

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 1322 of 2017**

United India Insurance Company Limited through Divisional Manager,
Divisional Office, Tara Complex First Floor G. E. Road, Power House
Bhilai, Tehsil and District Durg Chhattisgarh.....(Insurer of Vehicle No.
C. G. 08 L 2573)

---- Appellant**Versus**

1. Smt. Lata Bai Nishad W/o Late Mannu Ram, aged about 35 years, R/o through Jivanlal Nishad, Shankar Nagar Thana Mohan Nagar Durg, Tehsil and District Durg, Chhattisgarh.
2. Hemlal S/o Late Mannuram, aged about 18 years, R/o through Jivanlal Nishad, Shankar Nagar Thana Mohan Nagar Durg, Tehsil and District Durg, Chhattisgarh.
3. Makhan S/o Late Mannuram, aged about 16 years, minor through guardian mother Smt. Lata Bai Nishad W/o Late Mannuram, R/o through Jivanlal Nishad, Shankar Nagar Thana Mohan Nagar Durg, Tehsil and District Durg, Chhattisgarh.
4. Ku. Chandani D/o Late Mannuram, aged about 14 years, minor through guardian mother Smt. Lata Bai Nishad W/o Late Mannuram, R/o through Jivanlal Nishad, Shankar Nagar Thana Mohan Nagar Durg, Tehsil and District Durg, Chhattisgarh.....(Claimants)
5. Ashwani Kumar Rajak S/o Late Radheshyam Rajak, aged about 45 years, R/o Village Sambalpur, Thana Bhanupratappur District Kanker Chhattisgarh.(Driver of Vehicle No. C. G. 08 L 2573)
6. Shri Pritesh Chopda S/o Late Pramod Chopda, R/o Village Sambalpur, Thana Bhanupratappur, District Kanker Chhattisgarh.(Owner of Vehicle No. C. G. 08 L 2573)

---- Respondents

For Appellant : Shri Sudhir Agrawal, Advocate

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

03/10/2017

Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the interim award dated 17.05.2017 passed by the 3rd Additional Motor Accident Claims Tribunal, Durg (CG) in Claim Case No. 600360/2016. Vide the impugned award, the Tribunal has allowed an application under Section 140 of MV Act granting interim relief to the claimants.

2. The ground of challenge by the appellant Insurance Company is that the vehicle involved in the accident being a metador i.e. a goods vehicle which did not permit carrying passengers. However, the owner of the vehicle and the driver in breach of the policy condition carried a marriage party when the accident occurred causing many casualties. Further ground of challenge is that the owner had not paid any premium covering the risk of the deceased, travelling as a passenger in the said vehicle. According to the counsel for the appellant, the Metador was a goods vehicle whereas it was being used as a passenger vehicle which is a breach of policy condition. The Insurance Company has also raised the issue of jurisdiction of the Tribunal entertaining the claim case as also the fact that the vehicle involved in the accident did not have valid permit at the time of accident.

3. A perusal of the record would show that the policy which was taken by the owner of the offending vehicle was a package policy covering the risk of the driver and a Khalashi. The deceased in the instant case was one Maniram. Since it is an application under Section 140 of the MV Act which has been decided by the Tribunal, this Court is of the opinion that the merit of the case is yet to be adjudicated upon after recording of the evidence where it would also be decided whether the deceased was a Khalashi of the said vehicle or not which at this stage cannot be adjudicated upon only perusing the FIR which has been lodged in respect of the said accident and which is being relied upon by the appellant.

4. So far as the grounds which have been raised by the Insurance Company are concerned, these grounds can all be framed as issues by the Tribunal and subject to the evidence which comes on record, the Tribunal will adjudicate upon those issues and shall decide the same which at this juncture this Court may not be in a position to properly appreciate.

5. The appeal thus being devoid of merit deserves to be and is accordingly dismissed.

Sd/-

(P. Sam Koshy)
JUDGE