NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR No. 183 of 2008

1. National Insruance Com. Ltd. through its Branch Manager, Branch Office-Jagdalpur, Distt. Baster (CG)

---- Petitioner

Versus

1. Dhaneshwar Chandra, S/o Bhaddar @ Darasram Chandra, aged 21 years, R/o Village Kataud, PO-Kansa, P.S. & Tahsil-Dabhra, District-Janjgir-Champa (CG).

2. Nanki @ Shyam Kumar Chanda S/o Dharamlal Chanda, aged 31 years, R/o Katuaud, PO Kansa PS and Tahsil-Dabhara, Distt. Janjgir Champa (CG)

3. Manmohan Chandra S/o Sadaram Chandra R/o Kataud, PO Kansa, PS and Tahsil Dabhara, Distt. Janjgir Champa (CG)

---- Respondent

For Petitioner	: Shri Dashrath Gupta, Advocate.
For Respondent No.1	: None
For Respondent No.2	: Shri H.S. Patel, Advocate.
For Respondent No.3	: Shri Ravindra Sharma, Advocate.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

11/08/2016

Challenge in this revision is to the award dated 4.4.2007 passed by Additional Motor Accidents Claims Tribunal, Sakti, Distt. Janjgir-Champa in MACC No.08/2006 fastening the liability upon the petitioner/insurance company for payment of compensation of Rs.5,000/- to the claimant/respondent No.1.

02. On 11.11.2004 a tractor bearing registration No.CG-11-A-3855 and

trolley bearing registration No.CG-11-A-3856 was being driven by respondent No.2 and the claimant along with other labourers were sitting in the trolley. On account of rash and negligent driving by respondent No.2, the vehicle turned turtle as a result of which respondent No.1/claimant suffered grievous injuries. He filed a claim case for compensation under various heads. Learned Tribunal by the impugned award has awarded a total compensation of Rs.5,000/- in favour of the claimant with interest @ 6% p.a. fastening the liability upon the insurance company to satisfy the same.

03. The defence of the insurance company before the Tribunal was that the persons were travelling in the tractor-trolley unauthorizedly, there was breach of policy conditions, risk of such persons was not covered and therefore, the insurance company cannot be held liable.

04. Counsel for the petitioner submits that once it has come in evidence that the claimant was travelling in the vehicle as passenger whereas no premium was paid for such passenger, on account of there being breach of terms and conditions of the policy, the insurance company is not liable to pay any compensation. He submits that one Hilarius Kujur was examined by the insurance company to establish this fact.

05. While supporting the impugned award, it has been argued on behalf of the respondents that the claimant was not travelling as a passenger in the trolley but was employee of the owner of the vehicle and was engaged for agricultural purposes. Thus, risk of the claimant was covered under the policy. They further submit that neither any

specific plea was taken by the insurance company that risk of the labourers travelling in the vehicle was not covered under the policy nor any evidence to this effect was adduced by it properly. Therefore, the Tribunal was fully justified in fastening the liability upon the insurance company for satisfying the award. They submit that for a petty amount of compensation of Rs.5,000/-, this revision has been preferred and the same is liable to be dismissed.

It has been further argued that arising out of the same accident, claim case No.31/2005 was filed by Sonau and another on account of death of one Kalinga Yadav, in that case award of Rs.2.12 lacs with interest @ 6% p.a. was passed in favour of the claimants, against which an appeal (MA No.388/2006) was preferred by the insurance company, which has already been dismissed by this Court vide order dated 26.6.2006. They submit that once in a case arising out of the same accident, the plea of insurance company has been negated by this Court and the insurance company has satisfied the claim, present appeal is also liable to be dismissed.

06. Heard learned counsel for the respective parties and perused the material on record.

07. It is a settled position of law that the insurance company cannot shirk its liability merely by filing insurance policy. It is necessary for the insurance company not only to make specific pleading in its written statement but it is also required to prove the same by leading cogent and legally admissible evidence. It is also a settled legal position that in absence of a pleading, the evidence, if any, adduced by the parties

cannot be considered. Unless factual foundation has been laid down in the pleading and evidence to that effect has been adduced, no argument is permissible to be advanced on that particular point.

In this case, the insurance company has utterly failed to discharge its onus of pleading and proving the breach of terms and conditions of the insurance policy. It has failed to prove that on the date of accident, the persons, including respondent No.1/claimant, were travelling in the trolley as passengers. On the contrary, as per claim of the claimant, he was travelling in the vehicle as agricultural labourer employed by the owner of the vehicle. Even the witness examined by the insurance company has failed to prove as to on what basis he is deposing that the injured persons were travelling as passengers. Furthermore, arising out of the same accident, an appeal (MA No.388/06) was also preferred by the insurance company, which was dismissed by this Court vide order dated 26.6.2006 and as has been informed, the insurance company has also satisfied by the award in the said case.

08. Thus, considering the facts and circumstances of the case in light of the settled legal position, in particular the fact that arising out of the same accident, the appeal filed by the insurance company has already been dismissed by this Court and the award has been satisfied by the insurance company and further, considering the fact that the insurance company has failed to adduce proper evidence regarding breach of policy conditions etc., this Court finds no justification for interfering with the award impugned.

09. In the result, the revision being without any substance is liable to be dismissed and is, accordingly, dismissed.

Sd/

(Pritinker Diwaker)

Judge

Khan