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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 930 OF 2008

The Oriental Insurance Company Limited, Main Road, Sadar Bazar, Jagdalpur (C.G.)

… Appellant

versus

1. Kawasi Kamalo, father Hadma, age 20 years, Caste- Muria, R/o Gadmiri (Handodipara), Thana- Kuwakonda, District- Dantewada (C.G.)
2. Satyanarayan @ Sattu, S/o Ramuram (vehicle driver), R/o Village Hitawar (Gapipara), Thana- Kuwakonda, District- Dantewada
3. Manoj Kumar Singh, father Late K.P. Singh (vehicle owner), R/o Main Road, Nakulnar, District Dantewada (C.G.)

… Respondents

MISC. APPEAL (C) NO. 568 OF 2009

The Oriental Insurance Company Limited, Main Road, Sadar Bazar, Jagdalpur (C.G.)

… Appellant

versus

1. Madkami Hidma, father Deva, age 25 years, R/o Gadmiri Handodipara, Thana- Kuwakonda, District- Dantewada (C.G.)
2. Satyanarayan @ Sattu, S/o Ramuram (vehicle driver), R/o Village Hitawar (Gapipara), Thana- Kuwakonda, District- Dantewada
3. Manoj Kumar Singh, father Late K.P. Singh (vehicle owner), R/o Main Road, Nakulnar, District Dantewada (C.G.)

… Respondents

MISC. APPEAL (C) NO. 1652 OF 2008

The Oriental Insurance Company Limited, Main Road, Sadar Bazar, Jagdalpur (C.G.)

… Appellant

versus

1. Madkami Mangalram, S/o Hunga, age 22 years, R/o Gadmiri (Handodipara), Thana- Kuwakonda, District- Dantewada (C.G.)
2. Satyanarayan @ Sattu, S/o Ramuram (vehicle driver), R/o Village Hitawar (Gapipara), Thana- Kuwakonda, District- Dantewada
3. Manoj Kumar Singh, father Late K.P. Singh (vehicle owner), R/o Main Road, Nakulnar, District Dantewada (C.G.)

… Respondents

MISC. APPEAL (C) NO. 931 OF 2008

The Oriental Insurance Company Limited, Main Road, Sadar Bazar, Jagdalpur (C.G.)

… Appellant

versus

1. Kawasi Jamalo, father Sukko, age 19 years, R/o Gadmiri (Handodipara), Thana- Kuwakonda, District- Dantewada (C.G.)
2. Satyanarayan @ Sattu, S/o Ramuram (vehicle driver), R/o Village Hitawar (Gapipara), Thana- Kuwakonda, District- Dantewada
3. Manoj Kumar Singh, father Late K.P. Singh (vehicle owner), R/o Main Road, Nakulnar, District Dantewada (C.G.)

… Respondents

MISC. APPEAL (C) NO. 936 OF 2008

The Oriental Insurance Company Limited, Main Road, Sadar Bazar, Jagdalpur (C.G.)

… Appellant

versus

1. Madkami Budhri, father Jaggu, age 18 years, Caste- Muria, R/o Gadmiri (Handodipara), Thana- Kuwakonda, District- Dantewada (C.G.)
2. Satyanarayan @ Sattu, S/o Ramuram (vehicle driver), R/o Village Hitawar (Gapipara), Thana- Kuwakonda, District- Dantewada
3. Manoj Kumar Singh, father Late K.P. Singh (vehicle owner), R/o Main Road, Nakulnar, District Dantewada (C.G.)

… Respondents

- Mr. Sudhir Agrawal, Advocate, for the Appellant-Insurance Company.
- Mr. Amrito Das, Advocate, as Amicus Curiae.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08/11/2017

1. The present five appeals under Section 173 of the Motor Vehicles Act, 1988, arise out of the award dated 29.2.2008 passed by the Additional Motor Accident Claims Tribunal, South Bastar, Dantewada, in Claim Case No. 42/2007, Claim Case No. 44/2007, Claim Case No. 38/2007, Claim Case No. 45/2007 and Claim case No. 46/2007.

2. Vide the impugned award, the learned Tribunal, in injury cases, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.27,800/-, Rs.32,700/-, Rs.29,100/-, Rs.29,100/- and Rs.27,800/- respectively in accordance to the serial number of the claim cases referred to in preceding paragraph, with interest thereon at the rate of 6% per annum from the date of presentation of claim applications.

