NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 738 OF 2010

United India Insurance Company Limited, through its Divisional Manager, Divisional Office, Main Road, Korba, District Korba (C.G.)

… Appellant

versus

1. Jwala Prasad, S/o Mangluram, aged 18 years, through Father-Mangluram, S/o Chetanlal, aged-50 years, R/o Village- Faraswani, P.S. Dabhra, District Janjgir-Champa (C.G.)
2. Chherka, S/o Kartikram, aged about 50 years, occupation- Kirana Shop, R/o Village- Faraswani, P.S.- Dabhra, District Janjgir-Champa (C.G.)

… Respondents

For Appellant	:	Mr. Dashrath Gupta, Advocate.
For Respondent No.1	:	Mr. M.K. Jaiswal, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

10/11/2017

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 30.1.2010 passed by Additional Motor Accident Claims Tribunal, Sakti, District Janjgir-Champa, in Claim Case No.31/2009.

2. Vide the impugned award, the learned Tribunal, in an injury case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.55,000/- in favour of respondent no.1-claimant, with interest thereon at the rate of 6% per annum from the date of claim application. While passing the award, the learned Tribunal had assessed the total compensation payable at Rs.1,09,815/-, however, assessing the contributory negligence on the part of the injured-claimant his liability has been fixed at the rate of 50% of the compensation assessed, i.e., Rs.55,000/-, directing the appellant-insurance company to first pay the amount of compensation and to subsequently recover the same from respondent no.2-owner of the offending motorcycle.

3. Challenge to the impugned award by the insurance company is on the ground that the injured-claimant was a minor and was himself driving the offending motorcycle at the time of accident and therefore the insurance company cannot held liable for such breach of policy condition. It is also contended by the insurance company that the liability for payment of compensation ought to had been fastened exclusively upon the owner of the offending vehicle without applying the principle of 'pay and recovery', for the reason that, if at all, if anybody is to be blamed for the accident from the motorcycle belonging to respondent no.2 it is he himself and therefore the liability of payment of compensation could not have been fastened upon the insurance company. Learned counsel for the insurance company thus prayed that the impugned award is liable to modified to the extent of the insurance company be exonerated of its liability and the same may be fastened upon the owner of the offending vehicle.

4. Learned counsel appearing for respondent no.1-claimant however opposing the appeal submits that the finding of the learned Tribunal so far as contributory negligence is concerned is bad in law and the same should be set aside as there is no basis for attributing contributory negligence. He further submits that the claimant too has filed a cross-objection seeking enhancement of the compensation awarded as the amount awarded by the learned Tribunal is too meagre an amount.

5. So far as the appeal of the insurance company is concerned, this Court is not inclined to entertain the appeal for the reason that undisputedly an accident did occur and the vehicle involved in the accident was insured. Though admittedly the injured-claimant in the instant case was a minor and for which the learned Tribunal has already assessed contributory negligence to the extent of 50% and has accordingly reduced the compensation also at Rs.55,000/-. Further, from the award it clearly reflects that the insurance company has also been granted a liberty to recover the amount from the owner. Thus, this Court is of the opinion that the said finding of the learned Tribunal does not warrant any interference.

6. So far as the cross-objection of respondent no.1-claimant is concerned, the same is not maintainable for the reason that the claimant had already filed a separate appeal under Section 173 of the Motor Vehicles Act, i.e., MAC No. 3/2016, and which already stands dismissed by this Court on merits vide order dated 8.3.2016. In the light of the said appeal of the claimant already stands dismissed, his cross-objection in the instant case is not maintainable.

7. As a result, the appeal of the insurance company and the cross-objection of the claimant both being devoid of merits stand dismissed accordingly.

Sd/-
(P. Sam Koshy)
Judge

/sharad/