NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No.1117 of 2007

1. The Oriental Insurance Company Limited, Through Divisional Manager, Divisional Office No.1, The Oriental Insurance Company Limited, Jail Road, Raipur, District Raipur (C.G.).

---Appellant

Versus

1. Mohammad Latif Khan S/o Mohammad Hanif Choudhari, aged about 40 years, Present Address – Sanjay Nagar, Tikara, Raipur, District Raipur (C.G.).
2. Sanjay Kumar S/o Banwari Lal Sahu, R/o Camp-2, Baikunth Nagar, Bhilai, Police Thana – Chhawani, District – Durg.

---Respondents

For appellant/Insurance Company : Shri Sudhir Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

07/11/2017

1. Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 15/06/2007 passed by the learned 8th Additional Motor Accident Claims Tribunal, F.T.C., Raipur (C.G.) in Motor Accident Claim Case No.56/2006.

2. Vide the said impugned award, the Tribunal in an injury case under Section 166 of the Motor Vehicle Act has awarded the compensation of Rs.68,700/- along with interest @ 7.5% per annum from the date of application.

3. The contention of the counsel for the appellant/Insurance Company is that, the policy in the instant case was a package policy covering the risk of three persons i.e. the driver, khalasi and one employee. Thus, the Insurance Company covering the risk of three persons vide the said Insurance Policy is not in dispute.

4. The challenge to the impugned award is on the ground, that the injured in the instant case was traveling as a gratuitous passenger and since he was not an employee, driver or a khalasi, his risk would not be covered by the Insurance Policy.

5. According to the counsel for the appellant, in the said accident, three persons had died and three persons had suffered injuries and therefore the Insurance Company at best would be covering the risk of only three persons and not beyond three.

6. Perusal of record would show, that the Insurance Company has not been able to show any Claim Cases being filed beyond three in number inclusive of the present claim. So far as the other two claim cases are concerned, they were decided on 24/03/2007 by the 10th Additional Motor Accident Claims Tribunal, Raipur in Claim Case Nos.78/2006 and 82/2006. These awards were subject to challenged by the Insurance Company before the High Court vide MAC Nos.713/2007 and 711/2007. Both the appeals were partly allowed and remanded back to the concerned court vide order dated 28/04/2011. Unfortunately, the Insurance Company has not been able to give the subsequent development on these remanded matters and the outcome in spite of time being taken by the Insurance Company to provide the information. The Insurance Company has also not been able to provide the details as regards whether any other claim cases has been filed beyond the three claim cases, two which were remanded by this court and the present one to restrict the liability of Insurance Company in respect of the three claim cases. In the absence of the said information provided by the Insurance Company, this court is forced to draw an adverse inference against the Insurance Company.

7. Perusal of the evidence led by the Insurance Company before the Court below in the instant case i.e. of Sudhir Kumar Kopulwar, he has in his cross examination clearly admitted the fact, that the person whose goods are carried in the Metadoor is permitted to travel along with the goods as the owner of the goods. The case of the claimant was that, he was travelling in the Metadoor as the owner of the goods which were being transported and there is no material to contradict this submission made by the claimant.

8. The counsel for the appellant tries to draw attention of this Court to the finding of the Tribunal in Paragraph 21 stating that, there is no proof of the

claimant paying fair to the driver while traveling in the Metadoor. However, perusal of the evidence of the claimant itself would show, that he had specifically stated of having paid the fair to the driver of the vehicle for transporting his goods and that he has not paid anything else apart from the fair for transporting his goods. Thus, the ground so raised by the counsel for the appellant of there being a contradictory finding by the Tribunal stands negated.

9. This court is also inclined to dismiss the appeal of the Insurance Company on the ground, that the amount of compensation awarded is too meagre an amount and that too does not calling for interference particularly after about 10 years from the date of award and the appeal being filed.

10. So far as the judgment referred to by the counsel for the appellant is concerned, the facts of the case is entirely different and the policy issued in the said case was also not similar to the one which is issued in the instant case and therefore the same is distinguishable on its fact and would not be applicable in the present appeal.

11. The appeal thus being devoid of merits deserves to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

Sumit