3. These five appeals have been preferred by the appellant-Oriental Insurance Company Limited assailing the impugned award whereby the liability of payment of compensation has been awarded against the insurance company.

4. Contention of the learned counsel for the insurance company is that the policy which the insurance company had issued in respect of the vehicle involved in the accident was an Act Only policy covering the risk of the driver, an additional driver, a khalasi, a conductor and one coolie. According to him, the injured-claimants in the instant appeals were all travelling in the offending vehicle as gratuitous passengers and therefore the insurance company cannot be saddled with the liability of covering the risk of these persons. According to him, it is a case where there is an admitted factual aspect based on the evidence which have come on record that the injured persons in the instant case were not employed in the offending vehicle and since they were not employed in the offending vehicle it would be presumed that they were the gratuitous passengers for which the insurance company cannot be held liable for payment of compensation.

5. Further contention of the learned counsel for the insurance company is that in all there were around 12 passengers travelling in the offending vehicle who have sustained injuries also in the accident which took place on 19.3.2005. There were 12 different claim cases also which were filed before the Tribunal and in 7 of the cases the finding of the learned Tribunal is that the insurance company is not liable for indemnifying the owner as those persons were travelling in the offending vehicle as gratuitous passengers and whose risk was not covered by the policy. Status of the claimants in the instant appeals is identical to those in the said 7 claim cases as well, but the Tribunal has erroneously accepted the liability upon the insurance company only on the ground that the insurance company had received premium covering the risk of 5 persons employed in the vehicle. He thus prayed for setting aside of the said finding.

6. It was also the contention of the learned counsel for the insurance company that the driver of the offending vehicle at the time of accident was not having proper licence to drive the vehicle involved in the accident. The driver entering appearance before the Tribunal has produced his licence which shows that he was only permitted to drive a 'Light Motor Vehicle' and that the category of vehicle which he was driving was a 'Heavy Goods Vehicle' i.e. a Truck and therefore he did not have an effective licence on the date of accident.

7. The owner and driver in the instant case in spite of notices being served have not represented themselves. The claimants have also not represented before this Court though notices have been issued. This Court on an earlier occasion had appointed Shri Amrito Das, Advocate, to assist this Court as Amicus Curiae on behalf of the claimants.

8. Heard the contentions put forth on either side and perused the record. Taking into consideration the decision of this Court in the case of **Mahendra Singh Hora** v. **Anita Sahu and Others**, **2008 (3) C.G.L.J. 413**, as also the subsequent decisions, this Court is of the opinion that the insurance company has been able to produce sufficient material before this Court to convince that the policy issued in the instant case was an Act Only policy covering the risk of 5 persons. In addition, the driver also did not have proper licence to drive the truck involved in the accident.

9. In view of the aforesaid factual matrix of the case which stands unrebutted and uncontroverted, this Court is of the opinion that ends of justice would meet if the insurance company is directed to deposit the entire amount of compensation awarded with a liberty to recover the same from the owner and driver of the offending vehicle.

10. It is ordered accordingly that the insurance company shall deposit the amount if not deposited by now and the amount shall be recovered by the insurance company by initiating appropriate recovery proceeding against the owner and driver.

11. From perusal of record it appears that there is also a penal interest of 8% per annum imposed by the learned Tribunal, in case the amount awarded is not deposited within a period of 2 months from the date of award. This observation of the learned Tribunal stands modified and is made effective from today. It is made clear that in case the insurance company deposits the amount within a period of 2 months, the order of penal interest which has been passed by the Tribunal shall not come into play and in case the insurance company fails to do so then the amount shall also attract penal interest.

12. Registry is directed to forthwith forward a copy of this judgment to the District Legal Services Authority, District Dantewada, ensuring that the same is served on the respective claimants. The Secretary, District Legal Services Authority, District Dantewada may take assistance of Paralegal Volunteers working in those areas tracing out the claimants for serving the copy of this judgment.

13. The appeals of the insurance company thus are partly allowed and the impugned award stands modified accordingly.

14. This Court renders a word of appreciation to Mr. Amrito Das, Advocate, for rendering his valuable assistance to this Court.

Sd/-
(P. Sam Koshy)
Judge

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