NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 947 OF 2011

The Oriental Insurance Company Limited, through- Manager, 16 R.S.S. Market, Power House Bhilai, Station Road, Durg (C.G.) (Insurer of Vehicle Tempo No. MP24-C-4712)

… Appellant

versus

1. B. Raghu S/o Apaiyya, aged about 42 years, R/o Azad Mohalla, Camp-1, P.S. Chhawani, Bhilai, District Durg (C.G.) (Claimant)
2. Guhadas Joshi, S/o Bakhriya Joshi, aged about 48 years, R/o Ramnagar, Azad Chowk, Supela, District Durg (C.G.), Driver Nagar Palik Bhilai. (Driver of Vehicle Tempo No. MP24-C-4712)
3. Nagar Palik Nigam, Bhilai, through- Commissioner, Nagar Palik Nigam, Bhilai, Supela. (Owner of Vehicle Tempo No. MP24-C-4712)

… Respondents

For Appellant	:	Mr. Raj Awasthi and Dr. Kumaresh Tiwari, Advocates.
For Respondent No.1	:	Ms. Pushplata Khalkho, Advocate, under instructions of Mr. Raghvendra Pradhan, Advocate.
For Respondent No.2	:	Mr. Tarun Dansena, Advocate, under instructions of Mr. Jitendra Gupta, Advocate.
For Respondent No.3	:	None appears.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08/01/2018

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, filed by the appellant-insurance company assailing the award dated 11.7.2011 passed by the 2nd Additional Motor Accident Claims Tribunal, Durg, in Claim Case No. 58/2011.

2. Vide the impugned award, the learned Tribunal, in an injury case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.70,000/- in favour of respondent no.1-claimant with interest thereon at the rate of 5% per annum from the date of filing of the claim application.

3. Challenge to the impugned award is to the liability which has been fastened upon the appellant-insurance company to pay the compensation awarded.

4. Learned counsel for the appellant-insurance company submits that it is a case where the vehicle involved in the accident was issued with an Act Only policy and the risk covered was only that of the driver of the said vehicle and that no extra premium was paid for covering the risk of any other person travelling in the said vehicle. He further submits that the evidence of NAW-1 and NAW-3 have sufficiently proved the case of the insurance company to show that they are not liable for indemnifying the owner who had operated the vehicle in contravention to the policy conditions.

5. Perusal of record would show that the award is of the year 2011 and that there was no interim order passed and it is presumed that the entire amount in due course of time must have been deposited by the insurance company.

6. In spite of proper service, there is no representation on behalf of the owner of the vehicle.

7. On due perusal of the policy, it clearly reflects that the policy issued was marked as Exhibit D-4 and that it was an Act Only policy covering the risk of the driver alone for whom the premium was paid. Accordingly, this Court is of the opinion that there was no indemnification on the part of the insurance company indemnifying the owner of the vehicle involved in the accident apart from the driver.

8. Accordingly, this Court is of the opinion that since the entire amount has been deposited by the insurance company or at least there was no interim order in their favour, let the entire amount if it has till date not been deposited, be deposited by the insurance company before the Tribunal. However, the insurance company shall be at liberty to recover the same from the owner, applying the principles of 'pay and recovery'.

9. With the aforesaid modification in the impugned order, the appeal stands allowed in part.

Sd/-
(P. Sam Koshy)
Judge

/sharad/