NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MA No. 585 of 2006

The New India Assurance Co. Ltd. Divisional Office, Thakkar Chamber, In front of Project Automobile, Power House Bhilai, Chhattisgarh

---- Appellant

Versus

1. Mangal Singh Mourya S/o. Late Dhanusingh Mourya, aged 42 years, R/o. Main Road, Kondagaon, Bastar, Chhattisgarh
2. Smt. Malati Bai Mourya, W/o. Mangal Singh, aged bout 40 years, R/o. Main Road Kondagaon, Bastar Chhattisgarh
3. B. Venketeshwar Rao, S/o. Venkraya, R/o. B.D. Puram, D. No. 3-4208, D.S. One Town Vijayavada, Andhrap Pradesh.
4. Venketeshwar Rao B. S/o. Subbarao, 6-120 Mailwarm, District Krishana, Andhra Pradesh.
5. National Assurance Company Limited, Main Office Registered Office, 3 Middleton Street, P.B. 9229, Colcatta.
6. Kriparam Dhruv, S/o. Ramesh Kumar Dhruv, age 25 years, R/o. Shantinagar (Near to Machis Company) Bhilai-3, P.S. Bhilai-3, District Durg, Chhattisgarh
7. Ramadhar Ojha, S/o. R.K. Ojha, Adarsh Nagar, Kugda, Bhilai, P.S. Bhilai, District Durg Chhattisgarh.

----Respondents

For appellant	:	Mr. Sudhir Agrawal, Advocate
For Respondent No.5	:	Mr. Raj Awasthi, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

15/09/2017

1. Present is an appeal under Section 173 of the Motor Vehicles Act assailing the award dated 31.12.2005, passed by the Additional Motor Accident Claims Tribunal (F.T.C.), Kanker, in Claim Case No. 61/2004. Vide the said impugned award, in a proceeding under Section 166 of the Motor Vehicles Act, the Tribunal has awarded a compensation of Rs.2,06,424/-.

2. While passing the impugned award, the Tribunal has held that all the respondents before the Tribunal were jointly and severally responsible for making the payment, however the liability of

depositing the compensation was fastened upon the appellant-Insurance Company. The brief facts of the case is that the deceased Gulab Singh met with an accidental death on 03.09.2002, when he was travelling on a Tata Sumo bearing registration No. CG-04-ZD-0525, when the said Tata Sumo was dashed with a Truck bearing registration No. AP-21-T-4129.

3. The present appellant is the insurer of the Tata Sumo in which the deceased was travelling. The contention of the appellant is that the finding so far as the fastening the liability upon the present appellant is totally erroneous and the same deserves to be set-aside. According to the appellant since the policy, which covered the Tata Sumo vehicle was only an Act only the policy; the risk cover would be that of only the 3^{rd} party and the deceased in the instant case since he was travelling in the same vehicle, he would not fall within the ambit of 3^{rd} party and therefore the appellant-Insurance Company cannot be saddled with the responsibility of making the payment.

4. It was also the contention of the counsel for the appellant that the vehicle i.e. Tata Sumo was insured as a private vehicle, but the same was being used for commercial purpose and as such there was a breach of policy condition. Lastly it was contended that if for any reason this Court reaches to the conclusion that the appellant-Insurance Company is also liable, then the liability should be shared by the other Insurance Company also, which was the insurer of the Truck involved in the accident. At the outset, this Court intends to mention that there was no evidence whatsoever led by the Insurance Company to prove any of the contentions, which has been raised in the written statement.

5. Further, from the documents it also reflects that there is an evidence which has come on record particularly that of the claimants who have attributed the fault on the part of the driver of the Tata Sumo for the accident to occur. Similar evidence has also been made by one of the co-passenger in the said Tata Sumo, who has also attributed the fault on the part of the driver of the Tata Sumo for the accident to occur.

6. At this juncture, what also cannot be brushed aside is the fact that there is a categorical finding that the accident had occurred on account of the dash of two vehicles, i.e. the Tata Sumo in which the deceased was travelling and the Truck which has dashed the Tata Sumo. This was the categorical finding as has been reflected in paragraph 15 of the impugned award. Considering the fact that there is evidence on the part of the claimants as also on the part of the eyewitness of the accident regarding the negligence on the part of the driver of the Tata Sumo, coupled with the fact that there was no evidence led by the appellant-Insurance Company, we do not intend to interfere with the impugned award at this juncture. However, this Court is inclined to reach to the conclusion that the once when there is a categorical finding that the two vehicles involved in the accident were equally responsible for the accident, the liability of payment of compensation also ought to have been equally shared by the two Insurance Companies, which had insured the two vehicles and the order of the Tribunal stands modified to the aforesaid extent.

7. So far as the grounds that the vehicle was being used for commercial purpose, this Court does not find any evidence with which it could be stated that the vehicle was being used for the commercial purpose, and firstly there is no evidence of the claimants in this regard, neither has the Insurance Company led any evidence to substantiate this contention. Accordingly, this ground raised by the appellant stands negated.

8. Accordingly, the appeal of the appellant-Insurance Company is partly allowed to the extent that the liability of payment of the compensation is ordered to be borne by the appellant and the respondent No.5-Insurance Company in equal share i.e. 50% of the amount awarded shall be borne by each of the Insurance Company i.e. the present appellant- The New India Insurance Company Limited as also the respondent No.5-National Assurance Company Limited. Lastly it is observed that if the appellant- The New India Insurance Company has deposited the entire amount, they would be entitled for 50% of its refund from the respondent No.5-National Assurance Company Limited, and in case if the appellant has

deposited only 50% of the awarded amount, then it shall be the responsibility of the respondent No.5 to deposit the balance of 50% of the amount. With the aforesaid observations, the appeal stands partly allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved