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HIGH COURT OF CHHATTISGARH AT BILASPUR

Misc. Appeal (C) No. 1232 of 2010

The Oriental Insurance Co. Ltd. Divisional No.1, Madina Manzil, Kutchery Chowk, Jail Road, Raipur (CG) (Insurer of Hero Honda motor cycle number CG 04 CC 7901)

---- Appellant

Versus

1. K. Shashi Rekha W/o late K. Arjun Rao, age 26 years
2. K. Kunal Rao S/o late K. Arjun Rao, age 6 years
3. K. Sonal D/o late K. Arjun Rao, age 3 years
   All R/o through K. Kamraju, Shankar Nagar, Deo Baloda, District Durg (CG)
4. Darvan Lal S/o Raja Ram Yadav, age 35 years, resident of Mandi Gate, Pandari, Raipur (CG) (Registered owner of Hero Honda motor cycle number CG 04 CC 7901)

---- Respondents

Misc. Appeal (C) No. 92 of 2011

1. K. Shashi Rekha W/o late K. Arjun Rao, aged about 26 years
2. K. Kunal Rao S/o late K. Arjun Rao, aged about 6 years
3. K. Sonal D/o late K. Arjun Rao, aged about 3 years
   Respondents 2 & 3 are minors through their natural guardian mother K. Shashi Rekha
   All R/o through K. Kamraju, Shankar Nagar, Dev Baloda, District Durg (CG)

---- Appellant

Versus

1. Darvan Lal S/o Raja Ram Yadav, aged 35 years, resident of Mandi Gate, Pandari, Raipur (CG) (Registered owner of Hero Honda motor cycle number CG 04 CC 7901)
2. The Oriental Insurance Co. Ltd. Divisional No.1, Madina Manzil, Kutchery Chowk, Jail Road, Raipur (CG) (Insurer of Hero Honda motor cycle number CG 04 CC 7901)

---- Respondents

For Claimants	:	Shri A. L. Singroul, Advocate.
For Insurance Company	:	Shri Sudhir Agrawal, Advocates.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

14/11/2017

These are two appeals arising out of the award dated 20.10.2010 passed by the 2nd Additional Motor Accident Claims Tribunal, Raipur (CG) in Claim Case No. 16 of 2010. Vide the impugned award the Tribunal in a claim case under Section 163A of MV Act has awarded a compensation of Rs.3,73,000/- with interest @ 6% per annum from the date of application.

2. MAC No. 1232/10 is an appeal by the Insurance Company challenging the liability and MAC No.92/11 is an appeal by the claimants seeking for enhancement of compensation.

3. So far as the appeal of the Insurance Company is concerned, it is contended that the deceased in the instant case K. Arjun met with an accidental death on 26.12.2009 while driving the Hero Honda motorcycle bearing registration No. CG 04 CC 7901. He was not the owner of the said motorcycle but was the borrower when met with an accident. Counsel for the Insurance Company submits that it is a case where the Insurance Company has not been paid any extra premium for covering the risk of a borrower and therefore fastening of liability upon the Insurance Company is erroneous and the same deserves to be suitably modified. He submits that it is a case where the Insurance Company could not have been saddled with any liability whatsoever in the absence of any premium being received by the Insurance Company covering the risk of the borrower.

4. Counsel appearing for the claimants submits that the compensation awarded by the Tribunal is on the lower side and the same deserves to be substantially enhanced considering the facts and circumstances of the case. So far as the liability is concerned, counsel for the claimants submits that once when it is a package policy, it amounts to a comprehensive cover and the borrower also falls within the risk covered under the said policy. Therefore, the entire liability shall fall upon the Insurance Company and the finding of the Tribunal fastening the liability upon the Insurance Company seems to be proper, legal and justified and the same does not warrant any interference.

5. Having heard the contentions put forth on either side, undisputedly a perusal of the record would show that the policy in the instant case was a package policy with an extra premium paid for Rs.50 covering the risk of the owner-cum-driver. Taking into consideration the recent decision of the Supreme Court undoubtedly the deceased in the instant case being a borrower from the actual owner of the vehicle steps into the shoes of the owner and for all practical purposes, he has to be construed as the owner of the vehicle. Once when there is a policy with an extra premium paid covering the risk of the owner-cum-driver irrespective that the owner was driving the motorcycle or it was being driven by the borrower, the borrower would have to be looked as an owner and the Insurance Company is bound to indemnify the owner to the extent of the risk covered under the said policy which is in the instant case is up to rupees one lakh.

6. In view of the same, this Court is of the opinion that the liability of paymet of compensation of the Insurance Company in the factual matrix of the case would be up to one lakh. Further, the award of compensation stands restricted to rupees one lakh as the deceased himself was responsible for the accident to have occurred and that there being no negligence of any other third party or person, the claimants would be entitled for compensation of only rupees one lakh and the interest accrued thereon.

7. The appeal of the Insurance Company thus stands allowed and the impugned award stands modified to the extent that the claimants shall be entitled for a compensation of only rupees one lakh with interest at the rate as has been awarded by the Tribunal.

8. The appeal of the claimants as a consequence stands dismissed restricting the amount of compensation payable to the claimants at Rs.1,00,000/-. If any extra amount has been deposited by the Insurance Company, the same will be refunded by the owner in excess of the compensation of rupees one lakh and its interest. The amount lying before the Tribunal shall be released to the claimants.

Sd/-
(P. Sam Koshy)
Judge

Bhola