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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1571 of 2009

Santosh Kumar Thakur S/o Charan Thakur, aged about 23 years, R/o Shiv Mandir, Shastri Chowk Raipur, Tahsil and District Raipur (CG)

---- Appellant

Versus

1. Satruhan Lal Thakur S/o Bodhrai Thakur, aged about 43 years
2. Smt. Narbadiya Bai W/o Satruhan Lal Thakur, aged about 39 years (claimants)

   Both R/o Amalori, P.S. Utai, Tahsil Patan, District Durg (CG)
3. Pradip Kumar Chandrakar S/o Late Santosh Kumar Chandrakar, R/o village Amalori, Post Marra, P.S. Utai, Tahsil-Patan, District Durg (CG)
4. National Insurance Company Limited, Branch Office, 11 Bhilai, through Divisional Office-National Insurance Company Limited Akas Ganga Complex, Supela Bhilai, Tahsil and District Durg (CG)

---- Respondents

For Appellant	:	Shri Pramod Shrivastava on behalf of Shri A. L. Singroul, Advocate
For Respondent no. 4	:	Shri Raj Awasthi, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

26/10/2017

Present is an owner's appeal under Section 173 of the Motor Vehicles Act assailing the award dated 29.06.2009 passed by the 7th Additional Motor Accident Claims Tribunal (FTC), Durg (CG) in Claim Case No. 79/2008. Vide the impugned award the Tribunal in a death case under Section 166 of MV Act has awarded compensation of Rs.2,44,500/- with interest @ 6% per annum.

2. While passing the impugned award, the learned Tribunal has exonerated the Insurance Company and fastened the liability of payment of compensation upon the appellant/owner of the offending vehicle leading to the filing of this appeal.

3. The challenge to the impugned award is primarily on the fact that the exoneration of Insurance Company is bad in law in as much as the vehicle was duly insured with respondent no.4 Insurance Company and the policy which was issued was a comprehensive policy which has been marked as Exhibit D-1 before the Tribunal. Counsel for the appellant submits that it was a comprehensive policy and would therefore even cover the risk of the pillion rider of the motorcycle. Thus, prayed for modifying the impugned award to the extent that the liability may be shifted upon the Insurance Company.

4. Counsel for the Insurance Company, during the course of argument fairly admits that the policy issued in respect of the offending vehicle was a comprehensive policy under which the risk of the pillion rider would also be covered as would reflect from the terms and conditions of the policy schedule.

5. Having heard the counsel for the parties and on perusal of the record what is undisputed is the fact that the policy issued in respect of the offending vehicle was a comprehensive policy and as per the terms and conditions of the policy Schedule, liability to third party is referred to as under:

> **"Section II – Liability to third parties**
> Subject to the limits of liability as laid down in the Schedule hereto the company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to pay in respect of
> i) death of or bodily injury to any person including occupants carried in the insured vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured."

6. In view of the aforesaid factual matrix of the case, this Court has no hesitation in reaching to the conclusion that the finding of the Tribunal regarding exoneration of Insurance Company of its liability is bad in law and the same is accordingly set aside. The impugned order stands modified to the extent that the liability of payment of compensation shall be upon the Insurance Company in view of the comprehensive policy issued in favour of the present appellant. It is directed that any amount of compensation paid by the appellant at the time of filing of the appeal shall be refunded by the Insurance company to the appellant and the balance amount of compensation, if any, the liability of payment of the same shall be upon the Insurance Company.

7. The appeal thus stands allowed.

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

Bhola