NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 816 of 2008

Rajesh Gupta S/o Sonu Gupta, 35 years, R/o vijay Nagar, Amapara, Durg, Tehsil and Distt. Durg (CG).

---- Appellant

Versus

1. Ku. Tannu @ Tanuja Sarthi, D/o Shibhola @ Babla Sarthi, aged about 20 years, R/o Mathpara, Sarthi Mohalla, Ward No.33, Durg, Tah. And Distt. Durg (CG).
2. Rajesh Thakur, S/o Manharan Lal Thakur, R/o Rajeev Nagar, Durg, Teh. And Distt. Durg (CG).
3. ICICI Lombard General Insurance Co. Ltd. Lalganga Shopping Mall, GE Road, Raipur, Teh. And Distt. Durg (CG).

---- Respondents

MAC No. 290 of 2008

ICICI Lombard General Insurance Co. Ltd. Registered office ICICI Bank Towers, Bandra, Kurla, Complex, Mumbai-400051 through its Legal Manager, ICICI Lombard General Insurance Co. Ltd. Lalganga Shopping Mall, GE Road, Raipur, Teh. And Distt. Durg (CG).

---- Appellant

Versus

1. Shiv Bhola @ Babla Sarthi, aged about 43 years, S/oi Mehtar, Caste-Sarthi.
2. Ku. Tannu @ Tanuja Sarthi, D/o Shibhola @ Babla Sarthi, aged about 20 years,
   Both are R/o Mathpara, Sarthi Mohalla, Ward No.33, Durg, Tah. And Distt. Durg (CG).
3. Rajesh Thakur, S/o Manharan Lal Thakur, R/o Rajeev Nagar, Durg, Teh. And Distt. Durg (CG).
4. Rajesh Gupta S/o Sonu Gupta, 35 years, R/o vijay Nagar, Amapara, Durg, Tehsil and Distt. Durg (CG).

---- Respondents

For Appellant-Owner	:	Shri Keshav Dewangan, Advocate.
For respondent-Insurance Co.	:	Shri Sourabh Sharma, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

26.09.2017

1. By this common award both the appeals are being disposed of as common facts & issues are involved in these appeals and arise out of

the same accident.

2. Both the appeals under Section 173 of the Motor Vehicles Act have been filed against the award dated 21.01.2008 passed by the Additional Motor Accident Claims Tribunal Khairagarh, Distt. Rajnandgaon in Claim Case No.14/2007. Vide the said impugned award, the Tribunal in a proceeding under Section 166 of the MV Act has awarded a compensation of Rs.1,82,000/- alongwith interest @ 7.5 percent per annum from the date of application.

3. While passing the impugned award, the Tribunal has ordered for payment of compensation upon the Insurance Company with a liberty to recover the same from the owner applying the principle of Pay and Recover. MAC No. 816 of 2008 has been filed by the owner challenging the order of pay and recover whereas, MAC No.290 of 2008 has been filed by the insurance company challenging the liability part which has been fastened upon the insurance company to deposit the amount though with liberty to pay and recover.

4. The facts of the case are undisputed so far as the accident; the vehicle involved in the accident; the death of the deceased Usha Bai in the said accident and the vehicle being duly insured by the ICICI Lombard General Insurance Co. Ltd.

5. The only issue which has been raised and which is for consideration before this court is, whether the order of pay and recover by the Tribunal in the given facts of the case are justified or not and whether the liability of the insurance company to pay the amount though it has a liberty to recover the same, was justified or not.

6. The contention of the counsel for the owner is that it is a case where the deceased had gone to Durg to attend a family function and while returning from Durg, Shankar Lal and deceased had hired the vehicle for carrying 6 quintal of rice purchased by Shankar Lal and they occupied the vehicle as owner and agent of the rice loaded in the said vehicle while travelling in the vehicle when the accident had occurred. Therefore, the deceased fell within the category of third party and hence the liability of payment should have been fastened exclusively upon the insurance company. He also raised a contention that it is a case where the deceased would fall as the agent of the owner and was travelling in said capacity in the said vehicle in the course of transportation of the goods. Therefore, the liability of payment of compensation should have been exclusively fastened upon the insurance company and the owner should have been indemnified by the insurance company.
7. Counsel for the insurance company however opposes the appeal and submits that the claim application filed by the claimants itself would show that the deceased had gone to Durg to attend a family function and therefore the fact that there is a conflict and contrary stand between the claimants and owner, therefore, fastening of liability upon the owner is justified. At the same time he also argued that the insurance company also has preferred an appeal challenging the finding of pay and recovery. According to insurance company once when it is established before the Tribunal that the vehicle was being used for other than the purpose for which it was registered and also

for which the policy was issued, the same would amount to breach of policy condition and under the said facts the liability of payment of compensation should had been fastened upon the owner alone and that the insurance company should have been absolved of its liability altogether. Thus, prayed for the award to be modified suitably.

8. Having heard the rival contentions put forth on either side and on perusal of records what is undisputed is the date of accident; the death of deceased Usha Bai in the said accident; the appellant being the owner of offending vehicle and ICICI Lombard General Insurance Co. Ltd. being the insurer of the vehicle.

9. The claimant had in a very categoric terms made a statement that when the deceased had gone to attend family function and was returning in the vehicle of the appellant when the accident occurred resulting in her death. Once when the stand of the claimant at the time of filing of claim case itself was that the accident occurred in the course of travelling after attending the family function, the stand which has subsequently been raised by the owner as also by the claimants would not be sustainable as the same is without any basis. Further, what is also explicit from the record is that except for the statement of the claimants and the owner, there is no substantive piece of evidence to corroborate this aspect.

10. Further, what also reflects is that there is no evidence which has been brought on record by the owner with which it could have been established that Shankar Lal was the person who had engaged the vehicle along with deceased for transporting 6 quintals of rice. The

said Shankar Lal has not been examined by any of the parties. In the given facts and circumstances of the case, this court is of the opinion that no strong case has been made out by the owner to interfere with the findings arrived at by the Tribunal vide the impugned award.

11. So far as the appeal of the insurance company is concerned, this court further is of the opinion that indisputably there was a insurance policy issued by the ICICI Lombard General Insurance Co.Ltd and that the only allegation levelled is breach of policy conditions that of using the vehicle other than the purpose for which it was registered and insured. Applying the principle of law laid down by the Supreme Court in a catena of decisions so far as the judgment pertaining to pay and recover is concerned, this court does not find the order of Tribunal to be either erroneous or bad in law.

12. For the aforesaid reasons, this court is of the opinion that no strong case is made out by the appellant-insurance company as well, to disturb the findings of "Pay and Recover" as ordered by the Tribunal which is the only ground of challenge in the appeal by the insurance company.

13. Resultantly, both the appeals i.e. MAC Nos. 816 of 2008 and 290 of 2008 stand dismissed.

Sd/-
(P. Sam Koshy)
Judge

inder