NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1375 of 2008

The Oriental Insurance Company Limited, Sadar Road, Near State Bank of India, Ambikapur, District Surguja, Through: The Divisional Manager, Divisional Office Korba, District Korba, Chhattisgarh

---- Appellant

Versus

1. Basant Kumar, at present aged about 24 years, S/o. Late Lal Sai, Caste Cherwa (At present Major) (Earlier Minor through friend and guardian- Maternal uncle Heera Lal) R/o. Village Salka, P.S. and Tahsil Baikunthpur, District Korea, Chhattisgarh
2. Shiv Narayan, aged about 35 years, S/o. Ram Singh,
3. Rama @ Lakhan, aged about 29 years, S/o. Jokhan Jayaswal, R/o. Village Akhradand, P.S. Chirmiri, District Korea, Chhattisgarh
4. Ram Narayan Singh, aged about 25 years, S/o. Late Shri Son Singh @ Son Sai,
5. Patiraj, aged about 45 years, S/o. Shri Jagbandhan,
6. Maurat Singh, aged about 50 years, S/o. Shri Devlal Singh,
7. Ram Ratan, aged about 52 years, S/o. Shri Heera,

Respondents No.1 and 4 to 7 are R/o. Village Bhaiswar, P.S. Sonhat, District Korea, Chhattisgarh

----Respondents

For Petitioner	:	Mr. R.N. Pusty, Advocate
For Respondents	:	None appears though served.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

26/09/2017

1. Present is an appeal assailing the order dated 07.02.2008, passed by the Motor Accident Claims Tribunal, Korea (Baikunthpur), in Motor Accident Claim Case No. 96/2006. Vide the impugned award the Tribunal has in a proceeding under Section 166 of the Motor Vehicles Act awarded a compensation of Rs.1,69,500/- with interest @ 6% per annum from the date of application. While passing the said award the Tribunal has fastened the liability of payment of compensation upon the Insurance Company with the liberty to recover the same from the owner and the driver.

2. The present is an appeal by the Insurance Company questioning the order passed by the Tribunal in as much as directing for pay and recover. According to the counsel for the appellant it is a case where the Insurance Company has accepted the premium of covering only the risk of the driver of the Tractor and in addition the sitting capacity of the Tractor also was only one and the owner and the driver have illegally permitted the deceased to travel in the said Tractor and had also not paid a premium covering the risk of any person beyond the risk of the driver. Thus, the Insurance Company admittedly was not liable for payment of compensation, yet the Tribunal has fastened the liability of payment of compensation upon the Insurance Company. He referred to a decision of this Court in the case of ***"Rameshwar Kaushik & others v. Smt. Pramila Bai Loniya & others" 2015(3) CGLJ 427***.

3. According to the counsel for the appellant it is a case where the finding of the Tribunal is erroneous in as much as the Insurance Company cannot be held responsible to indemnify the owner when the owner has not paid premium of covering the risk of the deceased person or any person beyond the driver.

4. Considering the facts and circumstances of the case more particularly the decision of this Court in the case of "Rameshwar Kaushik" (supra), this Court is of the opinion that unless the owner of the vehicle has taken a specific policy having paid the premium covering a risk of the occupant in the vehicle insured, the Insurance Company cannot be held liable for payment of compensation. The Insurance Company cannot be fastened with the liability for indemnifying the insured in respect of those persons who were not

covered under the policy. The owner of the vehicle should have ensured that there was a sufficient contract between the Insurance Company and the owner with which the risk of the persons who would travel on the Tractor along with the driver also would be covered for payment of compensation in the event of an accidental injury. In the absence of any such premium paid by the owner, the Insurance Company would at best be responsible for covering the risk of any injury sustained by the driver alone, if any, and not of any person other than the driver.

5. In view of the aforesaid facts and circumstances of the case, this Court is of the opinion that the finding of the Tribunal to the extent of directing the Insurance Company to pay and recover is bad in law. It is held that it shall be the responsibility of the owner and driver to pay the entire compensation awarded.

6. At this juncture the counsel for the Insurance Company submits that there are certain statutory payments, which the Insurance Company has already deposited. Under the facts and circumstances, it is ordered that whatever amount which has been deposited by the Insurance Company they shall be at liberty to recover the same from the owner and driver and as regards the balance of the amount it shall be the liability of the owner to pay the rest of the amount.

7. The appeal of the Insurance Company thus stands allowed holding that the liability of payment of compensation falls upon the owner.

Sd/-
(P. Sam Koshy)
Judge

Ved