

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A. (C) No. 598 of 2015**

- The Oriental Insurance Company Ltd. Through its Divisional Manager, Divisional Office- Raigarh, District- Raigarh, (C.G.).

----Appellant**Versus**

1. Sukheshwar Ram S/o Gula Ram Aged about 20 years. Cast Korva Resident of Village- Devdand, Police Station and Tahsil- Bagicha, District- Jashpur, (C.G.).
2. Kunwar Ram Korva, S/o Jhanmlal resident of- Village Devdand District- Jashpur, (C.G.).
3. Motilal Yadav, S/o Munilal Yadav Resident of- Village Gaybuda, Tahsil- Bagicha, District- Jashpur (C.G.).

---- Respondents

For Appellant	:	Ms. Chitra Shrivastava, Advocate.
For Respondents	:	Mr. Sushil Dubey, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Order On Board****07/03/2019**

(1) This is insurer's appeal against the award dated 28.2.2015, passed by the Motor Accident Claims Tribunal, Jashpur C.G. in Claim Case No. 50/2013 awarding total compensation of Rs. 6,28,460/- along with interest @ 9 per annum from the date of filing of claim petition till its actual payment, fastening liability upon the Non-applicants jointly and severally.

(2) As per averments in the claim petition on 25.02.2007 claimant was coming from Devdand to Bagicha sitting on Tractor bearing registration No. CG-14/A-2478 attached with trolley bearing registration No. CG-14/A-2479 and when said tractor-trolley reached near Ahinmanda temple at Village, Lota, due to rash & negligent driving of respondent No. 2- Kunwar Ram, the tractor- trolley turned turtle, as a

result thereof, claimant suffered grievous injuries and his left leg was amputated below the knee.

(3) On claim petition being filed by the claimant/injured the Tribunal, considering the evidence led by the parties, passed an award as mentioned above.

(4) Learned counsel appearing for the appellant would submit that admittedly at the time of accident, the appellant/claimant was sitting in the tractor-trolley as a gratuitous passenger; sitting capacity of Tractor is only one; appellant/insurance company is not statutory liable to cover the risk of gratuitous passenger sitting in the trolley nor had assumed such risk by entering into special contract with the owner of the vehicle and by charging extra premium therefor, and therefore, the Tribunal has fallen in error in saddling the liability upon the appellant/insurance company.

(5) Learned counsel for the respondents submits that learned Tribunal in paragraph 3 of its award has recorded a finding that the claimant was going for loading & unloading manure (*Khad*) in the offending vehicle and the offending vehicle was insured with the Kisan Package policy and claimant was going for loading & unloading the manure and this fact is mentioned in the award paragraph 36, and this fact is also proved by adducing evidence by the claimant and the appellant/Insurance company has failed to produce any evidence regarding breach of policy conditions.

(6) Heard learned counsel for the appellant and perused the impugned award as also the documents annexed with this appeal.

(7) It is not disputed by both the parties that the offending vehicle was used for agricultural work; vehicle was insured with Kisan Package Policy and at the time of accident, the said vehicle was used only for the purpose of loading and unloading the manure (*Khad*) and claimant was working in the said tractor-trolley for the purpose of loading and unloading the manure, the claimant, himself in para 2 of

his statement, has clearly stated about the accident and sufferance of the injuries due to the accident and that statement was not controverted by the non-applicants; Insurance policy issued in this case was the Kisan Package Policy and vehicle was used for agricultural work and claimant was sitting in the trolley for loading & unloading the manure and the Tribunal has failed to prove any specific breach of policy conditions and evidence adduced in that regard.

(8) In view of the aforesaid discussion, the appeal, being devoid of merit, is liable to be and is hereby dismissed at the motion stage itself.

Sd/-
Gautam Chourdiya
Judge

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