NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No.484 of 2015

United India Insurance Company Limited Branch Office Bramha Road, P.S. & Tah.- Ambikapur, Distt.- Surguja Chhattisgarh Through Its Divisioal Manager, Divisional Office 2nd Floor Gurukripa Towers, Vyapar Vihar Road, Bilaspur Distt. Bilaspur Chhattisgarh

---- Appellant

Versus

1. Umko Devi, Wd/o Late Gunsai Aged About 42 Years R/o Village Idaripat, Gram Panchayat Charhatkala, Tah.-Samari, Distt Balrampur Ramanujganj Chhattisgarh
2. Tubias Uraon S/o Jawakim Uraon Aged About 45 Years R/o Charhatkala, Tah.-Samari, Distt Balrampur Ramanujganj Chhattisgarh
3. Premsai S/o Gedva Aged About 27 Years R/o Village Idaripat, Gram Panchayat Charhatkala, Tah.-Samari, Distt Balrampur Ramanujganj Chhattisgarh

------Respondents

For Appellant: Shri Dashrath Gupta, Advocate.
For Respondents: None.

Single Bench:Hon'ble Shri Sanjay Agrawal, J
Order On Board

10.02.2017

1. This is the Miscellaneous Appeal filed by the Insurance Company while exercising the powers enumerated under Section 173 of the Motor Vehicles Act,1988, challenging the award dated 8.1.2015 passed by the Additional Motor Accidents Claims Tribunal, Ramanujganj, Distt. Balrampur-Ramanujganj (CG) (for short 'the Tribunal') in Claims Case No.109/2012, by which the the Claim Petition has been allowed in part.

2. The undisputed facts are that on 22.03.2012, the deceased Gunsai, aged about 60 years and Jeetman Nagesiya, aged about 34 years and others were coming by the offending vehicle, i.e., Jeep-Marshall bearing registration

No.BR-13 P 0384. At the relevant time, the said vehicle was being driven rashly and negligently by its driver namely Premsai, Respondent No.3, owned by Respondent No.2-Tubias Uraon. The said vehicle was insured by the Appellant/Insurance Company. On the date of accident, the vehicle in question was being driven by the driver rashly and negligently as a result of which, the deceased Gunsai has died and Jeetman Nagesiya has sustained certain injuries.

3. Based upon the aforesaid incident, Respondent No.1/Claimant-Umko Devi, Widow of the deceased has instituted a Claim under Section 166 of the Motor Vehicles Act,1988 by submitting inter-alia that her husband who was 60 years old was a labourer by profession and used to earn Rs.7,500/- per month and thus total amount of Rs.18,50,000/- has been claimed.

4. Respondents No. 2 & 3, owner and driver of the offending vehicle have contested the aforesaid claim on the ground that the deceased was not travelling in their offending vehicle and contested further by denying the fact that the alleged accident was occurred by their vehicle and submitted further that merely on the basis of suspicion, the report has been lodged.

5. Appellant/Insurance Company has contested the claim on the ground that the vehicle in question was being used by carrying more than its sitting capacity and was being used in utter violation of the insurance policy, therefore, the Insurance Company cannot be held liable.

6. Upon hearing the parties, the Tribunal has come to the conclusion that the alleged accident has occurred on 22.3.2012 near the village Kotgahna, Rajpur because of rash and negligent driving of its driver Premsai. It held further that the Insurance Company has failed to establish the fact that the vehicle in question was being used in violation of its policy and as a

consequence, the Tribunal has awarded a total sum of Rs.2,97,000/- with 9% interest per annum from the date of the Claim Petition till its realization.

7. Shri Gupta, learned Counsel for the Appellant/Insurance Company has submitted that the policy was an Act policy and it is a 'Private Car-Liability Only Policy' and therefore, the Tribunal has erred in fastening the liability upon the Insurance Company by way of the impugned award.

8. I have heard learned Counsel for the Appellant and perused the entire record carefully.

9. The aforesaid contention of Shri Gupta was considered in the light of the defence taken by the Insurance Company. A bare perusal of the defence would show that no such defence, as alleged by him, was taken. What has been stated in the written statement was that since the offending vehicle was being used by carrying passengers more than its sitting capacity, therefore, under such circumstances, the Insurance Company can not be held liable. In order to get rid of its liability the Insurance Company not only should have taken a specific defence in this aspect but should have established the said fact by producing cogent and reliable evidence. However, from a perusal of the record, it is evident that neither any specific plea, as contended by Shri Gupta was taken, nor even any evidence was adduced. Therefore, contention of the learned counsel for the appellant can not be accepted.

10. Accordingly, the Appeal being devoid of merit, is hereby dismissed. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE

Priya