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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No. 730 of 2010

The Oriental Insurance Company Ltd. Through its Divisional Manager, Division Office, Korba, D. Commercial City Branch Office, First Floor, TP Nagar, Korba, Chhattisgarh.

----Appellant

Versus

1. Shri Ghuru Lal, aged 57 years, S/o Jotram Patel.
2. Shri Manbodh Prasad, aged 37 years, S/o Ghuru Lal.
3. Shri Pyare Lal, aged 35 years, S/o Ghuru Lal.
4. Shri Peela Dau, aged 28 years, S/o Ghuru Lal.
5. Shri Manoj Kumar, aged 26 years, S/o Ghuru Lal.

   Respondents No. 1 to 5 are R/o Temar, Tahsil Sakti, District Janjgir-Champa.

6. Shri Rambharos Yadav, aged 37 years, S/o Late Shiv Narayan Caste Yadav, R/o Kapan, Tahsil Janjgir District Janjgir-Champa.

----Respondents.

For Appellant	:	None
For Respondent No. 1 to 5	:	Shri D. Kushwaha, Advocate.
For Respondent No. 6	:	Shri Deepak Kumar Singh Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice

Order on Board

09/12/2016

1. By this judgment, the appeal filed by the Insurance Company as well as the cross-appeal filed by the claimants are being disposed of.

2. This appeal by the Insurance Company is directed against the award dated 31.03.2010 28.03.2007 passed by the Additional Motor Accident Claims Tribunal, Sakti, (hereinafter called the Tribunal') in Claim Case No. 18 of 2009 whereby the learned Tribunal awarded compensation of Rs. 2,19,000/- alongwith interest at the rate of 6% per annum to the Respondents No. 1 to 5. The Respondents No. 1 to 5 have filed cross-appeal for enhancement of the compensation amount.

3. The admitted facts are that the deceased Bhudhwara Bai was travelling from Sakti to her home on a bi-cycle of Uttara Kumar. This cycle was hit by Swaraj Mazda 407 bearing registration No. CG 11 AB 0543 at about 7:30 pm, which was owned and driven by Respondent No. 6. Due to the injuries received, Budhwara Bai, died on the spot. The claimants i.e. the husband and major sons filed a claim petition before the Additional Motor Accident Claims Tribunal, Sakti (hereinafter called 'the Tribunal). The learned Tribunal awarded a sum of Rs. 2,19,000/- as compensation.

4. The main challenge by the Insurance Company is that the cheque submitted by the owner of the offending vehicle bounced and therefore, there was no valid consideration for the insurance and as such, the insurance policy is not effective. As far as this point is concerned, law is well settled that if the cheque bounces, the Insurance Company must give notice to the owner of the vehicle that his cheque has bounced and only if such notice is given, the policy can come to an end. No such notice has been given in the instant case and as such, the policy will not come to an end. Even there is no allegation that any notice was given to the Respondent No. 6.

5. For the sake of argument, even assuming that the cheque had bounced, this by itself will not be sufficient to hold that the policy was ineffective. In this behalf, reference may be made to the judgments of the Apex Court rendered in *Daddappa v. Branch Manager, National Insurance Co. Ltd.* {2008 ACJ 581} and *National Insurance Company v. Rulla* {(2000) 3 SCC 195}. In *United India Insurance Co. Ltd. v. Laxmamma* {(2012) 5 SCC 234}, the Apex Court summarised the legal position as follows:

> "19. In our view, the legal position is this: where the policy of insurance is issued by an authorised insurer on receipt of cheque towards payment of premium and such cheque is returned dishonoured, the liability of authorised insurer to indemnify third parties in respect

> of the liability which that policy covered subsists and it has to satisfy award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the MV Act unless the policy of insurance is cancelled by the authorised insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorised insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonored and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof."

6. In the aforesaid view of the matter, there is no merit in the appeal filed by the Insurance Company. It is accordingly dismissed.

7. Coming to the cross-objection, the deceased was aged about 55-60 years. The claimants are her husband and major sons. She was almost 60 years old. However, even a 55-60 years old women in India contributes to her family. She cooks food, looks after her husband, children and grand-children and does many other things which a servant would never do. Therefore, I assess the contribution of the deceased to the family at Rs. 2000/- per month or Rs. 24,000/- per annum. The deceased was aged between 55-60 years. Therefore, the multiplier of 9 is to be used. Since it is a contribution to the family, no deduction is to be made. Thus, the total compensation works out to be Rs. 2,16,000 (Rs. 2000X12X9). In addition thereto, the husband is entitled to Rs. 50,000/- towards loss of consortium and Rs. 14,000/- is awarded towards funeral expenses. Thus, the total compensation works out to Rs. 2,80,000/-. However, I am not inclined to believe that the major sons who are aged about 26 to 37 years were dependent on their mother. The only person who was really dependent was her husband i.e. the Appellant No. 1.

8. The total compensation, therefore, is assessed at Rs. 2,80,000/- (2,16,000+50,000+14,000). The award is accordingly enhanced from Rs.2,19,000/- to Rs. 2,80,000/- i.e. by Rs. 61,000/-. The claimant shall also be entitled to interest on the awarded amount @ 9% per annum from the date of filing of the claim petition till deposit of the amount. The owner/driver and Insurance Company are jointly and severally held liable to pay the compensation. Needless to say that the Insurance Company shall be entitled to adjust the amount(s), if any, which it has already paid or deposited.

9. The total amount of compensation i.e. Rs. 2,80,000/- shall be payable only to Appellant No. 1 i.e. the husband and not to other Appellants i.e. the sons.

10. The appeal and the cross-appeal are disposed of in the aforesaid terms.

11. Send down the lower Court records forthwith.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Amit