NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MISC. APPEAL (C) NO. 189 OF 2010

1. Smt. Rinku Dewanjee, Wd/o Late Sanjeev Kumar Dewanjee, aged about 27 years.
2. Ku. Khushgauri, D/o Late Sanjeev Kumar Dewanjee, aged about 01 years.

Appellant No.2 being minor represented by her natural guardian & mother Appellant No.1 Smt. Rinku Dewanjee Wd/o Late Sanjeev Kumar Dewanjee.

Both R/o Coal Mines Colony, Chandarpur, Maharashtra.

… Appellants

Versus

1. Shriniwas Sharma, S/o V. Jogarao Sharma, aged about 26 years, R/o Flat No. 201, Kalandi Apartment, Maruti Vihar, Mohababazar, Thana Amanaka, Raipur (C.G.)
2. ICICI Lombard Motor Insurance, through Branch Manager, Branch Office, 3rd Floor, Lalganga Shopping Mall, G.E. Road, Raipur (C.G.)
3. Smt. Geetarani Dewanjee, W/o Asit Ranjan Dewanjee, occupation Housewife, aged about 50 years.
4. Asit Ranjan Dewanjee, S/o Late Mahendraranjan Dewanjee, aged about 60 years.
5. Ku. Reeta Dewanjee, D/o Asit Ranjan Dewanjee, aged about 27 years.

All Respondents No. 3 to 5 are R/o Pandaritarai, New Ganj Mandi Road, Raipur, thana Mowa, District Raipur (C.G.) [wrongly written as District Durg (C.G.)]

… Respondents

MISC. APPEAL (C) NO. 559 OF 2010

1. Smt. Geeta Rani Devanji, aged about 49 years, W/o Asit Ranjan Devanji, occupation Housewife.
2. Asit Ranjan Devanji, aged 58 years, S/o Late Mahendra Ranjan Devanji.
3. Ku. Reeta Devanji, aged 27 years, D/o Asit Ranjan Devanji.

All R/o Pandaritarai, New Ganj Mandi Road, Raipur, P.S. Mova, Raipur, District Raipur (C.G.)

… Appellants

Versus

1. Shrinivas Sharma, aged 25 years, S/o V. Joga Rao Sharma, R/o Flat No. 201, Kalandi Apartment, Maruti Vihar, Mohavabazar, P.S. Amanaka, Raipur (C.G.)
2. I.C.I.C.I. Lombard Motor Insurance Company, through Branch Manager, Branch Office, 3rd Mala, Lal Ganga Shopping Mall, G.E. Road, Raipur (C.G.)
3. Smt. Rinku Devanji, aged 26 years, Wd/o Late Sanjeev Kumar Devanji.

4. Ku. Khushgauri, aged 10 months, D/o Late Sanjeev Kumar Devanji, minor through her natural guardian mother (Respondent No.3) Smt. Rinku Devanji, both R/o Coal Mines Colony, Chandarpur, Maharashtra.

… Respondents

Mr. K.K. Dewangan, Advocate, for Appellants, in M.A.(C) No. 189 of 2010.

Mr. A.L. Singroul, Advocate, for the Appellants, in M.A.(C) No. 559 of 2010.

Mr. Sourabh Sharma, Advocate, for Respondent No.2 - I.C.I.C.I. Lombard Motor Insurance Co. Ltd., in both the M.A(C) Nos. 189 and 559 of 2010.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19/08/2016

1. As both these appeals, filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), arise out of the same award dated 10.11.2009 passed by the Xth Additional Motor Accidents Claims Tribunal, Raipur (for short, 'the Claims Tribunal') in Claim Case No.133 of 2009, the appeals are being decided by this common order.

2. M.A.(C) No.189 of 2010 has been filed by the widow and minor daughter, namely, Smt. Rinku Dewanjee and Ku. Khushgauri, respectively, of the deceased, Sanjeev Dewanjee, who were Non-applicants No. 3 and 4 before the Claims Tribunal. Similarly, M.A.(C) No.559 of 2010 has been filed by the mother, father and sister, namely, Smt. Geeta Rani Dewanjee, Asit Ranjan Dewanjee and Ku. Rita Dewanjee, respectively, of the deceased, Sanjeev Dewanjee, who were the Claimants before the Claims Tribunal.

3. For the sake of convenience, the parties shall be referred to in terms of their status before the Claims Tribunal.

4. Brief facts of the case as per the claim application are that on 15.8.2007 when Sanjeev Dewanjee along with his friends was returning to Raipur from Bhilai in a Santro Car bearing Registration No. CG04-H/4409, at about 1:30 in the night near Charoda Sai Mandir the Non-applicant No.1 while driving the said Car in a rash and negligent manner dashed it against a Truck standing alongside the road. On account of the said accident, Sanjeev Dewanjee and others received grievous injuries for which they were admitted to Sector 9 Hospital at Bhilai for treatment. However, during treatment Sanjeev Dewanjee died on 17.8.2007.

5. This gave rise to the filing of the claim application under Section 166 of the Act by the Claimants before the Claims Tribunal for a total compensation of Rs.30,75,000/- for the death of Sanjeev Dewanjee in the said vehicular accident.

