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HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 192 of 2018

United India Insurance Company Limited Through Its Divisional Manager, Divisional Office - Bramh Road, Near Kumkum Hotel, Ambikapur, Distt. Surguja (Chhattisgarh).

---- Appellant

Versus

1. Smt. Soniya @ Sonoya Wd/o late Ramnath Mahto, aged about 24 years, occupation Housewife.
2. Mukesh Mahto S/o Late Ramnath Mahto Aged About 5 Years Occupation Nothing,
3. Mohit Mahto S/o Late Ramnath Mahto, aged about 1 and ½ years, Both 2 & 3 are Minor Through Their Mother Smt. Soniya @ Sonoya Wd/o Late Ramnath Mahto.
4. Smt. Kismait Devi Wd/o Late Surendra Mahto Aged About 55 Years All R/o Village Hami Khas, Police Station Mahuadand, District Latehar, Jharkhand.
5. Kuldeep Barik S/o Ramvriksh Barik Aged About 23 Years R/o Village Hami Khas, Police Station Mahuadand, District Latehar, Jharkhand.

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

01.02.2018

1. The present is an appeal by the insurance company assailing the award dated 10.10.2017 passed by the IIIrd Additional Motor Accident Claims Tribunal, Ambikapur (CG) in Claim Case No.23/2017. Vide the impugned award the Tribunal has awarded compensation of Rs.4,41,500/- to the claimants along with interest @ 6 percent per annum from the date of application.
2. The appellant assails the award on the ground that the vehicle involved in the present case was being used for commercial purpose and it was carrying passengers on it much beyond its sitting capacity

and as such there is a clear breach of policy conditions. He further submits that it is a case where the liability under the policy issued was act only policy which would cover the risk of only third party. On this ground also, the liability should have been shifted upon the owner.

3. A perusal of the record would show that the insurance company has not adduced sufficient evidence before the Tribunal to establish the fact that the passengers travelling in the vehicle were much beyond its sitting capacity at the time of accident. So far as the liability covering the driver is concerned, even if it is an act only policy it covers the risk of driver engaged by the insured, the insurance company cannot be absolved of its liability covering the risk of driver engaged by the owner.

4. In view of the same, this court does not find any strong case made out by the appellant-insurance company calling for interference with the impugned award.

5. Accordingly, the appeal being devoid of merit is liable to be and is hereby dismissed.

Sd/-

(P.Sam Koshy)
Judge

inder