NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 1488 of 2008

The Oriental Insurance Co. Ltd. Adarsh Bal Mandir Road, Behind Amar Talkies, Dhamtari, District Dhamtari, (CG).

---- Appellant

Versus

1. Tiharuram Sahu, aged about 63 years, S/o Kushal Ram Sahu (Father of deceased).
2. Pardeshin Bai W/o, aged about 55 years W/o Tiharuram Sahu,
3. Poonam Bai W/o Late Shri Gautamram Sahu, aged 31 years.
4. Vishwanath Sahu S/o Late Gautamram Sahu, aged about 11 years.
5. Ku. Jhomlata, aged about 8 years, D/o late Gautamram Sahu, Respondents No.4 &5 are Minor Through Legal Gurdian His Mother Poonam Bai, D/o Shri Late Gautamram Sahu,
   All R/o Village - Golokumhada, Thana & Tehsil - Charama, District - Kanker (C.G.)
6. Ramadhar Allias Pratap Singh S/o Shri Baldeo Singh Rajpoot, R/o Village - Dhanesara, Thana - Narharpur, District - Kanker (C.G.)
7. Dr. P.S. Singh S/o Shri J. Singh, R/o Village - Golokumhada, Thana & Tehsil - Charama, District - Kanker (C.G.)

---- Respondents

For Appellant	:	Shri Sudhir Agrawal, Advocate.
For respondent No.6&7	:	Shri Afroz Khan, Advocate, under instructions of Shri Ashish Shrivastava, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

12.10.2017.

1. The present is an appeal under Section 173 of the Motor Vehicles Act (in short, the MV Act) filed by the insurance company against the award dated 16.07.2008 passed by the Motor Accident Claims Tribunal, Kanker, Distt. Kanker (for short, the Tribunal) in Claim Case No.75/2007. Vide the impugned award, the Tribunal in an application filed under Section 163-A of the MV Act has awarded a compensation of Rs.2,95,600/- along with interest @ 9 percent per annum from the

date of application.

2. The challenge to the impugned award by the insurance company is on three grounds; firstly the offending Tractor was being used for commercial purpose and that it was insured and registered for agriculture purpose and thus there was clear breach of policy conditions. Secondly, the deceased was travelling on the body of the Tractor where except for the driver, no other person can be permitted to travel and therefore also the insurance company cannot be held liable for payment of compensation. Thirdly, the insurance company has not taken any premium covering the risk of a person travelling in the Tractor. Thus, for all these reasons the insurance company was liable to be exonerated of its liability.

3. So far as merits of the case is concerned, learned counsel for the insurance company relied upon the documents brought on record particularly the FIR and other documents pertaining to the criminal case registered against the driver of the Tractor, however, what apparently reveals from the proceeding is that the insurance company in the instant case has not led any evidence to substantiate their pleadings and contentions which they have raised in their written statement. True it is that from the records which have come before the Tribunal it reveals that the deceased was sitting on the body of Tractor which was impermissible under the law. Further, from the proceedings it is also reflected that the deceased was not covered under the insurance policy which was issued by the present appellant.

4. Thus, prima facie there appears to be some force on the arguments

advanced by the counsel for the appellant-insurance company, but the fact that the vehicle was duly insured by the appellant-insurance company, this court is of the opinion and an order is being passed to the extent that the insurance company shall pay the compensation amount awarded by the Tribunal, however they shall be at liberty to recover the said amount from the owner and driver of the offending Tractor involved in the accident. It is ordered accordingly.

5. It has been informed that a substantial amount has already been deposited by the insurance company as per the interim direction of this court. Let the remaining amount be also deposited by the insurance company and the entire amount may be recovered from the owner and driver of the Tractor. The amount so deposited by the insurance company be also disbursed to the claimants.

6. Thus, the appeal of the insurance company stands allowed in part and disposed of.

Sd/-
(P.Sam Koshy)
Judge

inder