NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No.1054 of 2017

United India Insurance Company Limited Chhattisgarh Registered Office 24 White Road Chennai Branch Office G. E. Road Rajnandgaon (Chhattisgarh), Through Authorised Signatory For The United India Insurance Comapany Limited Bilaspur Divisional Office 2nd Floor Gurukripa Towers Vyapar Vihar Road Bilaspur (Chhattisgarh).

----Appellant

Versus

1. Lalita Bai Salame Wd/o Late Kanhaiya Lal Salame, Aged About 28 Years
2. Minor Arun Kumar Salame S/o Late Kanhaiya Lal Salame, Aged About 9 Years
3. Minor Ritesh Kumar Salame, S/o Late Kanhaiya Lal Salame, Aged About 6 Years
4. Kumari Renuka D/o Late Kanhaiya Lal Salame, Aged About 4 Years
   Above respondents No.2 to 4 through Natural Guardian Mother Lalita Salame Wd/o Late Kanhaiya Lal Salame,
   All above R/o Village Boriyamaksa Post Khadgaon Tehsil Manpur District Rajnandgaon (Chhattisgarh)....(Claimants).
5. N. Sakthiwel S/o Natrajan, R/o 7- R. C. Complex 206-261 Matthu Road Chamrajpeth Beguluru (Benglore) Karnatak....(Owner).
6. Suresh R. Yogam, S/o R. Yogam, Aged About 26 Years R/o Village Keedamkutti Post Kaduchtaram District Namakal (Tamilnadu).... (Driver).

---- Respondents

For Appellant : Shri B.N. Nande, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

01/08/2017

1. The present is an appeal under section 173 of the Motor Vehicles Act filed by the insurance company against the award dated 04.05.2017 passed by the 1st Additional Motor Accident Claims Tribunal, Rajnandgaon (in short, the Tribunal) in Claim Case No.10 of 2011. Vide the said impugned award, the Tribunal in a death case on an

application under Section 166 of the Motor Vehicles Act filed by the claimants, has awarded compensation of Rs.5,64,000/- along with interest @ 6 percent per annum from the date of application.

2. The challenge is to the liability of the insurance company. Learned counsel for the appellant-insurance company submits that the Driver of the offending vehicle at the relevant point of time did not produce permit and fitness certificate of the offending vehicle. In spite of sufficient time being granted, the same could not be produced before the Tribunal and the Driver and owner of the offending vehicle remained ex parte before the Tribunal also. It was also contended by the appellant that FIR itself which was lodged in respect of accident reflects the breach of policy conditions inasmuch as, the offending vehicle was carrying more number of workers than what was permitted under the rules. Moreover, the policy did not cover all the workers travelling in the said vehicle. The policy issued was only in respect of Driver, Conductor and one worker for loading and unloading purpose whereas, the said workers were not supposed to travel on the said vehicle.

3. Having heard the counsel for the appellant and on perusal of record what clearly reflects is that except for oral statement made by the witness of the insurance company, there was no document to prove the contents that were alleged by the appellant. So far as breach of policy condition is concerned, the insurance company has not been able to establish that there were more number of persons travelling in the offending vehicle. The insurance company itself did not produce

the evidence of the owner not having permit or fitness certificate of the offending vehicle at the relevant point of time.

4. In the absence of any evidence, in the opinion of this court no strong case is made out to admit the appeal.

5. Accordingly, the appeal being devoid of merit is liable to be and is hereby dismissed.

Sd/-
(P. Sam Koshy)
Judge

inder