6. The Claims Tribunal on a close scrutiny of evidence led, material placed and submissions made by the parties before it, vide impugned award has granted a total compensation of Rs.4,25,500/- with simple interest thereon at the rate of 6% per annum from the date of registration of the claim application till its realisation, in favour of the Claimants and Non-applicants No.3 and 4 on account of death of Sanjeev Dewanjee in the said vehicular accident, fastening the liability for payment of Rs.80,000/- of compensation amount upon Non-applicant No.2 - ICICI Lombard Motor Insurance Company and the payment of remaining amount of compensation upon Non-applicant No.1, Shriniwas Sharma, who was the owner and driver of the said vehicle at the relevant point of time, leading to the filing of the present appeals.

7. Learned Counsels appearing for the Appellants in both the appeals made a categorical statement before this Court that they confine the appeals to the extent of challenging the award of the Claims Tribunal restricting the liability of the Insurance Company bringing it under the ambit of limited liability to the extent of Rs.80,000/-. Whereas, according to the Appellants, the nature of the policy makes the liability of the Insurance

Company an unlimited liability and the award of the Claims Tribunal needs to be modified to that extent.

8. Learned Counsel for the Insurance Company opposing the appeals submitted that it is a case where the policy covering the vehicle involved in the accident is a limited liability policy and that the liability limited upon the Insurance Company in the event of a claim is to the maximum extent of Rs.80,000/- and which has rightly been accepted by the Claims Tribunal and therefore the award does not warrant any interference and the appeals being devoid of merit are liable to be dismissed.

9. So far as the issue involved in the case, the accident, the death of the deceased, particulars of the deceased etc., are not in dispute and the appeals as per the submissions of the Appellants are being decided only on the issue of the liability of the Insurance Company whether it would be limited with restriction to Rs.80,000/- or it would be an unlimited liability indemnifying the entire amount of compensation awarded by the Claims Tribunal.

10. Admittedly, in the instant case, the policy which was issued in respect of the vehicle involved in the accident was a package policy and so far as the liability of the Insurance Company in a package policy is concerned, it is relevant at this juncture to state that the said issue already stands adjudicated upon in a bunch of appeals decided by the Division Bench of this High Court vide its judgment dated 3.2.2010 in Misc. Appeal (C) No. 537 of 2008 and other analogous appeals. The Division Bench vide order dated 3.2.2010 referring to the package policy took note of a circular of the Oriental Insurance Company issued on 25.11.2009 which referred to as under:

“THE ORIENTAL INSURANCE COMPANY LTD., HEAD OFFICE NEW DELHI

DEPTT.: MOTOR Dated 25th November, 2009

CIRCULAR NO. HO/MOT(U/W)/282/2008-09/CR-6473
CIRCULAR TO ALL BOs/DOs/ROs, I.A.D, VIGILANCE DEPTT., IT DEPTT., OSTC, ALL DEPTTS. OF H.O. & C.M.D'S SECTT./SERVICE CENTRE AT HANSALAYA & HYDERABAD

LIABILITY OF INSURANCE COMPANIES IN RESPECT OF OCCUPANT OF A PRIVATE CAR AND PILLION RIDER IN A TWO WHEELER UNDER STANDARD MOTOR PACKAGE POLICY (ALSO CALLED COMPREHENSIVE POLICY)

We have received Circular No.IRDA/NL/CIR/F&U/073/11/2009 dt. 16.11.09 from IRDA whereby it is confirmed that insured's liability in respect of occupant carried in a Private Car and Pillion Rider carried on 2-wheeler is covered under the Standard Motor Package Policy. IRDA has further confirmed that vide various Circulars issued after detarrif of Motor, there has been no change in the scope of the standard covers. A copy of the Circular is enclosed for record & ready reference.

The terms of the cover as per the Motor Package Policy for Private Cars and 2-wheeler as given in Policy wording Section 2.1(i) are very clear and are reconfirmed by the IRDA's Circular.

It is, therefore, advised to immediately review all cases where appeal has been filed on the grounds that Insurer is not liable for occupants of Private Cars and Pillion Rider in a 2-wheeler under the Motor Package Policy. If the appeal is based solely on these grounds then it must be immediately withdrawn. If there are other grounds for filing appeal then the case must be examined on merits and decision regarding continuation of appeal be taken by the Regional Manager concerned.

Lastly, it must be ensured that our offices desist from filing appeals on the grounds of Pillion Rider on occupants of Private Car not being covered under Motor Package Policies.

Kindly acknowledge receipt and confirm action taken regarding appeal cases to Head Office Motor Department.

Sd/-
N.K. SINGH
GENERAL MANAGER

Encl : As above.”

11. Based on the said circular, the Division Bench had already held that in the light of the circular quoted above it cannot be said that in a case where the vehicle is covered under a package policy the liability of the Insurance Company would be restricted to Rs.80,000/- as has been held by the Claims Tribunal in the instant case. Rather, if the vehicle is covered under a package policy, the Insurance Company would be liable to indemnify the owner with the entire liability.

12. In view of the said judgment of the Division Bench, this Court is of the opinion that the present appeals deserve to be allowed to that extent and the finding of the Claims Tribunal in restricting the liability of the Insurance Company to Rs.80,000/- stands set aside and it is ordered that the entire liability of payment of compensation shall have to be borne by Respondent No.2-Insurance Company.

13. Thus, maintaining the impugned award of the Claims Tribunal so far as the quantum is concerned, the same stands modified to the extent that the onus of payment of entire compensation as awarded by the Claims Tribunal shall fall upon Respondent No.2-Insurance Company.

14. The appeals are allowed accordingly.

Sd/-

(P. Sam Koshy)
Judge

/sharad/