

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A.(C) No. 507 of 2015**

United India Insurance Company Limited Branch Office Bramha Road,
P.S. And Tah.- Ambikapur, Distt.- Surguja C.G., Through Its Divisional
Manager, Divisional Office-2nd Floor Gurukripa Towers, Vyapar Vihar
Road, Bilaspur, Distt.- Bilaspur, Chhattisgarh.

---- Appellant**Versus**

1. Lattu Ram S/o Late Surjan R/o Village-Idaripat, Tah.- Samari, Panchayat Charhatkala, Distt.- Balrampur, Civil District- Surguja, Chhattisgarh.
2. Tubias Uraon S/o Jwakim Uraon R/o Karamdih, Tah. Samari Kusmi, Distt.- Balrampur Chhattisgarh (owner of vehicle)
3. Premsai S/o Gedva Aged About 27 Years R/o Village Idaripat, P.S. - Samari, Tah-Samari, District- Balrampur, Chhattisgarh, Driver.

---- Respondents

For Appellant:	Shri Dashrath Gupta, Advocate.
For Respondents:	None.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J
Order On Board

28.10.2020

1. Heard on admission.
2. This Miscellaneous Appeal has been preferred by the Insurance Company under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988') challenging the award dated 30.01.2015 passed by the Fourth Additional Motor Accidents Claims Tribunal, Ambikapur, Distt. Surajpur (CG) (for short 'the Tribunal') in Claims Case No.128/2013, by which the the Claim Petition has been allowed in part.
3. The undisputed facts of the case are that on 23.03.2012, the claimant Lattu Ram was returning from Bitarpur Dumardeeh by the offending vehicle, i.e., Jeep-Marshall bearing registration No.BR-13 P 0384. At the relevant time,

the said vehicle was being driven rashly and negligently by its driver namely Prem Sai, Respondent No.3, which was owned by Respondent No.2-Tubias Uraon and was insured with the Appellant/Insurance Company. Owing to the rash and negligent driving by the said driver, the alleged accident occurred, as a result of which, the claimant Lattu Ram has sustained injuries.

4. Based upon the aforesaid incident, Respondent No.1/Claimant-Lattu Ram instituted a claim Petition under Section 166 of the Act of 1988 by submitting inter-alia that he was a mason (Rajmistri) by profession and used to earn Rs.250/- per day and thus total amount of Rs.7,00,000/- has been claimed under various heads.

5. Respondents No. 2 & 3, owner and driver of the alleged offending vehicle have contested the aforesaid claim on the ground that the claimant was not travelling in their vehicle and denied further that the alleged accident occurred by it and pleaded further and that merely on the basis of suspicion, the alleged report has been lodged.

6. Appellant/Insurance Company has contested the claim on the ground that the vehicle in question was being used by carrying more than its sitting capacity and was being used in utter violation of the insurance policy, therefore, no liability could be fastened upon it.

7. After considering the evidence led by the parties, it was held by the Tribunal that the alleged accident occurred on 23.3.2012 near the village Kotgahna (Rajpur) due to rash and negligent driving of its driver Prem Sai. It held further that the vehicle in question was not being used in violation of its policy and, in consequence, while fastening the liability upon the Insurance Company, awarded a total sum of Rs.25,000/- with 9% interest per annum from the date of the Claim Petition till its realization.

8. Shri Gupta, learned Counsel appearing for the Appellant/Insurance Company has submitted that the policy was an Act Only policy as the vehicle in question was insured as a 'Private Car-Liability Only Policy' therefore, the Tribunal has erred in fastening the liability upon the Insurance Company by way of the award impugned.

9. I have heard learned Counsel for the Appellant and perused the entire record carefully.

10. From perusal of the record, it appears that the vehicle in question was insured as a private use only, but in order to get rid of its liability, it was required to be established by the Insurer that the Claimant and others were traveling by paying fair of it. However, no such receipt as such, or any material has been placed on record so as to hold that it was being used in violation of the policy as contended by Shir Gupta herein.

11. Accordingly, the Appeal being devoid of merit, is hereby dismissed. There shall be no order as to costs.

Sd/-
(Sanjay S. Agrawal)
JUDGE