NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No.1236 of 2010

Kanker Roadways Through The Managing Partner, Civil Lines, Raipur.

---Appellant

Versus

1. Additional Inspector General of Police Central Reserve Police Force, Group Center of C.R.P.F. Bharani, Bilaspur, Through Officer Incharge of The Case Shri Radhacharan Tiwari.
2. Gajjan Falla S/o Shri Habbi Ullah, R/o Santoshi Nagar, Ward No.53, Masjidpara Raipur.
3. New India Insurance Co.Ltd., Disvision Office, Raipur.

---Respondents

For the appellant	:	Shri Sudeep Johari, Advocate.
For respondent No.3/ Insurance Company	:	Shri S.K.Agrawal along with Shri Anand Kumar Gupta, Advocates.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

30/10/2017

1. Present is an appeal under Section 173 of the Motor Vehicle Act assailing the award dated 10/02/2009 passed by the Additional Motor Accidents Claims Tribunal (F.T.C.) Balod, District Durg in Motor Accident Claim Case No.19/2008.

2. Vide the said impugned award, the Tribunal in a Claim Case under Section 166 of the Motor Vehicle Act in respect of the claim of damage of the vehicle of respondent No.1 has awarded the compensation of Rs.1,75,075/- with interest @ 6% per annum from the date of application.

3. While passing the said impugned award, the Tribunal has fastened the liability of payment of compensation upon the present appellant except for an amount of Rs.6,000/- for which the liability has been fastened upon the respondent No.3/Insurance Company. It is this fastening of the liability upon the present appellant which is under challenge in the present appeal.

4. The contention of the counsel for the appellant is that, the vehicle belonging to the appellant i.e. a Bus bearing registration No.CG-09-0054 was duly insured and the policy covered was a package policy which means a comprehensive policy and as such any liability arising out of the use of the said vehicle during the validity of the policy period, it should have been upon the Insurance Company. The Tribunal has not appreciated the same and thus prayed for the modification of the award suitably. He further submits, that it is a case where the policy of the Insurance Company which was produced before the Tribunal has brought from the record of the Criminal Case which was registered against the driver of the offending vehicle. Further the policy produced along with the records of the appeal which is not in dispute clearly reflects, that the policy was a package policy and valid from the midnight of 16/02/2006 to the midnight of 15/02/2007 and the accident in the instant case took place on 23/07/2006 i.e. during the validity period. It was further contended by the counsel for the appellant, that the Tribunal while deciding the issue categorically held, that there is no breach of policy condition and that the vehicle was duly insured. In the light of said finding of the Tribunal, the liability of payment of compensation should had been fastened upon the Insurance Company. Thus, prayed for the award being suitably modified.

5. The counsel for the Insurance Company on contrary opposing the appeal submits, that the finding of the Tribunal does not warrant any interference in as much as it is based upon the evidence which has come on record and also taking into consideration the provision of law. He further submits, that the Tribunal has given its finding as per the provision of Section 147(2b) of the Motor Vehicles Act and therefore there is no illegality or perversity in the finding of the Tribunal and the appeal thus deserves to be rejected.

6. Perusal of record would show, that the Insurance Company has not led any evidence before the Tribunal to support there contention in respect of the liability. The Insurance Policy which has come on record clearly reflects to be a package policy which in other words is known as a comprehensive policy. In the absence of any specific evidence led by the Insurance Company, the finding of the Tribunal does not seems to be proper, legal and justified particularly when we peruse the contents of the Insurance Policy which shows, that the limit of the liability as per the policy is up to Rs.7,50,000/- from one claim.

7. Thus, in view of the contents of the policy as reflected this court is of the opinion, that the finding of the Tribunal fastening the liability upon the appellant based on Section 147(2b) is not proper, legal and justified and the same deserves to be set aside and it is ordered accordingly, that the entire liability of payment of compensation shall be that on the Insurance Company.

8. The appeal stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Sumit