

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 235 OF 2008

- The Oriental Insurance Company Limited, through the Divisional Manager, The Oriental Insurance Company Limited, Bilaspur, Rama Trade Centre, Opposite Rajeev Plaza, near Bus Stand Bilaspur (C.G.)

... Appellant

versus

1. Dwarika Prasad, S/o Dukhram, age 30 years, R/o Village- Basha, P.S. Seepat, District Bilaspur (C.G.)
2. Manoj Das @ Vinod Das, S/o Vishnu Das Mahant, R/o Village Limha, P.S. Ratanpur, District Bilaspur (C.G.)
3. Koushal Kumar Soni, S/o Ganga Prasad Soni, R/o Village + Post Office Beltara, P.S. Ratanpur, District Bilaspur (C.G.)

... Respondents

MISC. APPEAL (C) NO. 236 OF 2008

- The Oriental Insurance Company Limited, through the Divisional Manager, The Oriental Insurance Company Limited, Bilaspur, Rama Trade Centre, Opposite Rajeev Plaza, near Bus Stand Bilaspur (C.G.)

... Appellant

versus

1. Suresh Kumar Kashyap, S/o Late Ramnarayan Kashyap, age 44 years, R/o Village- Basha, P.S. Seepat, District Bilaspur (C.G.)
2. Manoj Das @ Vinod Das, S/o Vishnu Das Mahant, R/o Village Limha, P.S. Ratanpur, District Bilaspur (C.G.)
3. Koushal Kumar Soni, S/o Ganga Prasad Soni, R/o Village + Post Office Beltara, P.S. Ratanpur, District Bilaspur (C.G.)

... Respondents

MISC. APPEAL (C) NO. 247 OF 2008

- The Oriental Insurance Company Limited, through the Divisional Manager, The Oriental Insurance Company Limited, Bilaspur, Rama Trade Centre, Opposite Rajeev Plaza, near Bus Stand Bilaspur (C.G.)

... Appellant

versus

1. Chamar Singh, S/o Ganesh Ram Gond, R/o Village- Basha, P.S. Seepat, District Bilaspur (C.G.)
2. Manoj Das @ Vinod Das, S/o Vishnu Das Mahant, R/o Village Limha, P.S. Ratanpur, District Bilaspur (C.G.)
3. Koushal Kumar Soni, S/o Ganga Prasad Soni, R/o Village + Post Office Beltara, P.S. Ratanpur, District Bilaspur (C.G.)

... Respondents

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- Mr. Abhishek Sinha and Mr. Ghan Shyam Patel, Advocates, for the Appellant-Insurance Company.
 - Mr. A.L. Singroul, Advocate, for the Respondent-Claimant in MAC No. 236 of 2008.
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Hon'ble Shri Justice P. Sam Koshy

Order on Board

05/10/2017

1. The present three appeals under Section 173 of the Motor Vehicles Act, 1988, arise out of 3 different claim cases decided on the same date i.e. on 29.8.2007 by the Additional Motor Accidents Claims Tribunal, Bilaspur, in Claim Case No. 61/2007, Claim Case No. 58/2007 and Claim Case No. 63/2007 respectively.
2. Vide the impugned awards, the Tribunal, in a proceeding under Section 166 of the Motor Vehicles Act, in an injury case, has awarded a compensation of Rs.20,000/- to the claimant in Claim Case No. 61/2007, Rs.20,000/- to the claimant in Claim Case No. 58/2007 and Rs.30,000/- to the claimant in Claim Case No. 63/2007, along with interest at the rate of 7% per annum from the date of application, further with a penal clause of interest leviable at 8% per annum in the event of the payment of compensation awarded is not made within 30 days from the date of award.
3. The present three appeals have been filed by the Insurance Company challenging the award on the ground that there is a clear breach of policy condition at the hands of the owner and driver of the offending vehicle i.e. Metador 407, bearing Registration No. CG10-A-4176. According to the Insurance Company, it is a case where the vehicle involved in the accident was carrying about 21 persons in a goods transport vehicle, whereas, it was not a passenger vehicle and therefore the Insurance Company would not have been liable for payment of compensation.

4. Learned Counsel for the Insurance Company further submits that it is an admitted case of the claimants themselves that the vehicle was being taken for a pilgrimage for visiting one of the temples when the accident occurred.

5. Learned Counsel for the Insurance Company refers to the FIR which was lodged in the case, which clearly depicts that at the time of accident there were around 20-21 persons on board on the said vehicle.

6. The owner and driver in spite of service of notice remained *ex parte* before the Tribunal and they have also not put up their appearance though served in the appeals before this Court.

7. Given the facts and circumstances of the case and also the evidence which have come on record, undisputedly, there were a large number of people in the transport vehicle at the time of accident as is evident from a large number of claim cases which have been filed arising out of the same accident before the Tribunal and some of which have also travelled up to the High Court. Thus, the clear breach of policy condition is evident.

8. In the given facts and circumstances and considering the fact that it is a case where the accident is of the year 2005 and the appeals are of the year 2008, ends of justice would meet if the appeals are allowed in part to the extent that the liability of payment of compensation shall be upon the Insurance Company with a liberty to recover the same from the owner of the offending vehicle.

9. Resultantly, the appeals are allowed in part and the impugned awards are modified, to the extent that the Insurance Company shall first pay the amount of compensation awarded if not till now deposited and then it shall have the liberty to recover the same from the owner of the offending vehicle.

Sd/-

(P. Sam Koshy)
Judge