

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 594 of 2017**

- The Oriental Insurance Company Limited Branch Office Jagdalpur, District Bastar, Chhattisgarh(Insurer)

---- Appellant**Versus**

1. Smt. Ramkali Yadav W/o Late Sitaram Yadav, Aged About 47 Years
2. Ku. Pushpa Yadav D/o Late Sitaram Yadav, Aged About 28 Years
3. Ku. Meena Yadav D/o Late Sitaram Yadav, Aged About 26 Years
4. Santosh Kumar Yadav S/o Late Sitaram Yadav, Aged About 24 Years
5. Manoj Kumar Yadav S/o Late Sitaram Yadav, Aged About 22 Years
6. Ku. Nirmala Yadav D/o Late Sitaram Yadav, Aged About 19 Years
7. Chitranjan Yadav S/o Late Sitaram Yadav, Aged About 18 Years

All R/o Patanpara, Geedam, Tahsil Geedam, District South Bastar Dantewada, Chhattisgarh(Claimants 1 To 7)

8. Kamal Singh S/o Sukuldhar Singh, Age Not Known, R/o Chhindnar, Tahsil Geedam, District South Bastar Dantewada, Chhattisgarh(Driver)
9. Mukesh Jain S/o Kamal Kumar Jain, R/o Bazarpara Geedam, Tahsil Geedam, District South Bastar Dantewada, Chhattisgarh(Owner)

---- Respondents

For Appellant	:	Shri Raj Awasthi, Advocate
For Respondent No.9	:	Shri Deepak Jain, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****25/07/2017**

1. **I.A. No.1**, is an application for condonation of delay in filing the appeal.
2. For the reasons assigned in the application and the fact that the appeal is delayed by only four days, the application I.A. No.1 is allowed the and delay in filing the appeal stands condoned.
3. The present is an appeal of the insurance company assailing the award dated 20.12.2016, whereby the First Additional Motor Accident Claims Tribunal, South Bastar Dantewada (for short 'the Tribunal') in claim case No.262/2014 as awarded a compensation of Rs.7,01,500/- to the claimants with interest @ 6% per annum from the date of application. The appeal has been preferred by the insurance company on the ground that there was a clear breach of policy condition, therefore, the appellant should not have been fastened with the liability of payment of compensation part.
4. Counsel for the appellant submits that it is a fit case where the liability should have been fastened upon the owner and driver of the offending vehicle. Counsel for the appellant further submits that admittedly it was a goods carrying commercial vehicle and that the vehicle was not meant for carrying passengers and in the instant case owner and driver were carrying about 20 to 25 persons in the said vehicle at the time of incident. Thus there is a clear breach of the policy condition which has not been properly appreciated by the Tribunal. The other contention which the appellant has raised was in respect of the driver of the offending vehicle not having proper license at the relevant point

of time.

5. So far as the issue whether the driver of the offending vehicle was having a valid license or not has been squarely decided by the decision of the Supreme Court in the matter of **S. Iyyapan Vs. United India Insurance Company Limited And Another**¹ and **Kulwant Singh And Others Vs. Oriental Insurance Company Limited**². Now the only issue which is left is whether the deceased at the relevant point of time was traveling as a passenger or not. As regards this objection which has been raised by the insurance company, the burden of establishing this issue is also upon the insurance company. The Administrative Officer of the Insurance Company had only brought on record certificates which were part and parcel of the criminal case which was registered against the driver of the vehicle trying to substantiate this issue. This Court has no hesitation in reaching the conclusion that for establishing the case of the deceased being a gratuitous passenger or not, it was the responsibility of the insurance company to have led cogent and sufficient evidence, on the basis of which it could be established that for traveling in the said vehicle the passenger had paid any amount to the owner and driver. Thus, in the absence of any strong evidence the contention of the insurance company thus cannot be said to be sufficient and the same deserves to be and is hereby rejected.

¹ 2013 (7) SCC 62

² 2015 (2) SCC 186

6. The appeal being devoid of any substance deserves to be and is hereby dismissed.

Sd/-

P.Sam Koshy
Judge

Ashu