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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1230 of 2010

United India Insurance Company Limited through its Micro Office Durg, Paras Complex, near State Bank Durg, District Durg (CG)

---- Appellant

Versus

1. Smt. Hulasi Bai W/o late Likhitram Sahu, aged 43 years
2. Rajeshwer Kumar Sahu S/o late Likhitram Sahu, aged 25 years
3. Sunil Kumar Sahu S/o late Likhitram Sahu, aged 23 years
4. Anil Kumar Sahu S/o late Likhitram Sahu, aged 20 years

   All are R/o Kilepar, Tahsil Gunderdehi, P.S. Ranchirai, District Durg (CG)
5. Ganesh Ram Thakur S/o Kunwar Singh Thakur, aged 25 years, R/o Borgahan, P.S. Ranchirai, Tahsil- Gunderdehi, Dist- Durg (CG)
6. Kunwar Singh S/o Palatram, aged 55 years, R/o Konde Power House Dallirajhara Ward No. 16, Tah. Balod, Dist- Durg (CG)
7. Gangdev Ram Sahu S/o Itwari Ram Sahu, aged 62 years, R/o Kilepar, Tahsil- Gunderdehi, P.S. Ranchirai, Dist- Durg (CG)

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate
For Respondents 1 to 4	:	Shri Nitansh Jaiswal, Advocate
For Respondent no.7	:	Shri Goutam Khetrapal, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

02/11/2017

Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 18.06.2010 passed by the 12th Additional Motor Accident Claims Tribunal, Durg (CG) in Claim Case No. 143 of 2009. Vide the impugned award, the Tribunal in a death case under

Section 166 of the MV Act has awarded a compensation of Rs.3,44,788/- with interest @ 6% per annum from the date of application.

2. While fastening the liability, the Tribunal has ordered for compensation to be paid by the present appellant Insurance Company as well as the owner-cum-driver of the other vehicle involved in the accident i.e. respondents 5 & 6. The liability which has been fastened upon the present appellant is to the tune of Rs.1,72,394/- indemnifying the Respondent no.7, the owner of the other vehicle.

3. Counsel for the appellant Insurance Company challenging the impugned award to the extent of the liability which has been fastened upon them submits that it is a case where the policy which was issued in faovur of respondent no.7 was an act only policy where the liability for covering the risk of the owner-cum-driver and the driver was limited to the extent of one lakh in the event of the owner-cum-driver has a valid driving licence.

4. Though the Insurance Company has pleaded that the driver of the motorcycle i.e. the deceased was not having a valid driving licence but the said aspect has not been proved effectively. Accordingly, the said contention stands negated.

5. However, so far as the policy being a limited policy is concerned, the same is not in dispute as Exhibit D-1 has been brought on record which has also been substantiated by the witness who has been examined on behalf of the Insurance Company Devbrat Chakraverty, the Branch Incharge of the appellant Insurance Company. This Court finds sufficient force in the documents as well as in the evidence of the appellant wherein it has been established that the policy issued by the appellant was an act only policy and that there was a limited liability of only Rs.1,00,000/-.

6. The liability of the Insurance Company is contractual liability and unless there is a premium paid while issuance of policy, the liability of the Insurance

Company would be confined only to the extent of covering the risk of only those persons for whom there is a statutory coverage i.e. third party or for whom the extra premium has been paid. The Insurance Company cannot be expected to protect the owner to the extent of covering those persons who are not otherwise covered under the terms of the contract and there can only be enforcement of contract between the insurer and the insured qua the contract and not beyond that.

7. Thus, the appeal of the appellant stands allowed to the extent that the liability of the appellant would be Rs.1,00,000/- and balance amount of Rs.72,394 shall be recovered by the claimants from respondent no.7. The record shows that the claimants in any case have also to recover an amount of Rs.1,72,394/- from respondents 5 & 6 as the liability of payment of compensation of 50% of the award has been saddled upon respondents 5 & 6.

8. The appeal of the Insurance Company therefore is allowed in part.

Sd/-
(**P. Sam Koshy)**
JUDGE

Bhola