NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 111 of 2012

Ajay Singh Thakur S/o Rajendra Singh Thakur, aged 30 years, R/o village Selud, Tehsil Patan, District Durg (C.G.), Presently residing at Village, Gudiyari, Tehsil Patan, District Durg (C.G.).

---Appellant

Versus

1. Ganpat Ram Thakur S/o Jivrakhan Thakur, R/o village Dihari, P.S.Ranitarai, Tehsil Patan, District Durg, at present residing at Village Amalori, P.S.Utai, District Durg (C.G.) (Driver).
2. National Insurance Company Limited, Through The Branch Manager, having office at Akash Ganga, Supela, Bhilai, District Durg (C.G.) (Insurer).
3. Sahodra Bai W/o Late Shri Dhanu Das Vaishnav, aged about 49 years.
4. Ku. Meena D/o Late Shri Dhanu Das Vaishnav, aged about 22 years.

Respondents No. 3 & 4 are R/o village Pauwara (Pauha), Tehsil Gunderdehi, P.S. Ran Chirai, District Durg (C.G.).

---Respondents

For appellant/owner	:	Shri Ashish Surana, Advocate.
For respondent No.2/ Insurance Company	:	Shri Pallav Mishra on behalf of Shri R.N.Pusty, Advocate.
For respondents No. 3 & 4	:	Shri Utsav Maheshwar on behalf of Shri Anand Dadariya, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

20/02/2018

1. Present is an appeal filed by the owner under Section 173 of the Motor Vehicles Act assailing the award dated 28/11/2011 passed by the learned Second Additional Motor Accident Claims Tribunal, Durg (C.G.) in Motor Accident Claim Case No. 108/2011.

2. Vide the impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.2,40,000/- with interest @ 6% per annum from the date of application.

3. While passing the impugned award, the Tribunal has exonerated the Insurance Company and have fastened the liability of payment of compensation upon the present appellant/owner of the offending vehicle i.e. a Tractor.

4. The challenge in the present appeal is on the ground that, the policy which was issued by the respondent No.2/Insurance Company was a policy in which an extra premium was also charged for covering the risk of a worker engaged by the owner.

5. The counsel for the appellant/owner submits that, once when the Insurance Company has accepted an extra premium covering the risk of the worker and from the evidence which have come before the Tribunal it is evidently clear that, the deceased in the instant case was working as a worker on the Tractor on the date of accident, the employment part stands proved and in the course of the said employment, the accident occurred. He further submits that, once when the employment and the accident is not in dispute, then the respondent No.2 who have insured the vehicle is duty bound to indemnify the owner for the extra premium that they have charged.

6. The aforesaid factual matrix of the case is not in dispute by any of the parties to the appeal.

7. The counsel for the Insurance Company however opposing the appeal submits that, the deceased in the instant case was sitting on the Tractor

which does not have sitting capacity of more than one and therefore the Insurance Company cannot be fastened with the liability of indemnifying the person who was not otherwise permissible to travel on the body of the Tractor.

8. The said contention of the counsel for the Insurance Company is not sustainable for the simple reason that, the policy which has been brought on record and which is not in dispute shows that, apart from covering the risk of the third party, the Insurance Company has also charged extra premium covering the risk of two of the employees of the owner of the Tractor. If the sitting capacity of the Tractor was one, the Insurance Company should not have accepted the premium covering the risk of two of the persons except for the driver alone.

9. The other ground raised by the counsel for the Insurance Company is that, the Tractor at the time of accident was not being used for an agricultural purpose.

10. Perusal of record would show that, the Insurance Company has not led any evidence to substantiate this fact, nor is there any evidence available on record to draw a presumption that, it was being used for other than agricultural purpose.

11. Given the aforesaid facts and circumstances of the case where an extra premium has been received by the Insurance Company, this Court is of the opinion that, the exoneration of the Insurance Company thus would not be sustainable and the same deserves to be modified and the impugned order thus stands modified to the extent that, the liability of payment of

compensation shall jointly and severally be upon the Insurance Company, driver and owner of the Tractor and the responsibility of payment of compensation shall be that upon the Insurance Company.

12. Whatever amount the appellant/owner till date have deposited before the Tribunal shall be refunded back to the owner upon the Insurance Company depositing the entire amount before the Tribunal.

13. The appeal stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit