

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No.1527 of 2009**

1. Ibrar Khan S/o Jan Mohammad, aged about 45 years.
2. Smt.Hasina Begum W/o Ibrar Khan, aged about 40 years.
3. Siddique Begum D/o Ibrar Khan, aged about 24 years.
4. Irfan Khan S/o Ibrar Khan, aged about 17 years.

Appellant Nos.3 & 4 are minor through natural guardian father Ibrar Khan.

All are R/o Chhirpani Colony Pondi, P.S.Bodla, Tahsil Kawardha, District Kabirdham (Kawardha) (C.G.).

---Appellants

Versus

1. The Oriental Insurance Company Limited, Kamthi Line, Rajnandgaon, District Rajnandgaon (C.G.).
2. Mohammad Ismile S/o Mohd.Hamid Musalman, aged about 32 years, R/o village Pondi, P.S.Bodla, Tahsil Kawardha, District Kabirdham (C.G.).

---Respondents

For appellants	:	Shri P.R.Patanker and Shri Amiyakant Tiwari, Advocates.
For respondent No.1/ Insurance Company.	:	Shri Hanuman Prasad Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

13/10/2017

1. Present is an appeal preferred by the claimants under Section 173 of the Motor Vehicles Act assailing the award dated 12/01/2009 passed by the Motor Accident Claims Tribunal, Kabirdham (Kawardha) (C.G.) in Claim Case No.01/2008. Vide the said impugned award, the Tribunal in a Claim Case under Section 163-A has awarded the compensation of Rs.1,00,000/- along with interest @ 8% per annum from the date of application. The Insurance Company has preferred a cross appeal under Order 41 Rule 22 of the C.P.C.
2. So far as the cross appeal of the Insurance Company is concerned, the ground of challenge that the claimants are not entitled for even Rs.1,00,000/-

which has been awarded by the Tribunal for the reason that, there is a clear breach of policy condition on part of the deceased. According to the counsel for the Insurance Company, the breach was to the extent that, firstly, the deceased was himself not driving the Jeep insured by the Insurance Company and the second ground was that, the owner of the Jeep i.e. the deceased did not have a valid endorsement on the license permitting him to drive the commercial vehicle though he had license for driving the Light Motor Vehicle.

3. Perusal of the record would show that, the Insurance Company in the instant case has not led any evidence in support of its contentions.

4. As regards the fact that he was not driving the vehicle is concerned, undisputedly, the deceased was the owner of the Jeep at the time of the accident and he was himself travelling in the said Jeep. There is no other evidence which has been led by the Insurance Company to show that under the policy, the claimants would not be entitled for the compensation from the Insurance Company. The said ground of the Insurance Company stands negated.

5. So far as the ground of not having proper endorsement is concerned, this court has no hesitation in reaching to the conclusion that, the issue stands squarely covered by the larger bench decision of the Hon'ble Supreme court in the case of ***Mukund Dewangan Vs. Oriental Insurance Company Limited [AIR 2017 S.C.3668]***. In view of the same, the cross appeal of the Insurance Company deserves to be and is accordingly rejected.

6. So far as the appeal of the claimants is concerned, undisputedly, the policy which was issued in favour of the deceased was covering the personal risk of Rs.2,00,000/-.

7. So far as issuance of policy, the date of accident and the resultant death of the deceased from the accident is concerned is not in dispute and the fact

that there is no evidence in rebuttal by the Insurance Company establishes the claim of the claimants.

8. Since the risk covered by the policy of the owner was to the extent of Rs.2,00,000/-, this court is of the opinion that, the claimants shall be entitled for the entire amount of the risk covered i.e. Rs.2,00,000/- instead of Rs.1,00,000/- as assessed by the Tribunal. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

9. The appeal of the claimants thus stands allowed to the aforesaid extent.

**Sd/-
(P. Sam Koshy)
Judge**

Sumit