NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No.935 of 2010

Insurance Company – The Oriental Insurance Company Limited, Extension Counter Gandhi Mandir Ward Bhatapara, District Raipur (C.G.)

---Appellant

Versus

1. Smt.Sumitra Bai W/o Tulsiram Rana, age 45 years.
2. Tulsiram Rana S/o Mansingh Rana, age 50 years.

Both are R/o Village Kuwapani, P.O. Aasulkhar, Thana Bhanupratappur, District U.B.Kanker (C.G.).

---Respondents

For appellant/Insurance Company : Shri Sudhir Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

07/11/2017

1. Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 13/05/2010 passed by the learned Additional Motor Accident Claims Tribunal, Bhanupratappur, District U.B. Kanker (C.G.) in Motor Accident Claim Case No.29/2009.

2. Vide the said impugned award, the Tribunal in a Claim Case under Section 163-A of the Motor Vehicle Act has awarded the compensation of Rs.2,64,500/- along with interest @ 7% per annum from the date of order.

3. The challenge by the Insurance Company is on three grounds. Firstly, there is no coverage in the policy issued of the said vehicle involved in the accident. Second, the accident occurred on account of the fault on part of the deceased himself and thirdly, since the vehicle was borrowed by the deceased from the registered owner, he would step into the shoes of the owner and thus not be entitled for any compensation.

4. The contention of the counsel for the appellant/Insurance Company is that, the policy issued in the instant case is effected from 18/11/2008 to 17/11/2009 and the accident in the instant case occurred on 31/10/2008 i.e. prior to the issuance of the policy. He further relies upon the judgment of the Hon'ble

Supreme Court in the case of ***Oriental Insurance Company Limited Vs. Porselvi & Anr.[{2009} 15 SCC 116]***.

5. Perusal of the record would show, that undisputedly, the cover note was issued by the present appellant-Insurance Company effective from 29/10/2008 to 28/10/2009. Subsequently, the policy was issued on 18/11/2008 with being effective till 17/11/2009. The issuance of the cover note and the issuance of the policy is not in dispute. Rather the counsel for the Insurance Company fairly admits of it being issued by the appellant/Insurance Company.

6. In view of the fact, that there is a valid cover note and policy issued and the accident occurred during the said period, the Insurance Company cannot be absolved of its liability as the owner of the vehicle had taken all the necessary steps for insuring the vehicle at the time of the accident.

7. The counsel for the appellant further submits, that the policy was issued at the request of the owner himself and therefore the Insurance Company would not be liable for the accident which have occurred prior to the policy being made effective.

8. This court is of the opinion, that the said ground raised by the counsel for the appellant does not have sufficient force as admittedly the cover note has been duly issued by the Insurance Company and the period mentioned in the cover note is during the period when the accident occurred and subsequently the policy was issued on a subsequent date.

9. Thus, once when the issuance of the cover note and the policy are not in dispute, the Insurance Company cannot be absolved of its liability.

10. So far as the deceased himself being responsible for the accident to occur, this ground again may not have much force for the reason, that it is a Claim Case under Section 163-A of the Motor Vehicle Act where the negligence need not be established. The provision of Secion 163-A is similar to the provision of Section 140 of the Motor Vehicle Act and therefore since the ground of negligence is not to be taken into consideration while deciding the Claim Case

under Section 163-A, the ground raised by the counsel for the appellant stands negated.

11. So far as the deceased having borrowed the vehicle from the owner is concerned this court is of the opinion, that the policy issued in favour of the owner was a package policy which otherwise means a comprehensive policy and only because the vehicle has been borrowed from the owner by itself would not mean that the borrower or the deceased would step into the shoes of the owner disentitling him even for the compensation under the provision of Section 163-A.

12. The judgment of the Supreme Court cited by the counsel for the appellant may not be applicable in the present case as the facts and the issues involved in the instant case is entirely different than the facts and issue of the said judgment.

13. Thus, the appeal of the Insurance Company being devoid of merits deserves to be and is accordingly dismissed.

14. The interim order earlier granted shall also stands merged with the present order and it is directed, that the Insurance Company shall ensure depositing the entire amount at the earliest.

Sd/-
(P. Sam Koshy)
Judge

Sumit