

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR
MAC No. 895 of 2008

The New India Assurance Company Limited through its Divisional Manager,
 Divisional Office, GE Road, Power House Bhilai, Tah. & Distt. Durg (CG).

---- Appellant

Versus

1. Smt.Urmila Bai Wd/o Late Purshottam Yogi, aged about 37 years.
2. Ku.Takeshwari D/o Late Pursottam Yogi, aged about 19 years,
3. Kumari Pooja D/o Late Pursottam Yogi, aged 15 years,
4. Kumari Maya D/o Late Pursottam Yogi, aged about 12 years.
5. Bhupeh Kumar S/o Late Pursottam Yogi, aged about 9 years.
6. Sagar Yogi S/o Late Pursottam Yogi, aged about 6 years.
7. Smt. Vimla Bai Wd/o late Hemnath Yogi, aged about 65 years.
 Respondents 3 to 6 are minor, through their Mother Smt. Urmila Bai
 All are R/o Ward No.5, Pandeypara, Balod, Tah. & PS Balod, Distt. Durg (CG).
8. Vinay Kumar @ Dinesh Vajpai S/o Late Ramshankar Vajpai, aged about 41 years, R/o Behind New Balod, Durg (CG).
9. Brijesh Kumar Vajpai S/o Nainy @ Vinay @ Dinesh Bajpai, aged about 21 years, R/o Khamtarai, Ripur At Present Near Bus Stand Aamapara, Balod, Durg
10. Rajesh Mishra S/o Ramlakhan Mishra, R/o Bhanpuri, Raipur Tah. And Distt. Raipur (CG).

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate.
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SB: Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

09.10.2017.

1. The present is an appeal under Section 173 of the Motor Vehicles Act (for short, the MV Act) filed by the insurance company against the award dated 31.01.2008 passed by the Additional Motor Accident Claims Tribunal (FTC) Balod, Distt. Durg (as it then was) (for short, the Tribunal) in Claim Case No.01 of 2007. Vide the said impugned award, the Tribunal in a claim application filed under Section 166 of the MV Act has awarded compensation of Rs.1,32,824/- along with interest @ 9 percent per annum from the date of application.

2. The insurance company in the instant case, at the instance of this court, has deposited the entire awarded amount way back about 10 years, however, there is an interim protection in favour of the appellant so far as disbursement of the amount to the claimants are concerned.
3. The challenge in the appeal is the liability which has been fastened upon the insurance company. The contention of the insurance company is that the deceased in the instant case Purshottam Yogi, aged about 45 years, while travelling as a pillion rider in the Scooter bearing registration No.CG-04-ZE-5827 met with an accidental death on 10.03.2006. According to appellant, the policy issued was liability only i.e. act only policy i.e. covering the risk of only owner to the tune of Rs.1,00,000/- and not any other persons. He submits that the deceased in the instant case would not fall within the definition of a third party and therefore, the liability which has been fastened upon the insurance company was bad in law and it should have been upon the owner and driver of the said Scooter. He relied upon the decision of Supreme Court in cases of Oriental Insurance Co. Ltd. Vs. Sudhakaran K.V. & Ors. 2008(7)SCC 428, General Manager, United India Insurance Co.Ltd. Vs. M.Laxmi and Others, 2009(1)TAC 6 (SC) wherein the Supreme court relying on various other decisions have held that the pillion rider of a two wheeler would not be indemnified by the insurance company if extra premium in this regard is not paid by the insured.
4. In the instant case, the insured had not paid any extra premium for covering the risk of pillion rider so also for any gratuitous passenger, if

any, and also on the basis of the authoritative decision of the Supreme Court in the aforesaid two judgments, this court has no hesitation in reaching to the conclusion that the finding of the Tribunal in the instant case was not justified and the liability which has been fastened upon the appellant-insurance company was erroneous and the same deserves to be struck down.

5. However, considering the entire facts and circumstances of the case, more particularly the fact that appeal is of 10 years old and there is nobody to represent the claimants before this court and the claimants till date have not been able to get a single penny from the award due to interim relief granted in favour of the insurance company so far as disbursement is concerned, this court is of the opinion that in the given peculiar facts and circumstances of the case, interest of justice would be served if the entire amount which is lying with the Tribunal for last 10 years, be ordered to be released to the claimants. It is ordered accordingly. However, the insurance company shall be at liberty of recovering the amount deposited before the Tribunal from the owner and driver of the Scooter at the time of accident.
6. The reasons for pay and recover is also for the reason that the amount involved in the instant case is also not too exorbitant and the claimants have been deprived of benefits for the last about 10 years.
7. Accordingly, the appeal stands allowed in part.

Sd/-

(P.Sam Koshy)
Judge