AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No.832 of 2009

National Insurance Company Limited, Through:- Its Divisional Manager, Divisional Office, B-1, Taha Complex, Ring Road-2, Vyapar Vihar Road, Tah & District Bilaspur (C.G.).

---Appellant

Versus

Smt.Uttara Bai Sahu W/o Sanjay Sahu, aged 27 years, R/o Village-Jarhagaon, P.S.Jarhagaon, District Bilaspur (C.G.).

---Respondent

For appellant/Insurance Company	:	Shri Dashrath Gupta, Advocate.
For respondent	:	Shri A.L.Singroul, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

10/11/2017

1. Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 19/11/2008 passed by the learned Motor Accident Claims Tribunal, Bilaspur (C.G.) in Motor Accident Claim Case No.65/2008.

2. Vide the said impugned award, the Tribunal in a death case under Section 163-A of the Motor Vehicles Act has awarded the compensation of Rs.1,52,000/- along with interest @ 6% per annum.

3. The Insurance Company has questioned the finding of the Tribunal on two issues. Firstly, the claim application by the claimant was not maintainable on the ground, that the deceased was not a third party and that the deceased is the owner of the vehicle involved in the accident himself. Secondly, the policy was only an act only policy which would cover the risk of only third party and the driver and that though there was an additional premium for the owner-cum-driver that would be only in the event if the owner himself is driving the vehicle. He further submits, that the claimant is the daughter of the deceased and therefore she would not be entitled for the compensation beyond the amount which is otherwise payable under Section 140 of the Motor Vehicles Act. It was

further contended by the counsel for the appellant/Insurance Company, that the driver of the offending vehicle was not made a party before the Tribunal and that the driver also did not have a license at the time of accident.

4. Perusal of record show, that the Insurance Company i.e. the appellant in the instant case have not led any evidence before the Tribunal to substantiate any of their contentions which they have raised. As regards the fact, that the vehicle was insured with an act only policy and therefore the Insurance Company would not be liable in indemnifying the owner when he would not be driving the vehicle is concerned, this court is of the opinion, that the said issue came up before the Madras High Court in a matter reported in 2014 ACJ 1862 in the case of ***National Insurance Company Limited Vs. Krishnan*** wherein the Madras High Court relying upon the decision of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs. Balakrishnan & Anr [{2013} 1 SCC 731]*** as in paragraphs 25, 26 & 27 has held as under:-

> **<u>25</u>**:- "Though the learned counsel for the appellant insurance company contended that the coverage for payment of additional premium for 'owner-cum-driver' cannot be extended to the occupant of the car, this court is not inclined to accept the said contention, in view of the recent decision of the Supreme Court in National Insurance Co. Ltd. v. Balakrishnan, 2013 ACJ 199 (SC) and taking note of payment of additional premium, this court is of the view that when the owner-cum-driver has paid an additional premium of Rs.100, taking a coverage for the pecuniary and non-pecuniary losses suffered by him in an accident arising out of the use of the vehicle, then he is entitled to seek for compensation."
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> **<u>26</u>**:- "An owner may travel in a vehicle, either driving the vehicle or as an occupant. He has taken a policy to cover himself for the bodily injuries or death due to an accident arising out of and use of the vehicle. The policy is to cover him in both the capacities, either as an owner of the vehicle or as a driver. Merely because, at the

time of accident, he did not drive the vehicle, it cannot be contended that the contract of insurance cannot be extended to cover the owner of the vehicle. When he travels in the vehicle, not actually driving the vehicle, but as an occupant, there is no alteration in his status, as the owner of the vehicle. The performance of an act, i.e., driving the vehicle, alone is not the criteria to determine the enforceability of the contract of insurance. So long as there is a payment of additional premium for the owner-cum-driver and during the period of validity, an accident has occurred, the policy would cover the owner also, even if he was not on the wheels at the time of accident. The expression 'owner-cum-driver' cannot be split up to narrow down the enforceability of the policy to the driver only, if he is also the owner of the vehicle. When an occupant in the vehicle is covered by the judgment in National Insurance Co.Ltd. v. Balakrishnan, 2013 ACJ 199 (SC), then the owner of the vehicle, who travelled in the offending vehicle as an occupant, is also entitled to seek for just compensation, when the vehicle is covered by a comprehensive/package policy. If the policy is comprehensive/package policy and when additional premium has been paid to cover any loss, then the insurance company is liable to pay compensation."

<u>27</u>:- "An occupant in a vehicle may include all the persons, including the owner. When there are different kinds of policies, for the owner-cum-driver, employee, unnamed passengers, etc., for which different rates of premium are prescribed under the India Motor Tariff, it cannot be contended that the claim for compensation is maintainable only when the owner is on the wheels and not when he travelled in the vehicle as an occupant. In the light of the decisions stated supra, this court is of the view that the respondent is entitled to maintain a claim for compensation against the insurer alone.

5. This court also is inclined to accept the analogy laid down by the Madras High Court on the said issue and reaches to the conclusion, that once if the owner has paid an additional premium covering the risk of the owner-cum-driver, he has option of traveling in his vehicle in either capacity i.e. either as an occupant or as a driver. He need not to be driving the vehicle all the time for getting the advantage of the additional premium that he has paid for. Thus, the objection raised by the counsel for the appellant stands negated.

6. If we look into the provision of Section 166(1)(c) of the Motor Vehicles Act it clearly reflects, that so far as the claim application is concerned where the death has resulted from the accident it has been envisaged, that the claim application can be filed by all or any of the legal representatives of the deceased. It does not debar the married daughter from filing the claim application for the death of her father.

7. Moreover in the instant case there is no evidence on record with which it could be established, that there were other claimants also alive after the death of the deceased. For all the said reasons this court is of the opinion, that the said ground of the appellant/Insurance Company also stands negated.

8. Even otherwise, the issue whether the married daughter would be entitled for claim under the Motor Vehicles Act or not is already been decided by the Hon'ble Supreme Court in the case of Smt.Manjuri Bera Vs. Oriental Insurance Company Limited (2007 (2) T.A.C. 431 SC).

9. Further when we peruse the record it seems, that the additional premium which was paid covering the risk of the owner-cum-driver was up to the extent of Rs.2,00,000/- and the amount awarded in the instant case is much within the said amount i.e. Rs.1,52,000/- and therefore the entire liability of payment of compensation shall be upon the Insurance Company.

10. So far as the ground of the driver not being made a party and he was not having a license at the time of accident is concerned, as has been earlier

discussed, since the Insurance Company has not led any evidence, this court does not find any strong case made out by the Insurance Company calling for an interference with the impugned award.

11. The appeal of the Insurance Company thus fails deserves to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

Sumit