NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No.456 of 2017

The New India Assurance Company Limited Through Its Branch Manager, Branch Office, Near Jhankar Talkies, Jagdalpur, Distt. Bastar, Chhattisgarh.

----Appellant

Versus

1. Podiyami Hidma D/o Late Deva, Aged About 33 Years
2. Podiyami Bhima S/o Late Deva, Aged About 30 Years
3. Podiyami Muke Wd/o Late Deva, Aged About 50 Years
   Respondents No. 1 to 3 are Gond by Caste, R/o Rampuram, P.O. Gadiras, Tah. Sukma, Distt. Dantewada (Now Sukma) CG
4. Mahadev Bhogami S/o Sunku Bhogami, Aged About 35 Years R/o Mangnar, P.S. Dantewada, Distt. Dantewada (CG)......(Driver/ Non-Applicant No.1)
5. Mahadev Bhogami S/o Sunku Bhogami, Aged About 35 Years R/o Mangnar, P.S. Dantewada, Distt. Dantewada (CG) ....(Owner/ Non-Applicant No.2).

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

27/07/2017

1. The present is an appeal under Section 173 of the Motor Vehicles Act preferred by the Insurance Company against the award dated 25.11.2016 passed by the Motor Accident Claims Tribunal, South Bastar, Dantewada in Claim Case No.249/2014. Vide the impugned award the Tribunal in a proceeding under Section 166 of the Motor Vehicles Act, has allowed the claim application and granted compensation of Rs.2,44,800/- along with interest @ 6 percent per annum from the date of application on account of death of deceased Podiyami Deva. It is this award which is under challenge in this appeal.

2. The factual details of the case is not in dispute and therefore this court refrains itself from enumerating the facts again. The accident, the resultant death of the deceased and the offending vehicle involved in the accident, as also the offending vehicle insured by the present appellant are not in dispute. The only issue which has been challenged by the Insurance Company in the present case is the liability which has been fastened upon the appellant.
3. According to appellant the accident arose because of the negligence on the part of the deceased also as he was sitting in the Dala which is the rear portion of the Truck which is otherwise meant for transportation of goods and not for sitting of passengers or labourers. Thus there is a breach of policy conditions and the appellant is therefore, not liable to pay compensation. He further submits that during the course of proceeding before the Trial Court also the owner and driver have failed to produce the license which the driver of the offending vehicle was having, on the basis of which it could was proved that the driver did not have valid license. He further submits that the owner and driver of the offending vehicle was the same person and yet they did not furnish necessary documents before the Tribunal. He further submits that as the deceased was travelling in the vehicle as gratuitous passenger, the liability cannot be fastened upon the Insurance Company. Further, it is also not properly established before the Tribunal as to whether the decease was in fact an employee working on the said Truck at the time of accident. In the absence of which, the liability should have been shifted upon the

owner rather than the Insurance Company.

4. Having heard the counsel for the appellant and on perusal of record, what clearly reflects is that the Insurance Company which had raised the issue so far as driver not having valid license, the deceased travelling as gratuitous passenger and also the fact that the deceased was not working as labourer of the Truck owner, no sufficient, substantial and cogent evidence has been led by the Insurance Company to prove these aspects. In the absence of any cogent evidence, the contentions so raised by the Insurance Company is hard to accept. Further, from the records the undisputed facts is that the appellant had in fact insured the offending vehicle. The risk which has been covered as per the policy was inclusive of two workers.
5. In the absence of any evidence on the part of Insurance Company or other Respondents to show that the deceased was not working as labourer or was travelling in the offending vehicle as a gratuitous passenger, the finding of the Tribunal cannot be said to be bad in law, arbitrary or illegal. Neither can it be said to be contrary to the evidence which have come on record.
6. Lastly, it is contended by the Insurance Company that the interest awarded should had been from the date of award as the accident is of the year 2004 and the matter took so long period for final adjudication for which the Appellant cannot be blamed.
7. This ground raised by the Appellant also cannot be accepted for the reason that the claimant had promptly approached the Tribunal for grant of compensation. Initially, the Claim Application got dismissed

and on an appeal the matter was remitted back and thereafter final adjudication has taken place. The claimant should not suffer for the delay caused on account of procedural and technical reasons that takes place in the final conclusion of the proceedings.

8. The appeal thus, being devoid of merit, is liable to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

inder