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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 821 of 2009

1. Vimla Jatav, aged about 40 years, Wd/o late Banshidhar Jatav
2. Sandeep Jatav, aged about 17 years, S/o late Banshidhar Jatav
3. Rajan Jatav, aged about 15 years, S/o late Banshidhar Jatav
4. Ku. Ekta Jatav, aged about 13 years, D/o late Banshidhar Jatav
5. Sagar Jatav, aged about 9 years, S/o late Banshidhar Jatav

Appellants 2 to 5 are minors through natural guardian mother appellant no.1.

All R/o village Nayak-Bandha, Pandepara Abhanpur, Tahsil and District Raipur (CG)

---- Appellants

Versus

1. Uday Shankar Mishra S/o Shri L. P. Mishra, R/o Amera, Post Chandi, P.S. Abhanpur, Tahsil and District Raipur (CG)

   (Registered owner of vehicle motorcycle Bajaj Boxer No. M.P. 23 MD/0615)

2. The Oriental Insurance Company Limited through Divisional Manger, Divisional Office, Madina Building, Jail Road, Raipur, Tahsil & District Raipur (CG)

   (Insurer of vehicle motorcycle Bajaj Boxer No. M.P. 23 MD/0615)

---- Respondents

For Appellants	:	Shri Shikhar Sharma, Advocate
For Respondent no. 1	:	Shri Sanjay Agrawal, Advocate
For Respondent no. 2	:	Shri Sudhir Agrawal, Advocate

Misc. Appeal (C) No. 1703 of 2008

Uday Shankar Mishra S/o Shri L. P. Mishra, R/o Amera, Post Chandi, P.S. Abhanpur, Tahsil and District Raipur (CG)

---- Appellant

Versus

1. Vimla Jataw Wd/o late Banshidhar Jataw, aged about 40 years
2. Sandeep Jataw S/o late Banshidhar Jataw, aged about 17 years
3. Rajan Jataw S/o late Banshidhar Jataw, aged about 15 years
4. Ku. Ekta Jataw D/o late Banshidhar Jataw, aged about 13 years
5. Sagar Jataw S/o late Banshidhar Jataw, aged about 9 years

   Respondents 2 to 5 are minors through natural guardian mother respondent no.1.

   All R/o village Nayak-Bandha, Pandepara Abhanpur, Tahsil and District Raipur (CG)

6. The Oriental Insurance Company Limited through Divisional Manger, Divisional Office, Madina Building, Jail Road, Raipur, Tahsil & District Raipur (CG)

   (Insurer of vehicle motorcycle Bajaj Boxer No. M.P. 23 MD/0615)

---- Respondents

For Appellant	:	Shri Sanjay Agrawal, Advocate
For Respondents 1 to 5	:	Shri Shikhar Sharma, Advocate
For Respondent no. 6	:	Shri Sudhir Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

08/11/2017

These are two appeals arising out of the award dated 08.07.2008 passed by the 12th Additional Motor Accident Claims Tribunal (FTC), Raipur (CG) in Claim Case No. 60 of 2007. Vide the impugned award, the Tribunal in a claim case under Section 163A of the MV Act has awarded a compensation of Rs.3,42,300/- with interest @ 7.5% per annum from the date of application.

2. While passing the impugned award, the Tribunal has exonerated the Insurance Company and has fastened the liability of payment of compensation upon the owner of the offending vehicle i.e. the appellant in MAC No. 1703 of 2008 and respondent no.1 in MAC No. 821 of 2009. MAC No. 821/09 is an appeal by the claimants seeking enhancement of compensation and MAC No. 1703/08 is an appeal by the owner questioning the liability fastened upon him.

3. So far as the appeal by the owner is concerned, it was contended that the claim application itself was not maintainable and the same ought to have been rejected on the ground that it is a case where the accident arose at the hands of the deceased himself. Since the deceased had stepped into the shoes of the owner, the claimants would not be entitled for claiming compensation for an accident for which the deceased himself was responsible. It was contended that the deceased in the instant case had borrowed the motorcycle from the owner and was driving the motorcycle himself when the accident occurred and therefore, applying the principle of law laid down by the Supreme Court in the case of Ningamma and Another vs. United India Insurance Company Limited, (2009) 13 SCC 710 the claim application of the claimants was not maintainable. Thus, prayed for setting aside of the impugned award.

4. So far as the appeal of the claimants is concerned, it was contended that the compensation awarded is on the lower side in as much as the multiplier used is erroneous. It was further contended that the amount of compensation awarded under conventional head is also on the lower side and prayed for the award to be suitably enhanced.

5. Having considered the contentions put forth by the counsel for the claimants, this Court is of the opinion that the issue involved in the instant case stands squarely covered by a recent decision of this Court in MAC No. 1433/07 decided on 31.10.17 in the case of Bajaj Allianz General Insurance Company Limited Vs. Smt. Kunti and others.

6. Undisputedly, in the present case also, the owner while insuring the vehicle had paid an extra premium of Rs. 150 covering the risk of the owner-cum-driver and therefore, even if the deceased in the instant case is said to have stepped into the shoes of the owner, he would be entitled for compensation under the policy in which his risk has been covered. A perusal of the policy would reveal that the extra premium was paid for covering the risk to a limit of Rs.1,00,000/-. Thus, the claimants in the factual matrix of the case would be entitled for an amount of rupees one lakh for which the Insurance Company had insured the vehicle.

7. At this juncture it is also relevant to refer to paragraph-22 of the case of Nigama in which it has been held as under:

> "In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided under Section 163-A . But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163-A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the MVA."

8. In view of the fact that the Insurance Company has covered the risk of the owner-cum-driver to the limit of one lakh, it is ordered that the claimants shall be entitled only for an amount of Rs.1,00,000/- and that their claim application beyond that is not maintainable. The appeal of the claimants i.e. MAC 821/09, in view of the aforesaid factual matrix of the case stands dismissed. The appeal of the owner i.e. MAC 1703/08 is allowed to the extent that the claimants are ordered to be entitled for a compensation of Rs.1,00,000/- which shall be paid by the Insurance Company for which they had insured the offending motorcycle.

9. The amount of compensation, if any deposited by the owner, if not disbursed, shall be refunded back to him and it shall be the responsibility of the Insurance Company to deposit the compensation of rupees one lakh before the Tribunal at the earliest. The said amount shall also carry interest at the same rate as has been awarded by the Tribunal.

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

Bhola