NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.46 of 2015

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

---- Applicant

Versus

1. Jeetman Nagesiya, S/o Late Surjan Aged About 34 Years R/o Village Idaripat, Gram Panchayat-Charhatkala, Tah.- Samari, District-Balrampur-Ramanusjganj, Chhattisgarh

2. Tubias Uraon S/o Jwakim Uraon Aged About 45 Years R/o Charhatkala, Tah.- Samari, District- Balrampur Ramanujganj,chhattisgarh

3. Premsai S/o Gedva Aged About 24 Years R/o Idaripat, Gram Panchayat-Charhatkala, Tah.-Samari, District-Balrampur-Ramanujganj, Chhattisgarh

------Non-Applicants

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

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

10.2.2017

1. This Revision is filed by the Insurance Company while exercising the powers enumerated under Section 115 of the Code of Civil Procedure,1908, 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.111/2012, by which 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, Non-Applicant No.3, owned by Non-Applicant No.2-Tubias Uraon. The said vehicle was insured by the Applicant/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, the applicant/injured-Jeetman Nagesiya has instituted a Claim under Section 166 of the Motor Vehicles Act by claiming total amount of compensation to the tune of Rs.6,00,000/-.

4. Respondents No.2 & 3, owner and driver respectively of the offending vehicle have contested the aforesaid claim on the ground that the injured were not traveling in this 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. The 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.8,000/- (Eight Thousand) with 9% interest per annum from the date of the Claim Petition till its realization.

7. Shri Gupta, learned Counsel for the Applicant/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 Applicant 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 Revision being devoid of merit, is hereby dismissed. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE

Priya