

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No.134 of 2009**

The Oriental Insurance Company Limited, through the Divisional Manager, The Oriental Insurance Company Limited, Bilaspur, Rama Trade Center Opposite Rajiv Plaza Near Bus Stand, Bilaspur (C.G.).

---Appellant

Versus

1. Nishar Parvej S/o Late Sajid Hassan Khan, aged 20 years.
 2. Shekh Abdul Salim S/o Abdul Karim, aged 60 years.
 3. Shekh Abdul Hafij S/o Shekh Abdul Salim, aged 28 years.
- All are R/o In front of Maribai Adhar Vidhya Mandir, Talapara P.S.Civil Line Bilaspur (C.G.).
4. Santosh @ Ayub Khan S/o Noor Khan, aged 24 years, R/o Karriyapara, P.S.Ratanpur, District Bilaspur (C.G.).

---Respondents

For appellant/ Insurance Company	:	Shri Ghanshyam Patel, Advocate.
For respondent Nos.1 to 3	:	Shri Dharmesh Shrivastava, Advocate.

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

24/10/2017

1. Present is an appeal preferred by the Insurance Company under Section 173 of the Motor Vehicle Act challenging the award dated 24/04/2008 passed by the Additional Motor Accidents Claims Tribunal, Bilaspur (C.G.) in Motor Accident Claim Case No. 54/2007.
2. Vide the said impugned award, the Tribunal in a Claim Case under Section 166 of the Motor Vehicle Act has awarded the compensation of Rs.4,28,650/- along with interest @ 7% per annum from the date of application.
3. The facts of the case in brief is that, the deceased Noorjanha while travelling in a Jeep bearing registration No.CG-10-ZD-1026 met with an accidental death on 03/01/2007. The legal representatives of the deceased moved the claim application which stood decided by the impugned award.

While passing the award, the Tribunal has fastened the liability of payment of compensation upon the Insurance Company.

4. The contention of the learned counsel for the appellant/Insurance Company is that, in the instant case the policy which was issued in favour of the respondent No.4 – the owner of the offending vehicle was only an Act only policy which would cover the risk of only the third party whereas the deceased was travelling in the vehicle as a passenger. He further submits that, no extra premium has been paid by the owner of the offending vehicle which would show that the risk of occupants travelling in the vehicle would also be covered. He further submits that, it is a case where there is no policy so far as covering the risk of the deceased and therefore the Insurance Company should not have been held liable and that the liability of payment of compensation should have been only upon the respondent No.4 – the owner.

5. However, perusal of the record would show, that though the Insurance Company has led an evidence before the Tribunal in as much as it had led the evidence of one Arvind Khalkho, Assistant Grade – III, Zonal Office, Bilaspur, it does not appear from his deposition, that he had taken the stand before the Tribunal of the owner have not paid any extra premium for covering the risk of occupants.

6. Further, what is also reflected is that the impugned award in the instant case was passed as early as on 24/04/2008 i.e. almost about nine years back and the claimants in the instant case have not received any amount of compensation.

7. From the policy which has been produced before the Tribunal i.e. Exhibit-D/1 it clearly reflects, that the policy issued was only an act only policy and the premium paid only for covering the risk of the third party and that it had no extra premium paid for covering the risk of occupants. In the

absence of the premium being paid covering the risk of the occupants, the Insurance Company cannot be held liable for payment of compensation.

8. However, under the given factual matrix of the case, applying the principles of Hon'ble Supreme Court in the case of ***Manuara Khatun & Ors. Vs. Rajesh Kumar Singh & Ors. [2017 {4} SCC 796]*** this court is of the opinion, that ends of justice would meet if the Insurance Company is directed to pay the entire amount of compensation first and then recover the same from the owner of the offending jeep i.e. respondent No.4.

9. It is made clear, that finding of this court in the instant case cannot be made as precedent for other cases.

10. The appeal thus stands partly allowed and disposed off.

**Sd/-
(P. Sam Koshy)
Judge**

Sumit