NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MA No. 50 of 2005

1. Oriental Insurance Co. Ltd. Through its Branch Manager, Division Office, Opposite High Court, Bilaspur (CG)

---Appellant

Versus

1. Shyamlal S/o. Late Parewa Panika, aged 27 years, R/o. Gram Bindawal, Tahsil Lormi, District Bilaspur (CG)
2. Harmendra Shukla, S/o. Shri Loknath Shukla, aged 35 years, R/o. Masanganj Chowk, Bilaspur (CG)
3. Smt. Harbhajan Kaur Wd/o. Late Harbhajan Singh, R/o. 27 Kholi Chowk, Mungeli Road, Bilaspur (CG)

---Respondents

For Appellant	:	Mr. Ghanshyam Patel, Advocate
For Respondents	:	Mr. R.K. Pali, Advocate

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

11/08/2017

1. Present is an appeal by the Insurance Company assailing the award dated 11.08.2004 passed in Claim Case No. 79/2004 by the 10th Additional Motor Accident (FTC) Bilaspur. Vide the impugned award under Section 166 of the Motor Vehicle Act in an injury case, the Tribunal has awarded compensation of Rs.2,68,500/- along with interest @ 6% per annum. It is this award which is under challenge by the Insurance Company is challenging the appeal on liability part as also on the quantum part.

2. So far as the quantum part is concerned, since claimants themselves had filed an appeal against the impugned award seeking enhancement i.e. M.A. No. 1282/2004 and the same having being decided by the Division Bench of this Court on 08.01.2013, the challenge to the quantum part becomes inconsequential as the compensation has been enhanced by the High Court itself.

3. So far as the liability part is concerned, grounds which has been raised by the Insurance Company is that the owner had been using the vehicle for commercial purpose when the vehicle otherwise registered as a private Jeep. It was the contention of the Insurance

Company that the deposition of one claimant showed that he had paid fair for traveling in the offending vehicle at the relevant point of time which by itself establishes the fact that vehicle was being used for commercial purposes nor for private purpose and thus liability should have been fasten upon the owner and not upon the Insurance Company and there is a clear breach of the policy condition.

4. He further submits that once claimant himself has deposed before the Court below of paying fair for traveling, there was nothing further required to be prove of the vehicle being used for commercial purpose and ought to have atleast passed the award applying the principles of pay and recovery.

5. Counsel for the respondent No.3-owner however opposes the petition and submits that so far as the vehicle was being used for commercial purpose has not been fully established as there was no sufficient evidence led by the Insurance Company to prove this and there are lots of the contradictions in the evidence of the claimants so far as payment of fair is concerned and thus prayed for the rejection of appeal of the Insurance Company.

6. Having considered the rival contentions put forth on either side what is paramount to be seen is the evidence which has come on record. The claimant had made the statement in his examination in chief of evidence of having paid Rs.30/- as fair for traveling on the Jeep, but this evidence is not corroborated by any other witness laid by the claimants or by the non-applicants including Insurance Company.

7. On the contrary there is a statement of applicant witness No.2 Ram Avtar who has categorically denied of having paid any charges for traveling on the said vehicle. In addition, if we read the deposition of the claimant before the Court below it clearly reflects that, there is much amount of contradictions on his statement in as much as in one part of the deposition he states that he has paid Rs. 30/- as fair for traveling in the Jeep, later in the deposition he makes statement that this charge was paid as fair for his wife. Subsequently, it is also reflected from the record that his wife has not travelled in the Jeep and that it was his son who was traveling in the Jeep.

8. As such since there is a material contradictions in respect of payment of fair itself the statement of the claimant becomes highly

doubtful and hence it is difficult to believe the same and particularly when it is without there being any supportive evidence. In addition to the aforesaid facts what is also reflected is that the Insurance Company in support of its defence has not led any evidence with which it could prove or establish its case.

9. Thus for all the aforesaid reason this Court does not find any strong case been made out for interfering with the impugned award. The appeal of the Insurance Company thus being devoid of merits deserves to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

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