

HIGH COURT of CHHATTISGARH, BILASPUR
MAC No. 800 of 2008

1. National Insurance Company Limited, Bhilai, District Durg (CG).

---- Appellant

Versus

1. Sakun Wd/o Sushil Yadav, aged about 36 years.
2. Kumari Shilu D/o late Shushil Yadav, aged about 15 years.
3. Sachin S/o late Shushil Yadav, aged about 10 years.
4. Deepak @ Chhotu S/o late Shushil Yadav, aged about 17 years.
Respondents No.2 to 4 are minors through guardian mother, Sakun Wd/o late Sushil Yadav.
5. Birajo Bai Wd/o Ghunha Yadav, aged about 60 years.
All are R/o Village Bazar Para, Bemetara, Distt. Durg (CG).
6. Serauddin Khan S/o Jagruddin Khan, aged about 56 years, R/o MIG-8/7, Vaishali Nagar, Supela, Distt. Durg (CG).
7. Pawan Kumar S/o Alakh Vishwakarma, aged about 26 years R/o village Karamtala, Police Station Khairagarh, Distt. Rajnandgaon (CG).

---- Respondents

For Appellant	:	Shri Raj Awasthi, Advocate.
For respondent No.1to5	:	Shri RK Pali, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy
Judgment On Board

25.10.2017.

1. The present is an appeal filed by the Insurance Company under Section 173 of the Motor Vehicles Act (for short, the MV Act) against the award dated 05.01.2008 passed by the Additional Motor Accident Claims Tribunal (FTC), Bemetara (for short, the Tribunal) in Claim Case No.23 of 2007. Vide the said impugned award, the Tribunal in a claim application filed under Section 166 of the MV Act has awarded a compensation of Rs.4,55,500/- to the claimants along with interest @ 6 percent per annum from the date of application. The liability of payment of compensation has been fastened upon the insurance company.

2. The ground of challenge by the insurance company is primarily that the vehicle i.e. Truck bearing registration No. CG-07-ZC-1834 at the time of accident was carrying gratuitous passengers. The deceased in the instant case was also a gratuitous passenger and since the vehicle involved in the accident was a Truck and was loaded with cement, it was not permitted to carry any passenger and therefore, there is a clear breach of policy conditions and as such the insurance company should have been exonerated of its liability and the liability, if any, had been upon the owner and driver of the offending vehicle.
3. Counsel for the appellant referred to the FIR and other documents of the criminal case to show that there were 10-12 persons travelling in the said Truck at the time of accident. He further relied upon the statement of witnesses examined on behalf of the claimants who have also deposed that they were travelling in the Truck which would further show that there were large number of persons travelling in the Truck as gratuitous passengers and thus prayed that the award impugned be modified.
4. Learned counsel for the respondents-claimants opposing the appeal submits that the claimants have established before the Tribunal by leading sufficient evidence that the deceased Sushil Yadav was travelling in the said vehicle as labourer for unloading cement loaded on the said vehicle and since he was a labour, it would be the liability upon the insurance company to indemnify the owner. Thus, prayed for rejection of the appeal.
5. Having heard learned counsel on either side and on perusal of

records, in the instant case the accident is not in dispute, the deceased having died from the said accident is not in dispute, the offending truck involved in the accident, owned by respondent No.6 and driven by respondent No.7 is also not in dispute. The other factors which is not in dispute is that the said Truck was loaded with around 200 bags of cement. Further, from the evidence which have come on record particularly the evidence recorded on behalf of the claimants wherein the statement of those workers travelling along with the deceased show that the deceased at the time of accident was working as labour and was travelling for unloading the cement which was there on the said Truck.

6. There is no sufficient strong material produced by the insurance company to disbelieve the version of the claimants. Further, once when the Truck was proceeding with over 200 bags of cement, it would definitely had a couple of labourers on it for unloading cement. Though the insurance company might have produced the document to show that there were large numbers of persons travelling in the Truck, but since there is a witness who has stated the deceased to be worker in the said Truck and there being not sufficient material to disbelieve the said version, this court is of the opinion that no strong case has been made out by the insurance company calling for an interference with the findings of the Tribunal so far as liability is concerned.
7. Thus, the appeal fails and is dismissed accordingly.

Sd/-
(P.Sam Koshy)
Judge