**AFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 416 of 2014**

- The Oriental Insurance Co. Ltd. Through Divisional Manager, Divisional Office, Madina Building, Kacheri Chowk, Distt. Raipur C.G. (Insurer of Indigo Car bearing Registration No. CG/04/HA/4933)

**---- Appellant**

**Versus**

1. Smt. Shikha Tripathi W/o Late Dr. Ajay Kumar Tripathi Aged About 45 Years
2. Chandrashu Tripathi S/o Late Dr. Ajay Kumar Tripathi Aged About 20 Years
3. Himanshu Tripathi S/o Late Dr. Ajay Kumar Tripathi Aged About 18 Years

   All are resident of Shri Ram Hospital, Sheetla Ward, Ambikapur, Distt. Sarguja (CG)
4. Indira Gandhi Agriculture University, Krishi Nagar, Raipur, Through- Kulpati, Indira Gandhi Krishi Vishwa Vidyalaya, Krishi Nagar, Raipur C.G.
5. Kulschiv Registrar Of Indira Gandhi Agriculture University Krishi Nagar, Raipur C.G.
6. Naval Kishore Shrivas, Indira Gandhi Krishi Agriculture University, Krishi Nagar, Raipur, R/o Halmukam- Lohari, Distt. Durg C.G., And Permanent Address- S-6, Krishak Nagar, Labhandi, Distt. Raipur C.G.

**---- Respondents**

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| For Appellant | : | Mrs.Chitra Shrivastava, Adv. |
| For Respondent Nos.1 to 3 | : | Ms. Priyanka Mehta, Advocate. |
| For Respondent Nos.4 & 5 | : | None though served. |
| For Respondent No.6 | : | Mr. Suresh Tandon, Advocate. |

**Hon'ble Shri Gautam Chourdiya, J**

**Judgment On Board**

**19/02/2019**

This appeal is by the insurance company under Section 173 of the Motor Vehicles Act, 1988 against the award 27th January, 2014 passed by Motor Accident Claims Tribunal, Sarguja (Ambikapur) in Claim Case No.36/2010 awarding total compensation of Rs.55,89,400/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant No.4/insurance company jointly and severally along with other nonapplicants.

02. As per claim petition, on 26.10.2009, Dr. Ajay Kumar Tripathi, aged about 49 years, working as Sr. Scientist in Rajmohini Agriculture College and Research Center, Ajirma, Ambikapur, Distt. Sarguja, was returning from Raipur after attending some official function by Indigo Car bearing No. CG 04 HA 4933. However, on way as the said vehicle skidded on the sand, Dr. Ajay Kumar suffered grievous injuries and died on the spot itself. At the time of accident, the offending vehicle was duly insured with non-applicant No.4.

03. On claim petition being filed by the claimants, wife and children of the deceased, under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

04. Learned counsel for the appellant/insurance company submits that the Tribunal has wrongly fastened liability on the insurance company because as per Ex.D/3, the offending vehicle was a private car and the policy was Private Car-Package Policy, under which risk of the deceased being occupant of the said vehicle was not covered. She submits that as the deceased was under the employment of non-applicant No.1 Indira Gandhi Agriculture University, claim, if any, was to be filed under the Workmen's Compensation Act and the insurance company is not liable to indemnify the owner of the offending vehicle for the death of the deceased.

05. Learned counsel for the respondents/claimants opposed the contention made by the appellant. She submits that as per Ex.D/3, the insurance policy is a package policy issued in the name of Registrar, Indira Gandhi Agriculture University and the deceased being occupant in the said vehicle, is covered under the policy. Therefore, there is no need to interfere with the award impugned.

06. Learned counsel for respondent No.6 has duly assisted the Court.

07. No counter appeal has been filed by the respondents as

submitted by learned counsel for the parties.

08. Heard learned counsel for the parties and perused the material available on record including the impugned award.

09. The Tribunal in its award has considered the objection raised by the appellant in this appeal and taking into consideration the facts and circumstances of the case, the policy of Ex.D/3 i.e. package policy which shows that sitting capacity of the vehicle is 4 + 1 and premium under various heads has been taken by the insurance company, which covers the risk of the deceased who was occupant of the said vehicle and further considering that there is no breach of policy conditions on the part of the owner of the vehicle, held the insurance company liable for satisfying the award.

10. In the matter of ***National Insurance Co. Ltd. Vs. Balakrishnan and another, (2013) 1 SCC 731***, while considering the identical issue, the Hon'ble Supreme Court observed held as under:

> “In view of the aforesaid factual position, there is no scintilla of doubt that a “comprehensive/package policy” would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an “Act Policy” stands on a different footing from a “Comprehensive/Package Policy”. As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a “Comprehensive/Package Policy” covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the “Act Policy” which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a “Comprehensive/Package Policy”, the liability would be covered. These aspects were not noticed in the case of Bhagyalakshmi (supra) and, therefore, the matter was referred to a larger Bench. We are disposed to think that

> there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same."

11. Keeping in view the aforesaid decision, the nature of the insurance policy and the overall evidence on record, this Court finds no illegality or perversity in the findings recorded by the Tribunal fastening liability on the insurance company.

12. In the result, the appeal filed by the insurance company being without any substance is liable to be dismissed and is, accordingly, dismissed.

Sd/

**(Gautam Chourdiya)**

**Judge**

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