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HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 1308 of 2009

Kishan, aged 35 years, S/o Bhanuram, R/o Zone-2, Khursipar, District Durg (CG).

---- Appellant

Versus

1. Ajuram, aged 48 years, S/o Aangadram Chandrakar, R/o village Koylari, Post Guda, PS Pipariya, Teh. And Distt. Kabirdham, permanent Address R/o Lalpur, Post Dhadi, Tehsil Bemetara, Distt. Durg (CG).
2. United India Insurance Co. Ltd. Paras Complex, Gurudwara, Station Road Durg (CG).

---- Respondents

MAC No. 1305 of 2009

Kishan, aged 35 years, S/o Bhanuram, R/o Zone-2, Khursipar, District Durg (CG).

---- Appellant

Versus

1. Birbal Kumar, aged 35 years, S/o Baburam Chandrakar, R/o village Koylari, Post Guda, PS Pipariya, Teh. And Distt. Kabirdham, permanent Address R/o Lalpur, Post Dhadi, Tehsil Bemetara, Distt. Durg (CG).
2. United India Insurance Co. Ltd. Paras Complex, Gurudwara, Station Road Durg (CG).

---- Respondents

MAC No. 1302 of 2009

Kishan, aged 35 years, S/o Bhanuram, R/o Zone-2, Khursipar, District Durg (CG).

---- Appellant

Versus

1. Arun Kumar, aged 28 years, S/o Mannulal Chandrakar, R/o village Koylari, Post Guda, PS Pipariya, Teh. And Distt. Kabirdham, permanent Address R/o Lalpur, Post Dhadi, Tehsil Bemetara, Distt. Durg (CG).
2. United India Insurance Co. Ltd. Paras Complex, Gurudwara, Station Road Durg (CG).

---- Respondents

MAC No. 1304 of 2009

Kishan, aged 35 years, S/o Bhanuram, R/o Zone-2, Khursipar, District Durg (CG).

---- Appellant

Versus

1. Smt. Anurati, aged 25 years,W/o Haribvansh Chandrakar, R/o village Koylari, Post Guda, PS Pipariya, Teh. And Distt. Kabirdham,

permanent Address R/o Lalpur, Post Dhadi, Tehsil Bemetara, Distt. Durg (CG).

2. United India Insurance Co. Ltd. Paras Complex, Gurudwara, Station Road Durg (CG).

---- Respondents

&

MAC No. 554 of 2012

United India Insurance Co. Ltd. Branch Office, Paras Complex, Gurudwara, Station Road Durg (CG) through its Divisional Manager, Divisional Office, Rajendra Nagar Chowk, Bilaspur (CG).

---- Appellant

Versus

1. Jankir Bai Wd/o O-Moti Chandrakar, aged about 45 years, R/o village Koylari, Post Guda, PS Pipariya, Teh. And Distt. Kabirdham (CG).
2. Kishanlal aged about 38 years, S/o Bhanuram Rajak, R/o Bala ji Nagar, Zone-2, Khursipar, Bhilai, District Durg (CG).

---- Respondents

For Appellant-Owner : None.
For United India Insurance Co.: Shri Dashrath Gupta, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

16.11.2017.

1. These are five appeals arising out of the same accident in respect of five different claims. MAC Nos.1308/09,1305/09,1302/09 and 1304/09 have been preferred by the owner challenging the award passed in Claim case Nos.61/08,63/08,66/08 and 65/08 decided on 26.02.2009 by the Additional Motor Accident Claims Tribunal, Bemetara, Distt. Durg (as it then was) (in short, the Tribunal). In all the aforesaid cases, the Tribunal has awarded compensation of Rs.15,000/-, Rs.56,890/-, Rs.93,300/- and Rs.13,595/-respectively. MAC No.554 of 2012 is also arising out of same accident in claim case No.35 of 2009 decided by the Motor Accident Claims Tribunal, Kabirdham, which has been filed by the insurance company assailing the award dated 15.02.2012

wherein in an injury case, the Tribunal has awarded compensation of Rs.75,000/- along with interest.

2. The facts of the case is that, the vehicle involved in the accident i.e. Tata Spacio Gold bearing registration No.CG-07-M-2015 in which all the claimants were travelling and going to Amarkantak, met with an accident resulting in the injuries sustained by them.

3. Indisputably, the said vehicle was insured with the respondent-United India Insurance Co. Ltd. which has also preferred an appeal i.e. MAC No.554 of 2012 arising out of separate claim case.

4. The contention of the owner in these cases are that, the vehicle was insured with the package policy from the United India Insurance Co. and that since the injured persons were travelling in the vehicle as occupant, they would also be covered by the risk under the package policy and this aspect has not been properly appreciated by the Tribunal and therefore, the liability deserves to be shifted upon the insurance company rather than being saddled upon the owner. The owner further stressed on the aspect that the claimants before the Tribunal also have stated that the vehicle was not being used on hire and reward, but was being taken to Amarkantak after borrowing the same from one friend. There is no further evidence on record with which a different stand could have been taken or arrived at in any of the cases. The insurance company has also not led any evidence to substantiate its contention as far as the vehicle being used for commercial purpose or being used on hire and reward.

5. The only ground which is being relied upon by the insurance company

is that, in the FIR which was lodged in respect of the accident, it has been mentioned that the vehicle was hired for a rent of Rs.4000/- though there is no evidence in this regard which has come on record. Neither is there any evidence on behalf of insurance company nor has the officer from the police station where the FIR was lodged, examined to substantiate the contents in the FIR. In the absence of which, the contention of the claimants before the Tribunal has sufficient force as they have categorically stated that it was being used after borrowing from a friend and that was no rent as such paid to the owner of the vehicle.

6. In view of the aforesaid factual matrix of the case particularly there being no evidence in rebuttal by the insurance company to disprove the contention put forth by the claimants, this court is inclined to accept the appeals preferred by the owner and accordingly modify the award under challenge in the four appeals filed by the onwer to the extent of fixing the liability upon the owner, driver and the insurance company jointly and severally and the responsibility of payment of compensation being fastened upon the insurance company.

7. So far as appeal of the insurance company i.e. MAC No.554 of 2012 is concerned, since the factual matrix prima facie being the same including the aspect that even before the Tribunal at Kabirdham, the insurance company has not led any evidence in rebuttal to the contention of the claimants so far as the vehicle being used for hire and reward or that the owner has received Rs.4000/-as rent for the said vehicle being used by the claimants. The award passed by the

Tribunal where the liability has been fastened upon the insurance company, does not call for any interference and the appeal of the insurance company in the aforesaid facts and circumstances of the case deserves to be and is hereby rejected.

8. As a result, the appeals of the owner i.e. MAC Nos.1308,1305,1302 and 1304 stand allowed and MAC No.554 of 2012 preferred by the insurance company stands rejected.

Sd/-
(P.Sam Koshy)
Judge

inder