

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1334 of 2017

The Oriental Insurance Company Limited Through Divisional Manager, Divisional Office, Address- Madina Manzil, Jail Road, Raipur, District Raipur, Chhattisgarh

---- Appellant

Versus

1. Smt. Saudagini Sahu W/o Late Minketan Sahu, Aged About 40 Years
2. Ku. Premadini Sahu D/o Late Minketan Sahu, Aged About 20 Years
3. Khirodra Sahu S/o Late Minketan Sahu, Aged About 18 Years
4. All R/o Village Rohina, Thana Basna, District Mahasamund, Chhattisgarh
4. Dhurau Bhoi S/o Manglu Bhoi, R/o Village Bichhiya, Tehsil Saraipali District Mahasamund, Chhattisgarh
5. Jagdish Pael S/o Ramprasad Patel, R/o Through Narayan Vade, Ashok Nagar, Near To Banshi Kirana Shop, Raipur, District Raipur, Chhattisgarh

---- Respondents

For Appellant	:	Mr. Sudhir Agrawal, Advocate
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Hon'ble Shri Justice P. Sam Koshy

Order on Board

27/09/2017

1. Heard on I.A. No.1, which is an application for condonation of delay.
For the reasons assigned in the application and finding them to be satisfactory, I.A. No.1 is allowed and delay of 29 days in filing the appeal stands condoned.
2. Present is an appeal under Section 173 of the Motor Vehicles Act.
Challenge in the present appeal is the award dated 01.05.2017, passed by the 5th Additional Motor Accident Claims Tribunal, Raipur, Chhattisgarh, in Claim Case No. 100/2012. Vide the impugned award, the Tribunal has awarded a compensation of Rs.6,14,000/- with interest @ 9% per annum.

3. The challenge by the Insurance Company is on two grounds; firstly the Tribunal ought to have considered the element of contributory negligence in the accident to have occurred. According to the appellant, it is a case where two vehicles were involved in the accident and the present appellant is the insurer of the vehicle, which dashed against a stationary truck on the road and therefore there was an element of contributory negligence on the part of the vehicle to which the appellant had insured dashed with.
4. Perusal of record would show that the policy which was issued by the present appellant was a package policy, which in other words is a comprehensive policy, which would also cover the risk of an occupant. Thus, in the given factual matrix of the case, the award of the Tribunal cannot be found fault with.
5. The second ground which has been raised is that the deceased in the instant case was travelling as a passenger in the Matador and the Matador was Goods Carriage Vehicle, where there was no permission to carry passengers and thus there is a clear breach of the policy condition.
6. However, a perusal of paragraph 19 of the award shows that the Insurance Company has not led any sufficient evidence both oral and documentary to substantiate the contentions that they have raised. In the absence of any evidence led by the Insurance Company, the grounds raised by the appellant would not be sustainable.
7. The counsel for the appellant relied upon the judgment of the Hon'ble Supreme Court in the case of ***"Renuka Devi H. v.***

Bangalore Metropolitan Transport Corporation and Others”

2008(3) TAC 389 (S.C.). With all great respect, the said judgment cited by the appellant is distinguishable on the facts itself, where the finding of the High Courts was based upon the spot mahazar, which indicated certain element of negligence on the part of the claimant, who was driving a scooter, which dashed the vehicle from the rear side.

8. In the instant case, no such evidence has been adduced before the Tribunal to establish the negligence on the part of driver of the vehicle which dashed against the Truck from the back. Thus, the said judgment would not come to the aid of the appellant-Insurance Company.
9. The appeal thus being devoid of merit fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge