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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 608 OF 2011

Bajaj Allianz Insurance Company Limited, registered office GE Plaza, Airport Road, Yerwada, Pune (M.H.), through Branch Manager, Shivmohan Bhawan, Vidhansabha Marg, Pandri, Raipur (C.G.)

… Appellant

versus

1. Smt. Ramshila Bai Yadav, W/o Shri Videshi Ram Yadav, aged 42 years
2. Arjun Yadav, S/o Shri Videshi Ram Yadav, aged 18 years
3. Kumari Sharda Yadav, D/o Shri Videshi Ram Yadav, aged 15 years
4. Ku. Sadhna Yadav, D/o Shri Videshi Ram Yadav, aged 13 years

Respondents No. 3 and 4 are through her guardian Mother Smt. Ramshila Bai Yadav, W/o Shri Videshi Ram Yadav, aged 39 years.

All Respondents R/o Village Purani Basti, Nawapar Dewridihi, Tahsil & District Bilaspur (C.G.)

5. Videshi Ram Yadav, S/o Late Sita Ram Yadav, aged about 44 years, R/o Village Purani Basti, Nawapar Dewridihi, Tahsil & District Bilaspur (CG)

… Respondents

MISC. APPEAL (C) NO. 191 OF 2011

1. Smt. Ramshila Bai Yadav, W/o Shri Videshi Ram Yadav, aged 42 years
2. Arjun Yadav, S/o Shri Videshi Ram Yadav, aged 18 years
3. Miss. Sharda Yadav, D/o Shri Videshi Ram Yadav, aged 15 years
4. Miss. Sadhna Yadav, D/o Shri Videshi Ram Yadav, aged 13 years

Appellants No. 3 and 4 are represented through their guardian (Mother) Appellant No.1 Smt. Ramshila Bai Yadav

All are R/o Village Purani Basti, Navapara, Devaridih, Tahsil & District Bilaspur (C.G.)

… Appellants

versus

1. Videshiram Yadav, S/o Late Sitaram Yadav, aged about 44 years, R/o Village Purani Basti, Navapara Devaridih, Tahsil & District Bilaspur (C.G.)
2. Bajaj Alliance General Insurance Company Limited, through Branch Manager, Shivmohan Bhawan, Vidhan Sabha Marg, Pandari, Raipur, District Raipur (C.G.)

… Respondents

- Mr. Ghan Shyam Patel, Advocate, under instructions of Mr. Abhishek Sinha, Advocate, for the Appellant in MAC No. 608/2011 for Respondent No.2 in MAC No. 191/2011.
- Mr. P.K. Tulsyan, Advocate, for the Appellants in MAC No. 191 of 2011.
- Mr. Anand Kesharwani, Advocate, for Respondents No. 1 to 4 in MAC No. 608/2011.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

15/11/2017

1. The present two appeals under Section 173 of the Motor Vehicles Act, 1988, arise out of award dated 19.11.2010 passed by the 9th Additional Motor Accident Claims Tribunal (F.T.C.), Bilaspur, in Claim Case No. 66/2010.

2. Vide the impugned award, the learned Tribunal, in a death case, under Section 163(A) of the Motor Vehicles Act, has awarded a compensation of Rs.1,60,000/- to the claimants with interest thereon at the rate of 6% per annum from the date of presentation of claim application and has fastened the liability for payment of compensation jointly and severally upon the owner and the insurance company.

3. MAC No. 608/2011 is an appeal preferred by the insurance company questioning the liability fastened upon it and MAC No. 191/2011 is an appeal filed by the claimants seeking enhancement of compensation.

4. Facts of the case in brief are that on the date of accident i.e. 20.12.2009, the deceased in the instant case, named, Krishna Yadav, took the motorcycle, bearing registration no. CG10-BA-8318, owned by his father Videshi Ram Yadav, and met with an accident in which he succumbed to the injuries sustained.

5. The motorcycle was duly insured with the Bajaj Allianz General Insurance Company and that the policy issued was a comprehensive policy.

6. So far as the appeal of the insurance company is concerned, i.e. MAC No. 608/2011, learned counsel for the appellant-insurance company submits that the claim application itself was not maintainable on account of the fact that the deceased was the son of the registered owner of the vehicle, i.e., Videshi Ram Yadav, and therefore the insurance company would not be responsible for indemnifying the son of the registered owner of the vehicle involved in the accident and that he would not fall within the ambit of third party and under Chapter XI, the claim application would not thus be maintainable. Learned counsel for the appellant-insurance company has relied upon a decision of the Hon'ble Supreme Court in the case of *New India Assurance Company Limited* v. *Sadanand Mukhi and Others*, *2009 (2) SCC 417,* and also to *GR 36* of the Indian Motor Tariff Rules which says that against the personal accident coverage, the registered owner is entitled for compulsory coverage where he/she had a valid effective licence. He thus prayed for the setting aside of the award holding that the claim application itself was not maintainable.

7. Per contra, learned counsel for the claimants, opposing the appeal of the insurance company, submits that it is a case where the deceased though being the son of the registered owner but on the fateful day he was sent on assignment for some work of the registered owner and as such he would be considered as third party as he was driving the vehicle on instructions of the registered owner and therefore it shall be the responsibility of the insurance company to indemnify the owner under such circumstances.

8. Learned counsel for the claimants further submits that the claimants have also filed an appeal i.e. MAC No. 191/2011, for enhancement of the compensation, as the income assessed and the compensation granted is on the lower side and the same deserves for a suitable enhancement.

