NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 1484 of 2009

The Oriental Insurance Co.Ltd. through the Divisional Manager, Oriental Insurance Co.Ltd. Bilaspur, Rama Trade Centre, opposite Rajiv Plaza, Near Bus Stand, Bilaspur (CG).

---- Appellant

Versus

1. Shobha Nath, aged about 44 years, S/o Shri Shiv Prasad Gond,
2. Urmila Bai D/o Shobha Nath Gond, aged about 16 years.
3. Rakesh Singh D/o Shobha Nath Gond, aged about 12 years
   All are R/o Village Mohanbhatha, Teh. Kota, District Bilaspur (CG).
4. Rajesh Kumar Bind (Kenwat) S/o Dayaram Bind (Kenwat), R/o Village Samogra, PO.-Amuie Chmuha, PS Karanpur Chouki Dehat Mirjapur (UP).
5. Smt. Sheeshah Rani Jaiswal @ Sheesham Rani Jaiswal, W/o Shri Lalji Jaiswal, R/o Village Ranibhag Katra Kotwali, Mirjapur (UP).

---- Respondents

For Appellant	:	Shri Abhishek Sinha, Advocate.
For Claimants	:	Smt. Neeta Choudhary, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

23.11.2017

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the insurer against the award dated 05.10.2009 passed by the Ist Additional Motor Accident Claims Tribunal Bilaspur (in short, the Tribunal) in Claim Case No.22/2008. Vide the said impugned award, the Tribunal in a claim application under Section 166 of MV Act has awarded a compensation of Rs.3,54,000/-with interest @ 7 percent per annum from the date of application.
2. The accident in the instant case took place on 24.06.2007 and the deceased was aged around 42 years. The vehicle involved in the accident was a Truck bearing registration No.UP-63-C-9984 which

was driven by the respondent No.5 and owned by the respondent No.4 at the time of accident. The vehicle was registered as goods vehicle and that the deceased along with other persons were travelling in the Truck as a gratuitous passengers.

3. The respondents No.4 & 4 inspite of repeated efforts being made by this court even after paper publication did not enter appearance before this court or represented through a counsel.

4. In the admitted facts of the case it is established that the offending vehicle i.e. Truck was a goods vehicle and the policy issued by the present appellant-insurance company was 'Liability only Policy' which is also known as 'Act only Policy' which covers the risk of only a third party and also the driver and owner of the offending vehicle as extra premium of Rs.50/- was paid in this regard.

5. Once when the vehicle is registered as a goods vehicle and the policy issued was an act only policy and that no extra premium has been paid to the insurance company to cover the risk of any passengers, gratuitous passengers or persons otherwise travelling in the said Truck, the insurance company cannot be saddled with the liability of indemnifying the owner against the policy which has been issued particularly when no premium has been paid.

6. In addition, it also reflects that there is no statutory liability fastened upon the insurance company pursuant to the nature of policy and the vehicle involved in the accident. Therefore, as a consequence, the insurance company would stand absolved of its liability in the facts of the case. However, taking into consideration the fact that the accident

arose in June, 2007 and the appeal itself is of the year, 2009, it would be too harsh to force the claimants now to go and get the award executed against the owner. Rather it would be more convenient on the part of the insurance company which has its office all over the country, to initiate appropriate recovery proceeding against the owner after satisfying the award passed by the Tribunal.

7. Taking into consideration the recent judgment of Supreme Court in case of Manura Khatun and Ors. Vs. Rajesh Kumar Singh & Ors.2017(4)SCC 796 and also the decision of co-ordinate bench of this High Court in case of National Insurance Co.Ltd. Vs. Kashi Das @ Mohandas Ramkhilawan & Ors. (MA No.496 of 2003, decided on 03.05.2016), this court is of the opinion that ends of justice would meet if this appeal is disposed of applying the principle of Pay and Recovery. It is ordered accordingly.

8. As a consequence, the appeal of the insurance company is partly allowed. It is ordered that the insurance company shall satisfy the award by depositing the amount awarded by the Tribunal with a liberty of recovering the same from the respondents No.4&5 by initiating appropriate recovery proceeding.

Sd/-
(P.Sam Koshy)
Judge

inder