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HIGH COURT of CHHATTISGARH, BILASPUR
MAC No. 968 of 2010

The New India Insurance Company Limited, Divisional Office, Bilaspur, 2nd Floor, Shri Ram Trade Centre, Rajeev Plaza, Bilaspur (CG)

---- Appellant

Versus

1. Smt. Laxmi Puja, aged 25 years, W/o Goverdhan, Caste Kachhi, R/o village Jyogipur, Gaurella, District Bilaspur (CG)
2. Goverdhan, aged about 27 years, S/o Horilal Caste Kachhi, R/o Chingrajpara, Bilaspur, Distt.-Bilaspur (CG)
3. Smt. Dukhiya Bagh Yadav W/o Jaspal Bagh Yadav, Kalika Nagar, Tifra, Bilaspur, Distt.-Bilaspur (CG)

---- Respondents

For Appellant	:	Shri Pankaj Agrawal, Advocate.
For respondent No.1&2	:	Shri Yogendra Chaturvedi, Advocate.
For respondent No.3	:	Shri Suresh Verma, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy
Judgment On Board

10.11.2017.

1. The present is an appeal filed by the Insurance Company under Section 173 of the Motor Vehicles Act (for short, the MV Act) against the award dated 30.03.2010 passed by the Additional Motor Accident Claims Tribunal (FTC), Pendra Road (for short, the Tribunal) in Claim Case No.37 of 2009. Vide the said impugned award, the Tribunal in a claim application filed under Section 166 of the MV Act in a death case has awarded a compensation of Rs.79,500/- to the claimants along with interest @ 8 percent per annum from the date of application. The liability of payment of compensation has been fastened upon the insurance company.
2. The ground of challenge by the insurance company is that the vehicle involved in the accident was a Oil Tanker bearing registration No. CG-10-A-7550 and that oil tanker has sitting capacity of 1+1 but the same

cannot be under any circumstances be used for transportation of passenger. The deceased in the instant case was a 4 year old girl and that she was not travelling in the said Tanker as an employee, driver or conductor of the vehicle. She is also not a third party. Therefore, the insurance company cannot be fastened with the liability of payment of compensation for a person who travels in the vehicle illegally. Thus, prayed for setting aside of the award impugned.

3. The respondent No.3 however opposing the appeal submits that the owner is unaware of the fact that driver was carrying the deceased in the vehicle. That, the owner has not committed any breach of policy conditions and the policy issued in the case is a package policy which would also cover the risk of occupant, and therefore, the finding of the Tribunal does not warrant any interference. Thus, prayed for rejection of the appeal.

4. Having heard the contention put forth on either side and on perusal of records what clearly reflects from the evidence which have come on record is that the deceased was daughter of the driver of the said vehicle and that owner was not in any manner informed about taking of the deceased by the driver along with him at the time of accident. Further, indisputably, the vehicle involved in the case was covered by a package policy which would include the occupant as well.

5. In the given factual matrix of the case, this court is of the opinion that the findings given by the Tribunal does not warrant any interference and the appeal thus deserves to be and is hereby rejected. Sd/-

(P.Sam Koshy)
Judge

inder