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HIGH COURT of CHHATTISGARH, BILASPUR

Misc. Appeal No. 822 of 2004

National Insurance Co. Ltd.

Versus

Smt. Buneswari Bai & Others

For Appellant	:	Shri Goutam Khetrapal, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

17/08/2017

1. This is insurer's appeal under Section 173 of the Motor Vehicles Act challenging the award dated 02.04.2004 passed by the Ist Additional Motor Accident Claims Tribunal, Kanker (in short, the Tribunal) in Claim Case No.73/2003. Vide the said award, the Tribunal in a claim application preferred under Section 166 of the Motor Vehicles Act in a death case has awarded compensation of Rs.2,65,000/- along with interest @ 6 percent per annum from the date of application. There was also penal interest awarded in the event if the award amount is not deposited within the stipulated period.
2. The facts of the case leading to filing of claim application, as per claimants, was that on 20.12.2002 Birsan Sirpat, the husband of respondent No.1 and son of respondents No.2&3 while travelling on his motorcycle bearing registration No.MH-33-B-9783 along with two other persons as pillion rider, the said motorcycle got skidded and rammed to a Drum fixed on the side of road as a result of which all of them fell down from the motorcycle. Birsan Sirpat is said to have received

grievous injuries who later on succumbed. The other two persons accompanied him did not suffer much grievous injuries. The deceased was aged around 28 years at the time of accident and was working as a Teacher earning Rs.5232/-per month.

3. The widow and parents of the deceased filed a claim application under Section 166 of the Motor Vehicles Act. The Tribunal considering the evidence which have come on record have awarded compensation of Rs.2,65,000/-to the claimants. The liability of payment was fastened upon the appellant-insurance company as they have insured the vehicle involved in the accident. It is this award which is under challenge in this appeal.

4. The ground of challenge by the appellant is that the claim application itself was not maintainable as the accident did not occur because of the collusion of two vehicles. According to him, the admitted facts as per claimants is that when the deceased was riding the motorcycle, the said motorcycle got slipped and dashed a Drum fixed on the side of the road resulting in his accidental death later. According to appellant, it was the deceased alone who could be held responsible for the accident and there was no other vehicle, neither was any other person responsible for the said accident. Under the given factual matrix of the case, the insurance company cannot be held responsible for indemnifying the act of the deceased himself.

5. It was further contended by the appellant that for establishing the claim case under Section 166 of the Motor Vehicles Act, it is mandatorily required for proving the rash and negligence of the other vehicle or its owner or driver which had resulted in the accident. In the present case,

no such pleadings or averment is there to establish any negligence on the part of the owner of the vehicle or for that matter any other vehicle. In the absence of which the claim application ought to have been rejected by the Tribunal.

6. According to appellant, it is a case where the policy which has been issued by the appellant did not reflect any extra premium paid covering the risk of owner and driver of the motorcycle. That, without any extra premium being paid, the insurance company has been erroneously fastened with the liability of payment of compensation. He relied upon decision of this court in case of Oriental Insurance Co. Ltd. Vs. Swatantra Kumar Verma & Others, 2017(1) CGLJ 499.
7. The respondents in the instant case inspite of specific service of notice being served, have avoided appearance therefore this court proceeds to decide the case on its merits as the matter is very old.
8. A perusal of record of court below would reflect that the policy which has been issued by the appellant-insurance company is that of comprehensive policy and that no extra premium has been paid covering the risk of either owner or the driver of the said vehicle. Under such circumstances, what can be safely inferred is the policy only covering third party as also the risk of damage caused to the vehicle. Going through the claim application itself as also the pleadings and evidence of the claimants, there is no doubt that accident occurred without involvement of any other vehicle.
9. The case of the claimants themselves before the Tribunal was that the deceased fell from the motorcycle which he was driving himself and that the accident occurred as the motorcycle which he was driving slipped

from the road. This admitted factual aspect itself shows that there was no negligence or rash driving alleged against any third person which also proves and establishes the fact that there was no other vehicle involved in the said accident. Under such circumstances, the only presumption and inference which can be drawn is that the accident occurred because of the act or negligence on the part of the deceased himself who himself was driving the motorcycle. For the act of negligence of the deceased himself, the claimants could not have filed the claim application seeking for compensation from the owner or the insurer of the motorcycle under Section 166 of the Motor Vehicles Act. At best, they should have preferred a claim application under Section 163-A of the Motor Vehicles Act subject to their falling within the category to which the provisions under Section 163-A of Motor Vehicles Act applies.

10. In the case of Oriental Insurance Co. Ltd. Vs. Swatantra Kumar Verma (Supra), as relied upon by the appellant, the co-ordinate Bench of this court has held as under :

> “The Apex Court held that the provision for getting compensation under Section 163-A of the Act is totally different from Section 166 of the Act. When a claim petitioner files a petition under Section 166 of the Act, he is required to prove negligence, but under Section 163-A of the Act, no negligence is required to be proved and it amounts to no fault liability.”

11. It would be relevant at this juncture to mention that this court also in one of its recent decision in case of Sakhan Ram Rajwade Vs. Indramani & Ors. (MAC No.14 of 2017, decided on 18.07.2017) has held in paragraphs 6 & 7 as under :

> “6. Learned counsel appearing for the appellant assailing the impugned award submits that the same is not

sustainable for the simple reason that the Tribunal itself while appreciating the evidence and the pleadings which have come on record has in paragraph-11 reached to the categoric conclusion that the accident arose because of the rash and negligent driving of the deceased himself. It was also the contention of the appellant that it was a case where the deceased had taken the vehicle from the present appellant and he himself was driving the vehicle. Therefore, he stepped into shoes of the owner himself and as such once when the deceased stepped into shoes of the owner, he cannot himself be construed to be a third party for the purpose of claiming compensation. It was also contended by the appellant-owner that the deceased at the relevant point of time did not have a valid driving licence and on this ground also the award passed by the Tribunal is not sustainable and the same is sought to be quashed.

7. At this juncture, it would be relevant to refer to the judgment of the Supreme Court in case of Ningamma Vs. United India Insurance Co.Ltd., 2009(13)SCC710. In the said judgment, the Supreme Court in paragraph 25 has laid down the ingredients or the determining factors for considering the case under Section 166 of the Motor Vehicles Act in the given facts of the case. For ready reference, relevant portion of paragraph 25 is reproduced as under:

> "25........When such a claim is made by the legal representatives of the deceased, it has to be proved that the deceased was not himself responsible for the accident by his rash and negligent driving. It would also be necessary to prove that the deceased would be covered under the policy so as to make the insurance company liable to make the payment to the heirs..."

12. In view of the aforesaid decision of this court and also the decision of co-ordinate Bench of this High Court which has been relied upon by the appellant-insurance company and is quoted above, this court is of the opinion that in the given facts and circumstances of the case, the claimants would not be entitled for any compensation whatsoever as the accident arose because of the act of the deceased himself and the claimants have not been able to prove the rash and negligence on the part of any other persons resulting in the accident.

13. For the aforesaid reasons this court is of the opinion that a strong case is made out by the appellant-insurance company calling for interference with the impugned award. Accordingly, the appeal is allowed. The award impugned dated 02.04.2004 stands quashed/set aside. It is held that respondents claimants shall not be entitled for any compensation under the provisions of Section 166 of the Motor Vehicles Act.

14. It is made clear that in the event if some award amount is deposited by the insurance company and which has been disbursed to the claimants, the same shall not be recovered from the claimants.

Sd/-
(P. Sam Koshy)
Judge

inder