NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 27 OF 2017

Shriram General Insurance Company Limited, 4th Floor, Through Divisional Manager, Shriram General Insurance Company Limited, 4th Floor, Maruti Heights, beside Sky Automobiles, G.E. Road, Raipur (C.G.) (Insurer)

… Appellant

versus

1. Smt. Kumari Bai, W/o (wrongly mention D/o) Late Harishankar Kewat, aged about 42 years
2. Suraj Kewat, S/o Late Harishankar Kewat, aged about 20 years
3. Akash, S/o Late Harishankar Kewat, aged about 18 years
4. Nanki Dau Kewat, S/o Late Amoli, aged about 63 years
5. Sunahi Bai, W/o Shri Nanki Dau Kewat, aged about 58 years

All are R/o Village- Singhra, P.S. Malkharoda, Tahsil Malkharoda, District Janjgir-Champa (C.G.) (Claimants)

6. Ajay Kumar Devangan, S/o Chidilal Devangan, aged about 28 years, R/o opposite Chandrapur Masjid, Tahsil- Dabhra, District Janjgir-Champa (C.G.) (Driver)
7. Murlidhar Yadav, S/o Chhoturam Yadav, R/o opposite of Chandrapur Masjid, Tahsil- Dabhra, District Janjgir-Champa (C.G.) (Owner)

… Respondents

For Appellant : Mr. Sachin Singh Rajput, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

02/02/2018

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, filed by the appellant-insurance company.

2. Challenge in the present appeal is to the award dated 4.10.2016 passed by the First Additional Motor Accident Claims Tribunal, Sakti, District Janjgir-Champa, in Claim Case No. 16/2016.

3. Vide the impugned award, the learned Tribunal, in a death case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.3,52,000/- in favour of respondents no. 1 to 5-claimants with interest thereon at the rate of 6% per annum from the date of presentation of the claim application. The liability for payment of compensation has been fastened upon the appellant-insurance company indemnifying the respondents no. 5 & 6 *i.e.* the driver and owner respectively of the offending vehicle *i.e.* a Pickup Van, bearing registration no. CG13-UE-2414.

4. Learned counsel for the appellant-insurance company assailing the award submits that the deceased in the instant case was not travelling as a coolie on the offending vehicle but was travelling as a gratuitous passenger and that the policy which was issued indemnifying the owner did not cover the risk of a gratuitous passenger. Therefore, the liability for payment of compensation ought to have been shifted upon the owner of the offending vehicle instead of the appellant-insurance company. He further submits that even otherwise if there is a risk covering the coolie, the nature of work of a coolie is to load and unload the goods to be transported on the vehicle and not permitting the coolie to travel in the vehicle.

5. However, perusal of record available with the case would show that the appellant-insurance company has got their witness examined before the Tribunal, namely, Ramesh Sinha (NAW-1), who in his evidence has categorically accepted the fact that Exhibit D-1, *i.e.,* the insurance policy, also reflects of covering the risk of the driver and the coolie of the vehicle insured.

6. Undisputed claim of the claimants in the instant case was that the deceased was working as a coolie. This aspect has not been disproved by the appellant-insurance company.

7. Under the given circumstances, this Court does not find any strong case made out by the appellant-insurance company calling for interference with the impugned award.

8. The appeal of appellant-insurance company thus being devoid of merits the same deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

/sharad/