(2009) 06 CHH CK 0021

In the Chhattisgarh High Court

Case No : M.A. No''s. 258, 259 and 261 of 2001

United India Insurance Co. Ltd. APPELLANT

Vs

Rajkumari and Others RESPONDENT

Date of Decision : 29-06-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2011) ACJ 426

Hon'ble Judges : T.P. Sharma, J

Bench : Division Bench

Advocate : H.B. Agrawal and J.K. Gupta, for the Appellant; Sunil Sahu, for the Respondent

Final Decision : Dismissed

Judgement

T.P. Sharma, J.—Since M.A. Nos. 258, 259 and 261 of 2001 are arising out of the award dated 28.2.2001 passed by the Additional Motor Accidents Claims Tribunal, Janjgir, in Claim Case Nos. 28, 23 and 33 of 1998, therefore, they are being disposed of by this common order.

2. Brief facts of the case are that Respondent Krishna Bai Rathod is the owner and Respondent Raju alias Rajesh Kumar Rathod was the driver of the jeep bearing registration No. MP 26-E 6690 which was insured with the Appellant. On the date of alleged accident, i.e., 23.11.1997, Jyoti and Kamlesh Kumar Dewangan who died on account of accident and Rajkumar, Rajkumari Yadram and Gopal Prasad received injuries, were sitting in the said jeep. By rash and negligent driving of driver Raju, the accident took place. Jyoti and Kamlesh Kumar Dewangan died on account of accident in the said jeep and Rajkumari sustained grievous injury.

3. Claims for compensation u/s 166 of the Motor Vehicles Act, were filed by different claimants including the present claimants and after affording an opportunity of hearing to the parties, learned Claims Tribunal has awarded claim

of Rs. 1,55,600 in Claim Case No. 23 of 1998 (M.A. No. 259 of 2001), Rs. 1,46,000 in Claim Case No. 33 of 1998 (M.A. No. 261 of 2001) and Rs. 14,700 in Claim Case No. 28 of 1998 (M.A. No. 258 of 2001).

4. All three awards are challenged by the insurance company that it is not liable for payment of compensation. Vehicle was driven in violation of condition of insurance policy and carrying the passengers for whom no premium was paid, therefore, the insurance company is not liable for payment of compensation.

5. The only short question which arises for decision in these appeals is whether the driver and the owner of the vehicle have violated the condition of the insurance policy?

6. I have heard learned Counsel for the parties, perused the award impugned and records of the Claims Tribunal.

7. Learned Counsel for the Appellant argued that the vehicle was registered as private jeep and the same was insured as private vehicle, not authorised for carrying passengers. No extra premium was paid for carrying the passengers. Injured and the persons died in the accident may be gratuitous passengers and premium has not been paid by the owner for such passengers, therefore, the Appellant is not under obligation to pay any compensation on account of death or injury sustained in the accident.

8. On the other hand, learned Counsel for the Respondents argued that insurance document/policy clearly shows that premium was paid to the insurance company for 9 passengers at the rate of Rs. 50 per person though vehicle was private and used for private purpose like social, domestic and pleasure purpose and for carrying on his own business. The persons injured and deceased were travelling in such vehicle for picnic trip, i.e., for social and pleasure purpose and their risk was covered by the insurance contract and the owner has paid premium for these passengers.

9. It reveals from the perusal of document/insurance policy that vehicle was private vehicle and was permitted for the use of social, domestic and pleasure purpose and for carrying on his own business for 9 passengers. Premium of Rs. 50 per person for 9 passengers was paid by the owner and received by the insurance company where the Appellant has not specified that whether such passengers include friends and other persons travelling for picnic, i.e., social and pleasure or not and in the absence of such explanation it can be safely inferred that friends and other persons travelling in such private vehicle for domestic, social or pleasure are included in the category of passengers for which premium has been paid.

10. Awards have been passed in summary proceeding. After appreciating the evidence available on record and considering the insurance policy, learned Claims Tribunal has awarded compensation and fastened the liability upon the Appellant. Learned Claims Tribunal has not committed any illegality in fixing the liability

upon the Appellant. I do not find any substance in these appeals.

11. Consequently, the appeals fail and are dismissed. However, the Appellant shall be at liberty to agitate his claim before appropriate forum against the award. No order as to costs.

A copy of this order be placed on record in M.A. Nos. 259 and 261 of 2001.

