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HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1269 of 2017

Branch Manager, The Oriental Insurance Co. Ltd. The Oriental Insurance Company Limited, Ambedkar Chowk, Ambikapur Chhattisgarh

---- Appellant

Versus

1. Dubey Prasad S/o Samaylal Kumhar, Aged About 32 Years
2. Munna S/o Samaylal Kumhar, Aged About 30 Years
3. Samaylal S/o Late Govind Aged About 60 Years

All are R/o. Village Bandhwatola, Tahsil Kotma, District Anuppur Madhya Pradesh.

4. Vijaypal Singh, S/o. Shriram Prasad Singh Gond, aged about 30 years, R/o. Village Salhi, Police Station Shrinagar, District Surguja, Chhattisgarh (Dead / Deleted)
5. Rajendra Prasad Singh, S/o Mohan Singh, R/o Village & Post Salhi, Tahsil Surajpur, District Surguja Chhattisgarh
6. Branch Manager, The Oriental Insurance Company Limited, Ambedkar Chowk, Ambikapur Chhattisgarh

–--Respondents

For Appellant	:	Mr. Raj Awasthy, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

11/09/2017

1. Heard on I.A. No.1, which is an application for condonation of delay. Considering the reasons assigned in the application and finding them to be satisfactory, I.A. No.1 is allowed and delay of 11 days in filing the appeal stands condoned.

2. The present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 15.05.2017, passed by the 2nd Additional Motor Accident Claims Tribunal, Manendragarh, District Korea, in Motor Accident Claim Case No. 27/2017 (Old MACC No. 83/2007).

3. Vide the impugned award, the Tribunal in a claim case under Section 166 of Motor Vehicles Act has allowed the application and ordered for payment of amount of Rs.2,68,000/- with interest @ 6% per annum from the date of application. The liability has been fastened upon the appellant-Insurance Company being the insurer of the vehicle involved in the accident.

4. The contentions of the counsel for the Insurance Company is that findings of the Tribunal is erroneous for the reasons; (i) the death of deceased is doubtful, (ii) the vehicle was being used for commercial purpose and the policy issued was also for private purpose. Further the name of the deceased also is not reflected even amongst the injured persons in the FIR or the final report which was lodged pertaining to the accident. There was a clear breach of policy conditions and therefore the claim itself was not sustainable. Further, it was submitted that the driver of the offending vehicle was not prosecuted for the offence under Section 304-A, but also prosecuted only for the offence under Sections 279, 337 and 338 of Indian Penal Code.

5. According to the counsel for the appellant, the claimants in the accident case has not led any cogent document any evidence to establish the fact that the deceased Dilbasiya has sustained injuries to which he later succumbed from the accident alleged to have occurred involving the vehicle of the respondent No.5. He submits that the claimants have not produced any documents in respect of the death of deceased or cause of the death to show that it was an accidental death.

6. According to the appellant, in the absence of any cogent evidence, the Tribunal ought not have entertained the application and should have rejected the same. It was further contended that the vehicle involved in the accident i.e. Bolero Jeep bearing registration No. CG-15-B-1358 was insured for the private purpose and there is an evidence to show that the deceased was travelling in the vehicle as

a member of marriage party, which itself shows that the vehicle was being used for commercial purpose rather than for private use.

7. The perusal of the record would show that the Insurance Company in the instant case has not led any evidence whatsoever to prove their contentions on the grounds they have raised for denying the claim of the claimants. In the absence of any evidence led by the Insurance Company, this Court does not find any strong case made out with which it could be accepted that the claim of the claimants was not proper and the findings arrived at by the Tribunal was contrary to the evidence.

8. Further the documents which were produced during the evidence proves the accident and the deceased involved in the accident and the criminal case gives the details of the vehicle involved in the accident.

9. The fact that the Insurance Company has not been able to discharge its liability of disproving the claim of the claimants, this Court did not incline to admit the appeal of the Insurance Company, thus being devoid of merits, appeal fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved