NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 167 of 2018

Branch Manager, The New India Assurance Company Limited Regional Office, Chauhan Estate, Supela Bhilai, District Durg, Chhattisgarh

---- Appellant

Versus

Rohit Kumar Sahu, S/o. Mahesh Kumar Sahu, Aged about 32 years, R/o. Jurripara, Balod, Police Station Balod, District Balod, Chhattisgarh

----Respondent

For Appellant	:	Mr. G.V.K. Rao, Advocate on behalf of Mr. Qamarul Aziz, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

30/01/2018

1. Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 13.09.2017, passed by the 1st Additional Motor Accident Claims Tribunal, Balod, Chhattisgarh, in Claim Case No. 90/2016.
2. Vide the impugned award, the Tribunal in a death case has awarded a compensation of Rs.19,500/- with interest @10% per annum from the date of application.
3. The counsel for the appellant submits that there was ample evidence led by the Insurance Company to prove that the vehicle at the time of accident was being used for commercial purpose and therefore the liability could not have been imposed upon the Insurance Company. The contention of the counsel for the appellant was that the vehicle involved in the accident was registered as private vehicle and it could not have been used for Taxi purpose. The counsel for the appellant referred to the document i.e. the contents of the FIR to substantiate this contention and thus prayed for the award to be

suitably modified in as much as the liability of the Insurance Company may be exonerated and the liability be shifted upon the Owner and the Driver.

4. Perusal of the record would shows that except for the reliance of the contents of the F.I.R., there has not been any substantive or cogent evidence led by the Insurance Company to establish that the vehicle was used for the commercial purpose. No witness had been examined, who could have stated before the Tribunal of having hired the vehicle on payment of rent. In the absence of which, only on the contents of the F.I.R. alone the liability of the Insurance Company cannot be absolved.

5. Given the facts and circumstances of the case, this Court does not find any strong case made out for interference with the impugned award.

6. So far as the judgment relied upon by the appellant in the case of ***"Oriental Insurance Company Limited vs. Premlata Shukla and Others" reported in (2007) 13 SCC 476*** is concerned, the said judgment is distinguishable on facts as in that case, both the parties had relied upon the contents of the F.I.R. and therefore the Hon'ble Supreme Court said that when both the parties were relying upon the same document, the contents cannot be ignored. Whereas in the instant case the Claimants have not relied upon the contents of the F.I.R. and as such the ratio laid down in said judgment cannot be made applicable in the present case.

7. The appeal thus fails and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

Ved