NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 59 of 2013

National Insurance Company Limited, Through the Branch Manager, Branch Office, Bhutani Complex, G.E. Road, Power House Bhilai, P.S. Bhilai, Tah. & Distt. Durg, C.G.

---- Appellant

Versus

1. Smt. Tikshwari Patil, W/o. Late Manthir Patil, Aged About 32 Years, R/o. Village- Bhainsbod, Post- Pauha, P.S. Ranchirai, Tah. Patan, Distt. Durg (C.G.)

2. Dhananjay Patil, S/o. Late Manthir Patil, Aged About 13 Years, Minor through Legal Guardian Mother Smt. Tikeshwari Patil, R/o Village- Bhainsbod, Post- Pauha, P.S. Ranchirai, Tah. Patan, Distt. Durg (C.G.)

3. Ku. Preeti Patil, D/o. Late Manthir Patil, Aged About 10 Years, Minor through Legal Guardian Mother Smt. Tikeshwari Patil, R/o. Village- Bhainsbod, Post- Pauha, P.S. Ranchirai, Tah. Patan, Distt. Durg (C.G.)

4. Jay Patil, S/o. Late Manthir Patil, Aged About 7 Years, Minor through Legal Guardian Mother Smt. Tikeshwari Patil, R/o Village- Bhainsbod, Post- Pauha, P.S. Ranchirai, Tah. Patan, Distt. Durg (C.G.)

5. Smt. Fulkenvari Patil, W/o. Late Khorbahra Ram, Aged About 65 Years, R/o. Village- Bhainsbod, Post- Pauha, P.S. Ranchirai, Tah. Patan, Distt. Durg (C.G.)

6. Purshottam Lal Patil, S/o. Khorbahra Patil, Post- Pauha, P.S. Ranchirai, Tah. Patan, Distt. Durg (C.G.)

---- Respondents

For Appellant	:	Mr. Goutam Khetrapal with Mr. Avinash Chand Sahu, Advocates
For Respondents	:	Mr. C.K.Sahu, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

01/10/2015

1. The appeal is against the award dated 06.11.2012 passed in Claim Case No.190/2011 by the learned Second Additional Motor Accident Claims Tribunal, Durg.

2. Briefly stated facts of the case are that the claim petition was filed by the widow, three children and mother of the deceased Manthir Patil. It was pleaded that on 20.03.2011, the deceased Manthir Patil was traveling on a Scooty bearing No.C.G.07 LY 1833, at that time, on road in a place between Gundardehi and Dhamtari near a village Kosagondi, he was hit by an unknown vehicle and he was admitted to the Hospital, however, he ultimately died on 27.04.2011. The case was registered, however, the offending vehicle could not be found. It was stated that at the time of accident, the vehicle was owned by the original non-applicant No.2 Purushottam Lal Patil and the vehicle was insured under the package policy. It was further stated that the income of the deceased was Rs.3000/- per month and he was aged about 35 years. Consequently, an amount of Rs.7,02,000/- was claimed.

3. The Non-applicant No.1, Insurance Company, contended that at the time of accident, the driver of the vehicle was not holding a valid licence and the accident had happened due to rash and negligent act of the driver himself. Consequently, the insurance company is not liable to make good the payment of compensation.

4. The Non-applicant No.2, owner of the vehicle, stated that the vehicle was insured with the National Insurance Company Ltd. and it was covered under the package policy. Therefore, on death of the owner/driver or third party, the same is covered by the insurance policy.

5. The learned Claims Tribunal after evaluating the facts and evidence has passed an award of Rs.1,00,000/- in favour of the claimants.

6. The appeal is by the insurance company challenging the award. Since there is no appeal by the claimants for enhancement and it is also not stated before the Court, therefore, the appeal is adjudicated on the issue raised by the Insurance Company.

7. Mr. Goutam Khetrapal, learned counsel for the appellant, would submit that under the package policy, the amount of compensation could not have been awarded to the claimants. He further submits that, it was not the owner who died in the accident but the deceased was brother of the registered owner of the vehicle, therefore, the insurance company even under the package policy could not be held liable.

8. Per contra, learned counsel appearing for the respondents supports the award and submits that the award is well merited, which do not call for any interference.

9. I have heard the learned counsel appearing for the parties, perused the pleadings, documents & evidence on record.

10. Perusal of the award would show that the petition was filed under Section 163-A of the Motor Vehicles Act. The wife of the deceased Tikeshwari Patil on a suggestion given had admitted the fact that the vehicle belonged to Purushottam who was younger brother of the deceased Manthir Patil which was borrowed by her husband. Purushottam Patil, the owner of the vehicle, stated that he obtained the package policy and also paid the premium for owner -cum- driver of the vehicle, therefore, the insurance company is liable to make good the payment. In the cross examination of this witness, the witness has further was suggested that for his own work, the vehicle was handed over to his brother, the deceased, and in order to discharge his own job the vehicle was being used when the accident happened.

11. The evidence on behalf of the insurance company, DW-1 had stated that the vehicle which met with the accident was insured for a period from 24.01.2011 to 23.01.2012, which was under the package policy wherein Rs.300/- premium was paid for the third party and Rs.50/- was paid for the personal accident to owner -cum- driver. It was further stated that

under the policy, which is marked as Ex.D-2, if the owner/driver dies then in such eventuality the insurance company was liable to make good the payment.

12. The evidence would show that the owner of the vehicle Purushottam Patil, PW-2, had stated that the vehicle was borrowed for the work of the owner itself by his brother who met with the accident. Therefore, certainly he would be stepped into the shoes of the owner of the vehicle as the fact and evidence is unrebutted that the vehicle was borrowed for the job of the owner itself. Consequently, the deceased stepped into the shoes of the owner. Since the premium was paid for the driver -cum- owner, therefore, as per the statement of the insurance company, the insurance company was liable to make good the fixed amount of Rs.1,00,000/- as per the policy Ex.D-2, no other compensation shall be payable to the legal heirs of the deceased.

13. In the result, the finding arrived at by the learned Claims Tribunal whereby an award of Rs.1,00,000/- has been awarded cannot be faulted with. Consequently, the appeal has no merit and is dismissed accordingly.

Sd/-
(Goutam Bhaduri)
Judge

Ashok