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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1222 OF 2008

The Oriental Insurance Company Limited, Divisional Office No.2, Chawla Complex, Devendra Nagar, Raipur (C.G.), through its Divisional Manager.

… Appellant

versus

1. Rukmani Bai, W/o Late Bhupendra Yadav, aged about 33 years
2. Minor, Tarun Kumar, S/o Late Bhupendra Yadav, aged about 05 year
3. Minor, Nitin Kumar, S/o Late Bhupendra Yadav, aged about 54 years
4. Soja Bai, Wd/o Late Rameshwar Yadav, aged about 54 years

Minors No. 2 and 3 – through – their natural guardian – mother – Rukmani Bai

All are resident of – behind School, Village Beergaon, P.S- Urda, Raipur, Tahsil and District Raipur (C.G.)

5. Ezaj alias Ajju Khan, through – Badruddin, S/o Peerbhai Jillari, R/o Kelabadi, Durg, near Sahu Sadan, Tahsil and District Durg (C.G.)
6. Badruddin, S/o Peerbhai Jillari, R/o Kelabadi – Durg, near Sahu Sadan, Tahsil and District Durg (C.G.)

… Respondents

For Appellant	:	Mrs. Chitra Shrivastava, Advocate.
For Respondent No.6	:	Mr. Shivendu Pandya, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08/11/2017

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, filed by the Oriental Insurance Company Limited, assailing the award dated 22.1.2007 passed by the Eight Additional Motor Accident Claims Tribunal (F.T.C.), Raipur, in Claim Case No. 11/2006.

2. Vide the impugned award, the learned Tribunal, in a death case, under Section 163-A of the Motor Vehicles Act, has awarded a compensation of Rs.4,05,000/- to the claimants with interest thereon at the rate of 7.5% per annum from the date of presentation of claim application and fastened the liability for payment of compensation upon the appellant-insurance company indemnifying the owner and driver of the offending vehicle.

3. The present is an appeal by the appellant-insurance company assailing the liability which has been fastened upon it.

4. The sole contention of the learned counsel for the insurance company is that the vehicle involved in the accident is a Maruti Van, bearing registration no. CG07-ZC-8504, which was registered and owned by respondent no.6-Badruddin as a private car. It was the contention of the learned counsel for the insurance company that the insurance company had led evidence of one Surendra Kumar Agrawal, an Administrative Officer of the insurance company, and to support his contentions there is also the statement of the widow of the deceased-Bhupendra Yadav with which it would be established that the vehicle which belonged to respondent no.6 was in fact used as a taxi at the time of accident and therefore the insurance company is liable to be exonerated of its liability as the vehicle was not being used for private purpose but was being used for commercial purpose as a taxi.

5. A perusal of record would show that after the widow of the deceased was examined, the evidence of one Devnath was also recorded. Devnath has categorically deposed that it was he who had called for the Maruti Van belonging to respondent no.6-Badruddin and that Badruddin was his friend and because of the friendly relationship that they had, Badruddin had offered him his car to be used for some personal use. From the evidence of Devnath it does not reflect that the insurance company has been able to extract anything in support of its contention to establish that the vehicle was being used as a commercial vehicle or as a taxi at the time of accident. Further, it also reveals that the insurance company has not led the evidence of the investigator on whose report the said administrative officer had deposed before the Tribunal. Thus, the report of the investigator is not corroborated or proved.

6. Perusal of the deposition of Devnath, which was recorded subsequent to the statement of the widow of the deceased being recorded, reflects that nothing has come out from his cross-examination so far as the use of the offending vehicle as a commercial vehicle or as a taxi. This Court therefore is of the opinion that the finding arrived at by the learned Tribunal cannot be found fault with as the finding of the Tribunal is purely based on the evidence which have come on record.

7. However, perusal of record would show that the insurance policy issued in respect of the vehicle involved in the accident, which was marked and exhibited as Exhibit D-1 before the Tribunal, was only Liability Only Policy whereby the risk of coverage would be only that of the owner, driver and third party. In the instant case, the deceased was not a third party as he was an occupant in the offending vehicle and there was no extra premium paid for covering the risk of any occupant in the said vehicle. In the given facts and circumstances, this Court is of the opinion that applying the principle of 'pay and recovery', the responsibility for payment of compensation shall be upon the insurance company with a liberty to recover the same from the owner and driver of the offending vehicle.

8. Thus, the appeal of the insurance company is partly allowed and the impugned award stands modified to the extent of the liability of payment of compensation is being retained upon the insurance company, however, the insurance company shall be at liberty to recover the same from the owner and driver of the offending vehicle.

Sd/-
(P. Sam Koshy)
Judge

/sharad/