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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 383 OF 2008

The Oriental Insurance Company Limited, through the Divisional Manager, Oriental Insurance Co. Korba, Geetanjali Bhawan, Main Road, Korba (CG)

… Appellant

versus

1. Smt. Jhaman Bai, S/o Ram Prasad Kanwar, aged 32 years, R/o Mahora, Urga, District Korba (C.G.)
2. Dharam Lal, S/o Chatram Satnami, R/o Akhrapali, Urga, Korba (CG)
3. Sita Lahre, S/o Anand Ram Lahre Satnami, R/o Kodhari, District Korba (CG)

… Respondents

For Appellant	:	Mr. Ghan Shyam Patel, Advocate.
For Respondent No.1	:	Mr. A.L. Singroul, Advocate, as Amicus Curiae.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

24/10/2017

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, filed by the Insurance Company, assailing the award dated 31.10.2007 passed by the Second Additional Motor Accident Claims Tribunal, Korba, in Motor Accident Claim Case No. 142/2007.

2. Vide the impugned award, the learned Tribunal, in a proceeding under Section 166 of the Motor Vehicles Act, in an injury case, has awarded a compensation of Rs. 1,25,000/- in favour of the Claimant of which the liability fastened upon the Insurance Company is of Rs. 1,10,079/- with interest thereon at the rate of 9% per annum from the date of claim application.

3. Contention of the learned Counsel for the Insurance Company is that the Insurance Company should not have been fastened with the liability of payment of compensation, for the reason that the owner of the Tractor No. CG11-A-3270 and Trolley No. CG11-A-3271, which is the vehicle involved in the accident, had not paid any premium covering the risk of a labourer or an occupant to travel in the Trolley and therefore the

Insurance Company should have been completely exonerated of its liability to pay the compensation. It was also the contention of the Insurance Company that the policy in the instant case was a Kissan Package Policy covering the risk of only third-party as well as driver, whereas no other persons were covered under the policy. The said policy was brought on record which has not been duly appreciated by the Tribunal and therefore the impugned award is liable to be modified accordingly.

4. Since there was no representation on behalf of the Claimant, this Court thought it fit to take the assistance of Mr. A.L. Singroul, Advocate, present in the Court, for the disposal of the present appeal.

5. According to Mr. Singroul, it is a case where the vehicle insured with a Kissan Package Policy and since it is a Kissan Package Policy, the learned Tribunal has rightly fastened the liability of an amount of Rs. 1,10,079/- upon the Insurance Company and thus the impugned award does not warrant any interference and the appeal is liable to the rejected.

6. Considered the contentions put forth on either side and perused the record of the case. The policy which has been issued in favour of the owner was a Kissan Package Policy which is exhibited as Exhibit D-3 and Exhibit D-5. The document would clearly show that the owner in the instant case had only paid the premium covering the risk of the driver and the third-party and that no extra premium was paid covering the risk of an occupant. Thus, it is a case where the Insurance Company has not received any premium covering the risk of an occupant of the vehicle except for the driver and third-party.

7. The Insurance Company has also led evidence of one Sandeep Kumar, an Administrative Officer of the Insurance Company, who has specifically pleaded so far as the liability of the Insurance Company is concerned.

8. Considering the entire facts and circumstances of the case and also keeping in view the decision of the Hon'ble Supreme Court in the case of **Manuara Khatun & Ors.** v. **Rajesh Kumar Singh & Ors.**, **2017 (4) SCC 796**, this Court is of the opinion that the impugned award deserves to be modified to the extent that the liability of payment of compensation would fall first upon the Insurance Company who shall deposit the entire amount and shall subsequently have the liberty of getting the amount recovered from the owner of the vehicle.

9. This Court is all the more inclined to apply the principle of 'pay and recovery' for the reason that it is a case where the impugned award was passed almost about 10 years back and the Claimant has till date not received any compensation.

10. As a result, the appeal is partly allowed. The Appellant-Insurance Company is directed to deposit the entire amount with a liberty to recover the same subsequently from the owner of the vehicle.

11. Registry of this Court is directed to forward a copy of this judgment to the Secretary, District Legal Services Authority of the concerned District from where the Claimant hails, with a direction for ensuring that the copy of this judgment is served upon the Claimant at the earliest.

12. This Court renders a word of appreciation to Mr. A.L. Singroul, Advocate, for rendering his valuable assistance to this Court.

Sd/-
(P. Sam Koshy)
Judge

/sharad/