NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1320 of 2009

The National Insurance Company Limited, Through: Divisional Manager, National Insurance Company Limited, G.E. Road, Raipur, Tahsil and District Raipur, Chhattisgarh. Through Authorized Authority, National Insurance Company Limited, Divisional Office, B-1, Taha Complex, Ring Road-II, Priydarshani Nagar, Bilaspur, Chhattisgarh

---- Appellant

Versus

1. Kalpana Jha, W/o. Rajesh Jha, aged about 52 years, R/o. Shanti Vihar Colloney, Danganiya, Raipur, Thana D.D. Nagar, Raipur, Tahsil and District Raipur, Chhattisgarh
2. Ishod, S/o. Ganesh Lodhi, R/o. Navegaon, at Post Office Navegaon, In front of State Bank, Thana Rural Navegaon, District Balaghat, Madhya Pradesh

----Respondents

For Appellant	:	Mr. B.N. Nande, Advocate
For Respondent No.1	:	Mr. Suresh Tandan, Advocate
For Respondent No.2	:	Mr. Sandeep Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

26/10/2017

1. The present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act challenging the award dated 24.01.2009, passed by the 10^{th} Additional Motor Accident Claims Tribunal (FTC), Raipur, Chhattisgarh, in Claim Case No. 63/2008.

2. Vide the said impugned award, the Tribunal, in an injury case under Section 166 of Motor Vehicles Act, has awarded a compensation of Rs.2,10,047/- with interest @ 6% per annum from the date of application.

3. The liability has been fastened upon the appellant-Insurance Company. The challenge to the impugned award is primarily on the ground that the Jeep which was involved in the accident was

registered and insured as a private Car, but was being used as a Taxi at the time of accident. Further, the amount of compensation also awarded by the Tribunal is exorbitant and on the higher side. More particularly for the reason that there was no sufficient medical evidence produced by the Claimants to support the contention, so far as the disability is concerned.

4. It was the contention of the counsel for the appellant that the vehicle involved in the accident was a Jeep belonging to the respondent No.2 and which was being driven by the respondent No.2 himself at the time of accident i.e. on 19.02.2007. The registration number of the Jeep was MP-50-D-0326. According to the counsel for the appellant referring to the deposition of the Claimant wherein in paragraph no.5 he has categorically admitted that the accident occurred when the Claimant with the other passengers had hired the vehicle for going from Gondia to Balaghat when the accident occurred.

5. It was further contended that it was agreed by the respondent No.2 to charge Rs.20/- per passenger for traveling from Gondia to Balaghat and the payment was to be made on reaching the destination. This evidence of the Claimant does not have any strong rebuttal nor is there any sufficient cross examination with which the statement of the Claimant are to be disbelieved.

6. The further contention of the counsel for the appellant as regard the quantum is that the treating Doctor has not been examined and the amount of compensation awarded is also not on concrete basis, but is only on assumption and presumption and the same deserves to be interfered with.

7. Per contra, the counsel for the Claimant/respondent No.1 opposing the appeal submits that undisputedly the vehicle at the relevant point of time of vehicle was dully insured with the appellant. The accident in the instant is not in dispute. The injury sustained by the **Claimant** also is not in dispute and therefore the only contention now to be seen is whether there is a breach of policy condition or not. From the statement of the Claimant it apparently is clear that the vehicle at the relevant point of time was being used for the Taxi purpose and that the Claimant and other passengers traveling in the Jeep had hired the Jeep on an agreement to pay Rs.20/- per passenger for traveling between Gondia to Balaghat. Thus, it is proved that the respondent No.2 at the time of accident was using the vehicle for Taxi purpose and was taking passenger from one place to another. This evidence which have come on record is clear indication that the Jeep being used for Taxi purpose and therefore this Court is of the opinion that since there is a breach of policy condition, the liability of payment of compensation should had been upon the respondent no.2.

8. However, from the record what is clearly reflected is that the Insurance Company as such has not led any evidence to support its contention before the Tribunal. Further, the date of accident in this case of almost 10 ½ years old.

9. The vehicle at the relevant point of time was insured with the appellant, though there is a breach of policy condition. Thus, applying the principles laid down by the Hon'ble Supreme Court in the case of ***“Manuara Khatun and others vs. Rajesh Kumar Singh and others”,*** reported in ***2017 (4) SCC 796,*** this Court is of the opinion that it shall be the responsibility of the present appellant

to pay the compensation awarded by the Tribunal with the liberty of recovering the same from the respondent No.2.

10. The impugned award thus stands modified to the aforesaid extent and the appeal of the Insurance Company thus stands allowed in part.

Sd/-
(P. Sam Koshy)
Judge

Ved