9. Having considered the contentions put forth on either side and on perusal of record, the admitted factual matrix of the case is that, the accident took place on 20.12.2009 when the motorcycle belonging to Videshi Ram Yadav, bearing registration no. CG10-BA-8318, was being driven by the deceased. It is also not in dispute that the said motorcycle was insured with comprehensive coverage issued by Bajaj Allianz General

Insurance Company Limited. As a result of the accident, the deceased-Krishna Yadav died is also not in dispute.

10. The only issue now left to be considered is, firstly, whether the claim application as has been questioned by the insurance company itself was maintainable and secondly, if the claim application was maintainable whether the amount of compensation awarded does require enhancement.

11. At this juncture, it would be relevant to refer to the decision cited by the learned counsel for the insurance company, i.e., the case of *Sadanand Mukhi* (supra). A perusal of the said decision would show that the claim application decided in the said case was under Section 166 of the Motor Vehicles Act and not under Section 163-A. The Hon'ble Supreme Court in the said case in paragraphs 11 to 14 has held as under:

> **"11.** ...The provisions of the Act, therefore, provide for two types of insurance - one statutory in nature and the other contractual in nature. Whereas the insurance company is bound to compensate the owner or the driver of the motor vehicle in case any person dies or suffers injury as a result of an accident; in case involving owner of the vehicle or others are proposed to be covered, an additional premium is required to be paid for covering their life and property.
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> **12.** It is not a case where even Section 163-A of the Act was resorted to. Respondents filed an application under Section 166 of the Act. Only an act policy was taken in respect of the motor vehicle. Submission of the learned counsel that being a two wheelers, the vehicle was more prone to accident and, therefore, whosoever becomes victim of an accident arising out of the use thereof would come within the purview of the term "a person" as provided for in Section 147 of the Act, in our opinion, is not correct.
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> **13.** Contract of insurance of a motor vehicle is governed by the provisions of the Insurance Act. The terms of the policy as also the quantum of the premium payable for insuring the vehicle in question depends not only upon the carrying capacity of the vehicle but also on the purpose for which the same was being used and the extent of the risk covered thereby. By taking an `act policy', the owner of a vehicle fulfils his statutory obligation as contained in Section 147 of the Act. The liability of the insurer is either statutory or contractual. If it is contractual its liability extends to the risk covered by the policy of insurance. If additional risks are sought to be covered, additional premium has to be paid. If the contention of the learned counsel is to be accepted, then to a large extent, the provisions of the Insurance Act become otiose. By reason of such an interpretation the insurer would be liable to cover risk of not only a third party but also others who would not otherwise come within the purview thereof. It is one thing to say that the life is uncertain and the same is required to be covered, but it is another thing to say that we must read a statute so as to grant relief to a person not contemplated by the Act. It is not for

> the court, unless a statute is found to be unconstitutional, to consider the rationality thereof. Even otherwise the provisions of the Act read with the provisions of the Insurance Act appear to be wholly rational.
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> **14.** Only because driving of a motor vehicle may cause accident involving loss of life and property not only of a third party but also the owner of the vehicle and the insured vehicle itself, different provisions have been made in the Insurance Act as also the Act laying down different types of insurance policies. The amount of premium required to be paid for each of the policy is governed by the Insurance Act. A statutory regulatory authority fixes the norms and the guidelines.**"**

12. As regards the reference to *GR 36* of the Indian Motor Tariff Rules is concerned, the note which is annexed to the said GR shows that the personal accident covers the risk of registered owner alone. If we peruse the policy issued in the instant case it clearly reflects that an additional premium of Rs.50/- has been charged by the insurance company while issuance of the policy covering the risk of owner-cum-driver and the policy is a comprehensive policy, thus, the policy issued being a comprehensive policy with an additional coverage of owner-cum-driver up to Rs.1,00,000/-.

13. In view of the fact that the insurance company has taken additional premium covering the risk of owner-cum-driver, this Court applying the analogy as has been laid by the Hon'ble Supreme Court in the case of *National Insurance Company Limited* v. *Sinitha*, *2012 (2) SCC 356* and in the case of *Ningamma and Another* v. *United India Insurance Company Limited*, *2009 (13) SCC 710*, wherein the Hon'ble Supreme Court in very categorical terms has held that, under similar circumstances the driver of the vehicle would step into the shoes of the owner and for all practical purposes the driver has to be construed as the owner.

14. In the given factual matrix of the case, this Court is inclined to treat the deceased as the owner applying the principles of “stepping into the shoes of the owner”, and by virtue of the additional premium which has been taken by the insurance company, grants the coverage of risk of Rs.1,00,000/- in favour of the claimants holding that the claimants shall be entitled for an amount of only Rs.1,00,000/-. Since the deceased has been treated as the owner, the claim beyond Rs.1,00,000/- would not be maintainable.

15. The appeal of the claimants thus being devoid of merits stands dismissed and the appeal of the insurance company stands allowed in part. The impugned award stands modified to the extent of the liability being limited to Rs.1,00,000/- instead of Rs.1,60,000/-. The said amount of Rs.1,00,000/- shall carry interest at the same rate as has been assessed by the learned Tribunal.

16. Perusal of record shows that this Court on 12.5.2016 had held that the amount deposited by the insurance company shall be disbursed only after taking security. If the amount has already been disbursed to the claimants, the insurance company would be at liberty for claiming the said amount from the registered owner of the motorcycle.

17. In view of the fact that the award is being restricted to the extent of the limited coverage under the policy, the appeal of the claimants would not be maintainable and the same deserves to be and is accordingly dismissed.

18. As a result, the appeal of the insurance company i.e. M.A.(C) No.608/2011 stands allowed in part and the appeal of the claimants i.e. M.A.(C) No.191/2011 stands rejected.

Sd/-
(P. Sam Koshy)
Judge

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