

(2019) 02 CHH CK 0287
In the Chhattisgarh High Court
Case No : MAC No. 416 Of 2014

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Shikha Tripathi And Ors

RESPONDENT

Date of Decision : 19-02-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2019) 02 CHH CK 0287

Hon'ble Judges : Gautam Chourdiya, J

Bench : Single Bench

Advocate : Chitra Shrivastava, Priyanka Mehta, Suresh Tandon

Final Decision : Dismissed

Judgement

Gautam Chourdiya, J

1. 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 non- applicants.

2. 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.

3. 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.

4. 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.

5. 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.

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

7. No counter appeal has been filed by the respondents as submitted by learned counsel for the parties.

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

9. 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 73,1 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.