NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No.399 of 2008

1. Ram Narayan Sahu S/o Bisouha Sahu, aged 35 years
2. Bisouha Sahu S/o Motiram Sahu, aged 60 years.
3. Anand Kumar S/o Bisouha Sahu, aged about 35 years.
   All are R/o Village Khanda, Police Chouki Lawan, P.S.Kasdol, Tahsil Baloda Bazar, District Raipur (C.G).

---- Appellants

Versus

1. Bisouha Das Vaishnav S/o Chaindas Vaishnav, aged about 70 years.
2. Umenda Bai Vaishnav W/o Bisouha Das Vaishnav, aged about 65 years.
   Both are R/o Village Khainda, P.S.Kasdol, Tahsil Baloda Bazar, District Raipur (C.G)
3. I.C.I.C.I. Lombard Insurance Company Limited, Through Branch Manager, Lal Ganga Complex, Raipur, District Raipur (C.G.)

---Respondents

AND

MAC No.400 of 2008

1. Ram Narayan Sahu S/o Bisouha Sahu, aged 35 years
2. Bisouha Sahu S/o Motiram Sahu, aged 60 years.
3. Anand Kumar S/o Bisouha Sahu, aged about 35 years.
   All are R/o Village Khanda, Police Chouki Lawan, P.S.Kasdol, Tahsil Baloda Bazar, District Raipur (C.G).

---- Appellants

Versus

1. Ishwari Prasad Sahu S/o Padumnath Sahu, aged about 56 years.
2. Smt.Rambati Sahu W/o Ishwari Prasad Sahu, aged about 50 years.
   Both are R/o Village Khainda, P.S.Kasdol, Tahsil Baloda Bazar, District Raipur (C.G)
3. I.C.I.C.I. Lombard Insurance Company Limited, Through Branch Manager, Lal Ganga Complex, Raipur, District Raipur (C.G.)

---Respondents

AND

MAC No.603 of 2008

ICICI Lombard, General Insurance Co.Ltd, Registered office : ICICI Bank Towers, Bandra – Kurla, Complex, Mumbai, 4000 51, through its Legal Manager, ICICI Lombard General Insurance Company Limited Lal Ganga Shopping Mall, 3rd Floor, G.E.Road, Raipur (C.G)

---- Appellants

Versus

1. Smt.Rambati Sahu W/o Ishwari Prasad Sahu, aged about 50 years.
2. Ram Narayan Sahu S/o Bisouha Sahu, aged 32 years
3. Bisouha Sahu S/o Motiram Sahu, aged 58 years.
   All are R/o Village Khainda, Police Chowki – Lavan, Tahsil Baloda Bazar, District Raipur (C.G)
4. Anand Kumar S/o Bisauha Sahu, aged about 35 years, R/o village Khainda, Police Chowki – Lavan, Police Station Kasdol, District Raipur (C.G)

---Respondents

AND

MAC No.756 of 2008

ICICI Lombard, General Insurance Co.Ltd, Registered office : ICICI Bank Towers, Bandra – Kurla, Complex, Mumbai, 4000 51, through its Legal Manager, ICICI Lombard General Insurance Company Limited Lal Ganga Shopping Mall, 3rd Floor, G.E.Road, Raipur (C.G)

---- Appellants

Versus

1. Bisouha Das Vaishnav S/o Chaindas Vaishnav, aged about 70 years.
2. Umenda Bai Vaishnav W/o Bisouha Das Vaishnav, aged about 65 years. Both are R/o Village Khainda, P.S.Kasdol, Tahsil Baloda Bazar, District Raipur (C.G)
3. Ram Narayan Sahu S/o Bisouha Sahu, aged 32 years
4. Bisouha Sahu S/o Motiram Sahu, aged 58 years. Respondent No.3 & 4 are R/o Village Khainda, Police Chowki – Lavan, Tahsil Baloda Bazar, District Raipur (C.G)
5. Anand Kumar S/o Bisauha Sahu, aged about 35 years, R/o village Khainda, Police Chowki – Lavan, Police Station Kasdol, District Raipur (C.G)

---Respondents

Shri C.R.Sahu, Advocate for appellants in MAC Nos.399 & 400 of 2008 and for respondents No.2 to 4 in MAC No.603/2008 and for respondents No.3 to 5 in MAC No.756/2008.
Shri Sourabh Sharma, Advocate for Insurance Company.

