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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 293 OF 2010

United India Insurance Co. Ltd., Branch Office, Bramha Road, Ambikapur,
P.S. Tahsil, Surajpur, District Surguja (C.G.)

... Appellant

versus

1. Khilanand @ Sanjeev Puri, S/o Lallan @ Mohanpuri, aged about 27 years, caste Baba, occupation Agriculture, R/o Surajpur (Badkapara), P.S. & Tahsil Surajpur, District Surguja (C.G.)
2. Heeraman, S/o Hari Choudhary, aged about 25 years, caste Choudhary, occupation Bittle Shop, R/o Bazarpara, Surajpur, District Surguja (C.G.)
3. Kenda Bai, Wd/o Ramcharan @ Ramchandra, aged about 25 years, caste Rajwar, occupation Housewife.
4. Rohit, S/o Late Ramcharan @ Ramchandra, aged about 4 years, caste- Rajwar (minor)
5. Poornima, D/o Late Ramcharan @ Ramchandra, aged about 6 months, caste Rajwar (minor)
6. Holsai, S/o Late Subaran, aged about 65 years, Caste Rajwar, occupation Agriculture.
7. Phuleshwari, W/o Holsai, aged about 60 years, occupation- Housewife, caste Rajwar.

(Sl. No. 4 & 5 minor through guardian at item respondent no.3 mother Kenda Bai) (Sl. No. 3 to 7 R/o Surajpur (Badkapara), P.S. and Tahsil Surajpur, District Surguja (C.G.)

... Respondents

For Appellant	:	Mr. Dasrath Gupta, Advocate.
For Respondent No.1	:	Mr. D.N. Prajapati, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

22/11/2017

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, preferred by the appellant-insurance company, assailing the award dated 17.12.2009 passed by the Second Additional Motor Accident Claims Tribunal (F.T.C.), Surajpur, District Surguja, in Motor Accident Claim Case No.175/2007.
2. Vide the impugned award, the learned Tribunal, in a death case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.4,63,000/- to the claimants with interest thereon at the rate of 7.5% per annum from the date of presentation of the claim application.

3. The facts relevant for the adjudication of the case are that on 30.6.2007 the deceased-Ramcharan while travelling on a motorcycle bearing registration no. CG15-CA-6447 along with respondent no.1-Khilanand and respondent no.2-Heeraman, they met with an accident and as result of which the deceased-Ramcharan succumbed to the injuries sustained. An FIR was immediately lodged at Police Station Bistrampur for the offence under Sections 279, 337, 304-A of IPC against the respondent no.2-Heeraman. The learned Tribunal while passing the award has fastened the liability for payment of compensation upon the insurance company and respondent no.1-Khilanand, jointly and severally.

4. Contention of Shri Dasrath Gupta, learned counsel for the appellant-insurance company, is that it is a case where at the time of accident the motorcycle was being driven by respondent no.2-Heeraman and he did not have a licence to drive. That the owner in order to save himself from the liability of payment of compensation, a different stand has been taken before the Tribunal of the motorcycle being driven by respondent no.1-Khilanand, the owner, and not by respondent no.2-Heeraman. According to him, this stand of respondent no.1-Khilanand was purely to escape the liability of payment of compensation, since the motorcycle was being used in contravention of the policy condition. In support of his contentions, he refers to the written statement of respondent no.1-Khilanand filed in the claim case, wherein he has taken the stand of the motorcycle being driven by respondent no.2-Heeraman and that the FIR also reflects the motorcycle to be driven by respondent no.2-Heeraman. He further submits that it is only at the stage of evidence that the respondent no.1-Khilanand took a different stand of the motorcycle being driven by himself and not by respondent no.2-Heeraman and that a similar stand was also taken by

respondent no.2-Heeraman which is an afterthought and a cooked up story.

5. Shri D.N. Prajapati, learned counsel for respondent no.1-Khilanand, however, submits that initially some unknown person had lodged the FIR without verification of facts and that subsequently the respondent no.2-Heeraman is said to have filed a complaint case alleging that in the accident which took place on 30.6.2007 in which the deceased-Ramcharan died, the motorcycle was being driven by respondent no.1-Khilanand and not the respondent no.2.

6. None appears for the claimants despite service of notice.

7. Having heard the contentions put forth and on perusal of record, the undisputed facts which have come on record is, the date of accident being 30.6.2007, the vehicle being motorcycle bearing registration no. CG15-CA-6447 belonged to respondent no.1-Khilanand and the vehicle being duly insured by the appellant-insurance company.

8. What is also relevant to take note of is that, when the FIR was lodged on the same day it has been categorically mentioned that the motorcycle was being driven by respondent no.2-Heeraman. Respondent no.2-Heeraman was also prosecuted for the offence under Sections 279, 337, 304-A of IPC. The claim case was filed on 23.10.2007. Notices were also issued immediately. Subsequently, in December, 2007, the respondent no.2-Heeraman filed a complaint case alleging that the vehicle was being driven by respondent no.1-Khilanand and not the respondent no.2-Heeraman. By that time, the claim petition had already been filed and the notices were also issued. Respondent no.1-Khilanand had also entered appearance before the Tribunal and submitted written statement wherein he has accepted the fact that the motorcycle was at the relevant point of time being driven by respondent no.2-Heeraman. All these facts

and circumstances of the case clearly reflect of the vehicle at the relevant point of time was being driven by respondent no.2-Heeraman and he was also prosecuted for the said act. Admittedly, respondent no.2-Heeraman did not have the driving licence, as is reflected from paragraph 12 of his deposition wherein he has admitted that he does not have a driving licence. Only to avoid the liability of payment of compensation a different story has been taken by the respondent no.2-Heeraman in connivance with respondent no.1-Khilanand, stating that the vehicle was being driven by respondent no.1-Khilanand and not the respondent no.2-Heeraman.

9. In view of the same, this Court does not find the reasons assigned by the learned Tribunal in accepting the version of respondent no.2-Heeraman of not believing the fact that the motorcycle was being driven by respondent no.2-Heeraman but by respondent no.1-Khilanand. The said finding of the learned Tribunal is unsustainable and deserves to be and is accordingly set aside.

10. In the given factual matrix of the case, once when the vehicle was duly insured and that there being only breach of policy condition of the person not having proper licence, this Court is of the opinion that it is a fit case where the doctrine of 'pay and recovery' can be applied and accordingly it is ordered that the appellant-insurance company shall deposit the entire amount awarded by the learned Tribunal with a liberty to recover the same from respondent no.1-Khilanand.

11. At this juncture, it would be relevant also to mention that the respondent no.2-Heeraman had also filed a claim case before the Second Additional Motor Accident Claims Tribunal (F.T.C.), Surajpur, District Surguja, which was registered as Claim Case No. 40/2008, where the learned Tribunal has held that the payment of compensation has to be made by respondent no.1-Khilanand.

12. The appeal thus stands allowed in part. The appellant-insurance company shall pay and deposit the entire amount and can recover the same from the respondents no. 1 and 2.

Sd/-
(P. Sam Koshy)
Judge

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