous passenger, therefore, when the claimant was not traveling as gratuitous passenger he would be covered within the third party as in absence of proof of terms of policy other than the insured and insurer, the person would be within the ambit of third party.

14. In the instant case, since the insurance company has failed to prove the terms of policy except one cover page of the policy, therefore, taking into the evidence which has come on record that the claimant is not traveling as gratuitous passenger, it can not be presumed in absence of any evidence that the persons traveling in the vehicle would not be covered in the terms of the policy.

15. In a result, the finding arrived at by the learned Claims Tribunal do not require any interference. Therefore, the appeal has no merit and is dismissed accordingly.

**Sd/-**
**(Goutam Bhaduri)**
Judge

Balram