NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 953 of 2010

The Oriental Insurance Co.Ltd. through Branch Manager, Near LIC Office Railway Station Road, Rajnandgaon (CG).

---- Appellant

Versus

1. Jailal S/o Ramlal Sahu, aged about 45 years.
2. Smt. Kumari W/o Jailal Sahu, age 44 years.
   Permanent Address-Village Bhardakala, Thana, Arjunanda, Tah. Gundardehi, District Durg (CG).
   Present address Village Deori, Bangla, Tahan Deori, Tahsil Dondilohara, Distt. Durg (CG).
3. Chatur Ram Sahu S/o Bisruram Sahu, R/o village Kutulbod, Bhatagaon, PO Singhola, Tansil/Distt. Rajnandgaon (CG).

---- Respondents

For Appellant	:	Shri Sudhir Agrawal, Advocate.
For Claimants	:	Shri Sudhir Agrawal, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

22.11.2017

1. The present appeal under Section 173 of the Motor Vehicles Act have been filed by the insurer against the award dated 30.06.2010 passed by the Additional Motor Accident Claims Tribunal (FTC) Balod (in short, the Tribunal) in Claim Case No.84/2009. Vide the said impugned award, the Tribunal in a claim application under Section 163-A of MV Act has awarded a compensation of Rs.2,85,000/-with interest @ 6 percent per annum from the date of application.
2. Learned counsel for the appellant submits that it is a case where the deceased himself was driving the motorcycle and that he was not the actual owner of the motorcycle. Since the claim application was filed under Section 163-A of the MV Act and that the driver was not

covered under the policy, the insurance company should not have been fastened for payment of compensation. Further contention is that, it is a case where the policy issued was an act only policy covering the risk of only third party and the deceased in the instant case would not fall within the definition of a third party as deceased himself was driving the motorcycle at the time of accident. Referring to the decision of Ningamma and Another Vs. United India Insurance Co.Ltd. 2009 (13)SCC 710 he submits that the insurance company should had been exonerated of its liability and if at all if any, the same should have been gone upon the owner of the motorcycle i.e. respondent No.3, Chatur Ram Sahu.

3. Counsel for the respondents-claimants however opposing the appeal submits that the findings of the Tribunal is based upon the facts which have come on record and the compensation awarded is just and reasonable and therefore no interference is called for and the appeal deserves to be rejected.

4. Having considered the rival contentions put forth on either side and on perusal of record, the admitted facts which comes before the court is the date of accident resulting into death of deceased and the vehicle being motorcycle No.CG-04-ZV-2380. The accident occurred when the motorcycle in which the deceased was moving was hit by an unknown Truck. A criminal case was also registered against the unknown driver of Truck.

5. If we peruse the policy it reflects that it was an 'Act only Policy' which covers the risk of only a third party. However, it also reflects that the

owner of the vehicle had paid an extra premium of Rs.50/- for covering the risk of owner-cum-driver and the liability was up to Rs.1,00,000/-only for the owner.

6. The facts that there was an extra premium paid covering the risk of driver and the owner irrespective whether it was owner or the driver, the liability of the insurance company up to Rs.1,00,000/- cannot be absolved and further since it was an 'Act only Policy', the insurance company cannot be fastened with liability of payment of compensation beyond Rs.1,00,000/-.
7. Thus, in the given facts and circumstances of the case, the appeal of the insurance company deserves to be and is allowed to the extent that the amount of compensation payable to the claimants would be Rs.1,00,000/-as per the policy which was issued and the claimants also shall be entitled only for Rs.1,00,000/-. The decision of this court also stands fortified by an earlier decision of this court passed in MAC No.1433 of 2007, decided on 31.10.2017.
8. The appeal of the insurance company thus stands partly allowed. The award dated 30.06.2010 is modified to the extent that the claimants shall be entitled only for Rs.1,00,000/- instead of Rs.2,85,000/- as awarded by the Tribunal.
9. The said amount shall also carry interest at the same rate as has been fixed by the Tribunal.
10. The appeal thus stands allowed in part.

Sd/-

(P.Sam Koshy)
Judge

inder