NAFR

HIGH COURT of CHHATTISGARH, BILASPUR
MAC No. 1250 of 2010

Bajaj Allianz General Insurance Co. Ltd., 608 and 609 Sixth Floor, Second Block, White House Begampet, Hyderabad, 500016 through branch office at Shiv Mohan Bhawan, Vidhan Sabha Road, Raipur & Distt. Raipur (CG).

-----Appellant

Versus

1. Smt. Sirmo Bai Wd/o late Mohan Nishad, aged about 48 years, Caste Kewat, R/o Bus Stand, Near Kali Mata Mandir, Dongargarh, Distt. Rajnandgaon (CG).
2. Nagdev Kesari s/o Anjori Kesari, aged about 24 years, R/o Village Kumhartola, Tahsil Manpur, District Rajnandgaon.
3. M/s Mentas Infra Ltd. Composite Katangitola, Mohla, Tahsil and Thana, District Rajnandgaon.

-----Respondents

For Appellant	:	Shri SS Rajput, Advocate.
For respondent No.1	:	Shri Abhijeet Mishra, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

03.11.2017.

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 05.08.2010 passed by the Additional Motor Accident Claims Tribunal, Dongargarh (for short, the Tribunal) in Claim Case No.01 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.2,44,500/- to the claimant along with interest @ 6 percent per annum from the date of application.
2. The undisputed facts of the case is that while the deceased was travelling on a Dumper bearing registration No.CG-08-B-2246 met with an accident on 04.07.2008 resulting in his death. The legal representatives of the deceased had filed a claim application which

has been allowed and liability of payment of compensation has been fastened upon the appellant-insurance company.

3. The contention of the appellant is that the liability has wrongly been fasted upon the insurance company inasmuch as the deceased in the instant case was travelling in the Dumper as a gratuitous passenger and that no extra premium was paid with which the insurance company could have identified the insured. It was further contended that the admitted facts from the evidence which have come on record is that the deceased along with another labour was sitting on the back side of the Dumper which was meant for only transportation of goods and where no persons were permitted to travel and further that the deceased sitting in the back side of the said vehicle itself shows that there was a breach of policy conditions. Further, though the insured had paid premium for covering the risk of two persons for operations and maintenance, but the deceased in the instant case was neither in the operation nor was assigned for maintenance of the vehicle. Thus, for all these reasons, the counsel for the insurance company submits that the award be suitably modified and the insurance company be exonerated of its liability.

4. The contentions put forth by the insurance company seems to be a matter of fact and there is no dispute on facts. Indisputably the vehicle at the relevant point of time was duly insured with the appellant. Therefore, in view of the fact that there was a proper insurance policy taken by the insured, applying the principle of pay and recover it is ordered that the insurance company shall deposit the entire amount of

compensation first and thereafter can recover the same from the owner and driver of the vehicle by initiating appropriate recovery proceedings.

5. The impugned award thus stands modified. The appeal is accordingly allowed in part. The liability of payment of compensation is saddled upon the insurance company with liberty to recover the same from the owner and drive of the offending vehicle.

Sd/-
(P.Sam Koshy)
Judge

inder