

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 831 of 2012**

IFFCO Tokio General Insurance Company Limited, 3rd Floor, Shop No. 345-347 Ganga Shopping, G.E. Road, Raipur, Tahsil and District Raipur Chhattisgarh

---- Appellant**Versus**

1. Smt. Laxmi Gond, W/o. Shri Dwarika, Aged about 28 years, R/o. Bisatola, Police Station Sahaspur Lohara, Tahsil Sahaspur Lohara, District Kabirdham, Chhattisgarh
2. Dwarika Gond, S/o. Baburam Gond, Aged about 30 years, R/o. Bisatola, Police Station Sahaspur Lohara, Tahsil Sahaspur Lohara, District Kabirdham, Chhattisgarh (Claimants)
3. Shivilal Markam, S/o. Shri Lakhan Markam, Aged about 27 years, R/o. Jarha Nawagaon, Police Station Sahaspur Lohara, District Kabirdham, Chhattisgarh (Driver)
4. Rajkumar, S/o. Brijlal Dhurve, R/o. Junwani Jungle, Police Station Sahaspur Lohara, Tahsil Sahaspur Lohara, District Kabirdham, Chhattisgarh (Owner)

---- Respondents**AND****MAC No. 833 of 2012**

IFFCO Tokio General Insurance Company Limited, 3rd Floor, Shop No. 345-347 Ganga Shopping, G.E. Road, Raipur, Tahsil and District Raipur Chhattisgarh

---- Appellant**Versus**

1. Smt. Gauri Bai, W/o. Arjun Gond, Aged about 37 years, R/o. Gaurmati, Police Station Sahaspur Lohara, Tahsil Sahaspur Lohara, District Kabirdham, Chhattisgarh
2. Shivilal Markam, S/o. Shri Lakhan Markam, Aged about 27 years, R/o. Jarha Nawagaon, Police Station Sahaspur Lohara, District Kabirdham, Chhattisgarh (Driver)
3. Rajkumar, S/o. Brijlal Dhurve, R/o. Junwani Jungle, Police Station Sahaspur Lohara, Tahsil Sahaspur Lohara, District Kabirdham, Chhattisgarh (Owner)

---- Respondents

For Appellant	:	Mr. P. Acharya, Advocate under instructions of Mr. Amrito Das, Advocate
For Respondent No.1	:	Mr. Anumeh Shrivastava, Advocate
For Respondents No. 2 & 3	:	Mr. Viprasen Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****26/02/2018**

1. These are two appeals, which have been filed challenging the two awards passed in two separate claim application arising out of the same accident.
2. MAC No. 831/2012 is an appeal challenging the award passed in Claim Case No. 20/2009 and MAC No. 833/2012 is an appeal challenging the award passed in Claim Case No. 40/2010.
3. The awards under challenge in both these appeals are of the same date i.e. 30.01.2012, passed by the Motor Accident Claims Tribunal, Kabirdham, Chhattisgarh. The present appeals are by the Insurance Company.
4. Vide the impugned award, the Tribunal in Claim Case No.20/2009, which pertains to MAC No. 831/2012 has awarded a compensation of Rs.2,50,000/- in respect of the death of a 3 years old child. Likewise, in Claim Case No. 40/2010, giving rise to MAC No. 833/2012 is an injury case, where the Tribunal has awarded a compensation of Rs.50,000/-. In both cases the rate of interest awarded was @ 9% per annum from the date of application.
5. The counsel for the appellant submits that in the instant case the fact that the deceased in one of the cases was a 3 years old child itself shows that he was traveling in the said Tractor as a gratuitous passenger as the 3 years old child could not have traveled in the Tractor as a worker engaged by the Owner. Further it was also the contention of the counsel for the Insurance Company that Claimants themselves in their claim application have accepted that they had

boarded the Tractor en route and they were not engaged directly by the Owner for the agriculture purpose. This also establishes the fact that they were gratuitous passengers. It was also the contention of the counsel for the appellant that no extra premium was charged by the Insurance Company covering the risk of any extra passenger other than the Owner-cum-Driver and therefore also the Insurance Company should not have been fastened with the liability to indemnify the Owner when the extra premium was not charged by the Insurance Company in this regard.

6. Perusal of the record would show that the policy involved in the instant case was a package policy. Package policy includes covering the risk of an occupant also as is established from the judgment of the Hon'ble Supreme Court in the case of "***National Insurance Company Limited vs. Balakrishnan & Anr.***" reported in (2013) 1 SCC 731.
7. Moreover, what is also relevant in this case that there is a categorical finding of the Tribunal based on the evidence of the Claimants themselves that they had not paid any amount towards traveling in the Tractor to the Driver or for that matter to the Owner, only then could the deceased or the injured have been brought within the ambit of a gratuitous passenger.
8. In the light of aforesaid finding of fact and the judgment of Hon'ble Supreme Court in the case of ***Balakrishnan*** (supra), this Court does not find any strong case made out by the Insurance Company calling for an interference with the impugned award.

9. Both these appeals thus being devoid of merits deserve to be and are accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved