NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 1217 of 2007

United India Insurance Company Ltd. TP Nagar, Korba, PS Tehsil and Distt. Korba (CG).

---- Appellant

Versus

1. Kanhaiya Lal S/o Dasram, aged 27 years, Caste Sahu, R/o Village Kirit, PS Shivarinarayan, Tahsil Nawagarh, Distt. Janjgir Champa (CG).
2. Narendra Kumar Sahu S/o Triloknath, aged 22 years, R/o Village Kirit, PS Shivarinarayan, Tahsil Nawagarh, Distt. Janjgir Champa (CG).
3. Goverdhan Prasad Chandra S/o Kishno Prasad Chandra, aged 27 years, Caste Chandra, R/o village Pipara, PO & Tehsil Navagarh, Distt. Janjgir Champa (CG).

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate.
For respondents No.1&2	:	Shri Dharmesh Shrivastava, Advocate.
For respondent No.3	:	Shri Vivek Singhal, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

23.10.2017.

1. The present is an appeal under Section 173 of the Motor Vehicles Act (for short, the MV Act) filed by the insurance company against the award dated 26.03.2007 passed by the IInd Additional Motor Accident Claims Tribunal Janjgir (for short, the Tribunal) in Claim Case No.9 of 2007. Vide the impugned award, the Tribunal on an application filed under Section 166 of the MV Act ha awarded a compensation of Rs.50,000/- to the injured claimant along with interest @ 6 percent per annum from the date of application.
2. Challenge in the present appeal is to the liability part. According to counsel for the insurance company the injured in the instant case was travelling on the trolley of the tractor and that the premium paid was

only to the extent of own damage as well as third party and that the claimant since was travelling in the tractor trolley would not fall within the category of a third party and therefore the insurance company cannot be fastened with the liability of payment of compensation. He further submits that no extra premium was paid by the owner covering the risk of any person who would be travelling in the trolley.

3. Further, it was also contended that the vehicle was being used for the purpose other than for which it was insured and registered i.e. commercial purpose. Thus, for all these reasons, the liability should had been fastened upon the owner of the vehicle and the insurance company should had been exonerated.

4. A perusal of records would show that the insurance company in the instant case has not led any evidence to substantiate their contention. Further, from the evidence which have come on record, indisputably the claimant was travelling in the trolley of the tractor when the accident arose. The policy which has been brought on record and marked as Ex. NA-3 would show that it is only the risk covering his own damage as well as third party.

5. The Supreme Court in case of United India Insurance Co. Ltd. Vs. Serjerao and Others, 2008(1) TAC 6 SC has categorically held that the insurance company shall not be liable for covering the risk of labours travelling in the trolley.

6. In the instant case since the insurance company has not led any substantive evidence before the Tribunal to show that the conditions to the policy which was issued in favour of the respondent No.3-owner

would not be covering the risk of persons travelling in the trolley, all that, this court can reach to the conclusion is that prima facie there appears to be a lapse on the part of the owner in taking persons/labours on the trolley without paying premium covering the risk of those persons. But, since there was no evidence led by the insurance company, this court holds that the insurance company may deposit the amount awarded by the Tribunal and shall recover the same from the owner-respondent No.3 applying the principle of 'Pay and Recover'.

7. This court is not inclined to pass such an order is for the reason that the amount awarded being too meager an amount, which the claimant has been deprived of for about 15 years as the accident is of the year, 2003.

8. Accordingly, the appeal of the insurance company stands partly allowed and disposed of.

Sd/-

(P.Sam Koshy)
Judge

inder