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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1467 of 2009

Branch Manager, United India Insurance Company Limited, Branch Office Ambikapur, District Sarguja (Chhattisgarh)

---- Appellant

Versus

1. Smt. Urmila W/o Shri Deepan, aged about 32 years, resident of village Prakashpur, Thana and Tahsil Sonhat, District Korea (CG)
2. Ramesh S/o Shri Phoolsay, aged about 25 years, resident of village Prakashpur, Thana and Tahsil Sonhat, district Korea (CG) (Claimants)
3. Radheshyam S/o Shri Manilal Gupta, occupation agriculture and vehicle owner, R/o village Madhaura, Post Katgodi, Tahsil and District Sonhat, District Korea (CG)
4. Vishwanath S/o Shri Dhaneshwar Prasad, Occupation agriculture and vehicle owner, R/o village Madhaura, Post Katgodi, Tahsil and District Sonhat, District Korea (CG)
5. Moharsay S/o Shri Meelsay, aged about 30 years, occupation vehicle driver, resident of village Anandpur, Thana and Tahsil Sonhat, District Korea (CG)

---- Respondents

For Appellant	:	Shri H. B. Agrawal, Sr. Advocate along with Smt. Prabha Sharma, Advocate

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Hon'ble Shri Justice P. Sam Koshy

Order On Board

05/12/2017

Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 29.06.2009 passed by the Motor Accident Claims Tribunal, Korea (Baikunthpur) (CG) in Claim Case No.97 of 2006. Vide the impugned award the Tribunal in a death case under

Section 166 of the MV Act has awarded compensation of Rs.2,07,000/- with interest @ 7.5% per annum from the date of application.

2. Counsel for the appellant submits that the award of the Tribunal is erroneous to the extent that the Insurance Company in the instant case has not received any premium covering the risk of gratuitous passengers and therefore, the Insurance Company should not have been fastened with the liability of payment of compensation. He further submits that the Tribunal has erred in as much as not appreciating the fact that the deceased was travelling sitting on the trolley of the tractor which did not have a sitting capacity and it was not permissible for taking passengers in the trolley. For this reason also the impugned award deserves to be interfered with.

3. However, perusal of the record would show that the Insurance Company has not led any evidence before the Tribunal to substantiate their contention. As regards the policy, it is not in dispute that the same is a farmer package policy. The policy and the terms and conditions of the policy were also produced during the course of hearing. The very first sentence of the general condition is that "the company hereby agrees to indemnify the insured or the employees of the insured working with him". The deposition of AW-2 reflects that the deceased in the instant case was being taken for purchase of manure that by itself impliedly proves the fact that the vehicle was being used for agricultural purpose at the time of accident.

4. Given the aforesaid factual matrix of the case, this Court does not find any strong case made out by the Insurance Company calling for an interference with the impugned award. The appeal thus fails and is accordingly dismissed.

Sd/-
(**P. Sam Koshy)**
JUDGE

Bhola