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

22/09/2017

1. These are the four appeals preferred by the owner as well as by the Insurance Company challenging two awards passed by 2nd Additional Motor Accident Claims Tribunal, Baloda Bazar (C.G) in two different claim cases i.e. Claim Case Nos.17/2006 and 18/2006 vide the award passed on the same day i.e. on 25/02/2008. The four appeals are being taken to be decided by this judgment for the reason that the four appeals are arising out of the same accident.
2. MAC Nos.399/2008 and 756/2008 arise out of the Claim Case No.18/2006. MAC Nos.400/2008 and 603/2008 arise out of the Claim Case No.17/2006.
3. MAC Nos.399/2008 and 400/2008 are the appeals preferred by the owner of the Tractor involved in an accident. MAC Nos.603/2008 and 756/2008 are the appeals preferred by the Insurance Company.
4. Vide the said impugned award, the Tribunal in Claim Case No.17/2006 has awarded compensation of Rs.2,71,000/- along with interest @ 7% per annum and in Claim Case No.18/2006 the Tribunal has awarded compensation of Rs.1,27,000/- along with interest @ 6% per annum.

5. While passing the said award, the Tribunal has directed that the awarded amount shall be deposited by the Insurance Company and in turn the Insurance Company can recover the same from the owner.

6. It is these two awards passed in the aforesaid two Claim Cases which is under challenge in the present four appeals. The owner has challenged the impugned award on the ground of the ordering of pay and recovery made by the Tribunal whereas the Insurance Company also has filed the appeals challenging the order of pay and recovery on the ground that since there is a clear breach of policy condition, the Insurance Company ought to had been completely exonerated of its liability.

7. The contention of the counsel for the owner assailing the impugned award is that the vehicle involved in an accident was duly insured with the ICICI Lombard General Insurance Co.Ltd. and that the owner had also paid an extra premium for covering the risk of the driver/conductor/cleaner and in addition had also paid the premium covering the risk of the coolies engaged in the Tractor and thus when the vehicle was duly insured, the liability ought to had been shifted upon the Insurance Company and the Tribunal has wrongly passed an order of pay and recovery and the Insurance Company would have the right of initiating recovery proceedings against the appellant-owner.

8. So far as counsel for the Insurance Company is concerned, he was drawing attention of the court to the finding of the Tribunal that there was a clear breach of policy condition which is reflected from the evidence which have come on record. The order of pay and recovery passed by the Tribunal was not proper, legal and justified and the Tribunal ought to have fastened the liability exclusively upon the owner and should have exonerate the Insurance Company. He further submits that, it is a case where the Tractor was being used for commercial purpose and not for the purpose for which it was insured. In addition, it was also the contention that at the time of the accident, the Tractor was carrying more number of persons whereas sitting capacity of the Tractor is only one and as per the evidence which have come on record it shows that the deceased persons were sitting on the body of the Tractor which was otherwise not permissible and therefore also there was a clear evidence that the Tribunal ought to have fastened the liability of payment of compensation upon the owner itself.

9. Having heard the submissions put forth by the counsel appearing for either of the parties and on perusal of records particularly the policy which has been issued clearly reflects that the policy issued by the Insurance Company did cover the risk of driver/conductor/cleaner. In addition, the

owner had also paid an extra premium towards the coverage of risk of the coolies. This being the fact all that now has to be seen is whether the deceased persons were traveling in the trolley or on the body of the Tractor? The driver of the offending vehicle has deposed before the Tribunal where his statement is recorded as NAW-1 who in his evidence has stated that the deceased persons were sitting on the body of the Tractor when the accident occurred resulting in their death. The R.C.Book as also the other documents which has been produced on record shows that the sitting capacity in the Tractor was only of the driver and at the time of the accident the Trolley was also attached to the Tractor. Under the said circumstances, there is no reason as to why the driver should have permitted the deceased persons to sit on the Tractor instead of the Trolley. Under these circumstances, the finding of the Tribunal that there is a breach of policy condition on the part of the owner cannot be faulted with and the appeal of the owner for the said reason alone deserves to be and is accordingly rejected.

10. So far as the Insurance Company is concerned, once when there is a clear finding of the fact which has come on record that the owner had paid an extra premium covering the risk of cleaner and the coolies engaged in the Tractor, applying principles of law laid down by the Hon'ble Supreme Court in the case of ***Manuara Khatun and Ors. Vs. Rajesh Kumar Singh and Ors. [{2017} 4 SCC 796]*** this court is of the opinion that, the findings of the Tribunal of ordering for pay and recovery also cannot be said to be erroneous or bad in law and the appeal of the Insurance Company also thus deserves to be and is accordingly rejected.

11. Needless to mention that the Insurance Company can on discharging the liability of payment of compensation can initiate recovery proceedings against the owner.

Sd/-
(P. Sam Koshy)
Judge

Sumit