

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 11 of 2008**

The Oriental Insurance Company Limited, Through the Divisional Manager, Rama Trade Centre, Opposite Bus Stand, Bilaspur (CG).

---- Appellant**Versus**

1. Gulaba Bai W/o late Salik Ram Bhardwaj, Age about 30 years.
2. Anand Kishore Bharadwaj, Age about 13 years.
3. Nand Kishore Bharadwaj, age about 11 years.
Respondents No.2&3 are minors, through natural guardian mother Smt. Gulaba Bai.
All the respondents are R/o Nehru Nagar, Bilaspur (CG).
4. Smt. Madhu Agarwal, age about 40 years W/o Shri Surendra Kumar Agarwal, R/o Janta Quarter No.50, Nehru Nagar, Bilaspur (CG).

---- Respondents

For Appellant	:	Shri Abhishek Sinha and Shri Ghanshyam Patel, Advocates.
For respondents/Claimants:		Shri AL Singroul, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****03.10.2017.**

1. The present is an appeal by the insurance company under Section 30 of the Workmen Compensation Act, 1923 (in Short, the Act) against the award dated 29.10.2007 passed by the Commissioner for Workmen Compensation, Labour Court, Bilaspur, in case No.238/WCA/COC-1-B/05 (F). Vide the impugned award, the Commissioner in a death case has awarded a compensation of Rs.1,79,775/- to be deposited within two months failing which the said amount shall carry interest @ 10 percent per annum.
2. The brief facts of the case is that, the deceased Salik Ram was engaged as driver in a private car belonging to respondent No.4. On

17.05.2005 when the said Salik Ram was discharging the duties of driver of the vehicle insured by the present appellant, met with an accident resulting in his death. The claimants are widow and children of the deceased.

3. The Commissioner, considering the evidence which have come on record, allowed the claim application and have ordered for the aforementioned amount to be paid by the insurance company which has insured the vehicle belonging to the respondent No.4.
4. The contention of the appellant-insurance company while challenging the award is that, the insurance company could not have been saddled with the responsibility of payment of compensation for the reason that there is a clear breach of policy conditions on the basis of which the insurance company should have been exonerated of its liability. It is a case where the vehicle which was registered as a private car was being used for commercial purpose as is evident from the the evidence which has been adduced by the insurance company before the Commissioner. It is also the contention of the insurance company that the award is bad in law to the extent that the Commissioner has not fastened any liability upon the employer whom the appellant had indemnified and unless there is liability casted upon the employer, the award passed against the insurance company would not be maintainable.
5. It is also argued that it is a case where the claim putforth by the owner-respondent No.4 towards own damage claim made to the insurance company was rejected which was challenged before the

District Consumer Forum where the claim of the owner was rejected which was further put to challenge before the State Consumer Forum where also the appeal was decided in favour of the insurance company and as against the respondent No.4-owner.

6. It was next submitted that on the date of accident, the respondent No.4 was using the vehicle for commercial purpose inasmuch as it was being plied for transportation of one Ajay Chatterjee on hire basis from Bilaspur to Champa. The respondent No.4 has not examined himself before the Commissioner, but has led evidence only her husband which was otherwise not acceptable, and therefore, it has to be presumed that the respondent No.4 has not proved her case in any manner. It was lastly contended that the insurance company under any circumstances cannot be held liable to pay interest on the amount awarded. In support of his contentions, he refers to two decisions of the Supreme Court in case of P.J. Narayan Vs. Union of India and Ors.2006 (5) SCC 200 and New India Assurance Co. Ltd. Vs. Harshadbhai Amrutbhai Modhiya and Anr.2006 (5) SCC 192.
7. Per contra, learned counsel appearing for the respondent-claimants opposing the appeal submits that the deceased in the instant case was a driver and indisputably the accident arose out of and in the course of employment and therefore, under no circumstances the insurance company could be exonerated of its liability under the Workmen Compensation Act.
8. Having heard the counsel appearing on either side and on perusal of

records some of the undisputed facts are; the vehicle involved in the accident i.e. Tata Indica bearing registration No.CG-10-BC-9150; the deceased Salik Ram being the driver engaged by the respondent No.4 to drive the said Car; the vehicle was duly insured with the appellant and the policy issued was a package policy under the Motor Vehicles Act. The evidence which have come on record only establishes the fact that on the date of accident the vehicle was being plied on hire basis when Ajay Chatterjee had hired the vehicle for travelling from Bilaspur to Champa.

9. As regards the contention of the appellant-insurance company that the vehicle was being used for commercial purpose and therefore the insurance company should be exonerated of its liability as the vehicle was a private Car is concerned, indisputably the status of the deceased Salik Ram was that of a driver. Irrespective, where the Car was being used for private purpose or commercial purpose, the nature of job which the deceased was supposed to discharge would have remained that of a driver and the fact that the accident arose out of and during the course of employment is not in dispute. Being registered and insured as a private Car at the time of accident and the vehicle being used for commercial purpose by itself would not absolve the insurance company of its liability of payment of compensation so far as claim under Workmen Compensation is concerned.
10. The relationship between the deceased and respondent No.4 is concerned, indisputably it is that of employee and employer. That the

insurance company otherwise would have been duty bound to indemnify the owner if the accident would have occurred when the vehicle would have been used for private purpose. That only because the accident occurred when the vehicle was being used for commercial purpose would not by itself give the insurance company the benefit of being exonerated of its liability as the deceased under any circumstances would have remained a driver. All that under the provisions of the Workmen Compensation Act what is to be seen is whether the accident occurred out of and in the course of employment or not.

11. In the instant case, there is no dispute so far as the accident to have occurred arising out of any in the course of his employment. Under the said circumstances, this court is of the opinion that the Commissioner has rightly fastened the liability upon the insurance company to indemnify the owner who had insured the vehicle. Moreover, the policy issued was a package policy which would otherwise also cover the risk of the driver under the provisions of the Motor Vehicles Act subject to fulfillment of terms and conditions of the policy.
12. Since, in the instant case the claim has been raised under the Workmen Compensation Act, the requirement of law for consideration would be whether it falls within the ambit of Section 3 of the Act or not. Considering the facts which have come on record, this court has no hesitation in reaching to the conclusion that the factual matrix of the case squarely fits to the provisions of Section 3 of the

Act. Therefore, the insurance company cannot be exonerated of its liability.

13. Counsel for the appellant also relied upon the decision of Rajasthan High Court in case of The Oriental Insurance Co.Ltd. Vs. Smt. Badami Devi & Others, decided on 23.04.2012, wherein the insurance company has been exonerated on the ground that no liability has been casted upon the employer and unless the employer is held liable to pay compensation, the insurance company cannot be forced to indemnify the employer.
14. In the instant case since the facts are undisputed so far as the accident to have occurred while deceased was discharging his duties and that the vehicle was duly insured with the appellant, in addition, the undisputed fact that there was an employer and employee relationship between the respondent No.4 and the deceased, this court is of the opinion that the insurance company cannot be given advantage of the employer not being held liable for payment of compensation particularly when the policy which has been issued being a package policy.
15. As regards the contention so far as liability of payment of interest is concerned, a perusal of award would reveal that the Commissioner has not granted interest from the date of application or from the date of accident. The order of the Commissioner is that the interest would be attached to the compensation awarded in the event if the insurance company does not honour the award within a period of 60 days from the date of award. Thus, the two judgments cited and

relied upon by the appellant-insurance company would not be made applicable in the present case and are therefore distinguishable on its facts itself.

16. In view of the aforesaid factual matrix of the case, this court is of the opinion that the award passed by the Commissioner does not warrant any interference and the substantial question of law framed by this court on 15.01.2008 is answered in the negative against the present appellant. It shall be the responsibility of the appellant-insurance company to deposit the entire amount awarded with interest. The appeal accordingly stands dismissed.

Sd/-
(P. Sam Koshy)
Judge

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