

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 1433 of 2007**

Bajaj Allianz General Insurance Company Limited, Shiv Mohan Bhavan, Vidhan Sabha Marg, Pandri, Raipur, Chhattisgarh

----Appellant**Versus**

1. Smt. Kunti, Wd/o. Late Devcharan Pal, Aged about 40 years,
2. Umakant S/o. Late Devcharan Pal, Aged about 16 years,
3. Lakshmikant, S/o. Late Devcharan Pal, Aged about 14 years,
4. Kamin Bai, Wd/o. Late Mehataru Pal, Aged about 65 years,

Respondents No. 2 & 3 are minor represented through: Natural Guardian mother-Respondent No.1 Smt. Kunti, Wd/o. Devcharan Pal.

All R/o. Village and Post Birgaon, District Raipur, Chhattisgarh

5. Jitendra Singh, S/o. Gopal Singh Rajput, R/o. Motilal Nagar Kota, Behind Viridi Colony, P.S. Amanaka, Raipur, District Raipur, Chhattisgarh

----Respondents

For Appellant	:	Mr. S.S. Rajput, Advocate
For Respondents No. 1 to 4	:	Mr. Amiyakant Tiwari, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****31/10/2017**

1. The present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act challenging the award dated 31.10.2007, passed by the Chief Motor Accident Claims Tribunal, Raipur, Chhattisgarh, in Claim Case No. 9/2007.
2. Vide the impugned award, the Tribunal, in a death case under Section 163-A of the Motor Vehicles Act has awarded a compensation of Rs.1,72,000/- with interest @ 6% per annum from the date of application. The liability of payment of compensation has been jointly and severally fastened upon the Owner, Driver and the

Insurance Company.

3. The appeal is by the Insurance Company challenging the liability on the ground that the deceased in the instant case was himself driving the motorcycle and accident did not occur because of collision of another vehicle. That he himself fell from the motorcycle sustaining injuries, to which he later succumbed, and therefore it is a case where the Claimants would not be entitled for compensation under the Motor Vehicles Act. In view of the fact that he would not fall within definition of third party under the Motor Vehicles Act and that he himself was responsible for the accident and thus prayed for the impugned award to be set-aside and the claim application to be rejected.
4. Counsel appearing for the Claimants however submits that it is a case, where the accident occurred on account of busting of the tyre and the said ground would be a technical reason for the accident and that it cannot be held that it was he, who was responsible for the accident and thus prayed for dismissal of the appeal of the Insurance Company.
5. He further submits that it is a case, where the deceased was not the Owner of the vehicle and the Owner was somebody else, the policy issued being a package policy, the Claimants would also fall within the ambit of the third party for the purpose of compensation in a policy, which was a comprehensive policy.
6. Having heard the contentions put forth on either side and on perusal of record, the date of accident, the vehicle involved in the accident

and the vehicle being insured with the present appeal is not in dispute. It is also not in dispute that the deceased was not an employee of the Owner of the motorcycle. The only issue is to what extent would the Insurance Company be liable to pay compensation if at all and what would be the consequences.

7. At this juncture, it would be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of “***Ningamma and Another vs. United India Insurance Company Limited***” (2009) 13 SCC 710. After discussing a catena of decisions of the Hon'ble Supreme Court in respect of an application under Section 163-A of the Motor Vehicles Act, the Hon'ble Supreme Court in paragraph No. 22 of the said judgment holds as under:-

“In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided under Section 163-A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163-A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the MVA.”

8. In light of the aforesaid authoritative decision of the Hon'ble Supreme Court, this Court is of the opinion that the grounds raised by the appellant, thus have some force, the impugned award deserves to be interfered with accordingly.
9. However, further perusal of the policy would show that the Owner of

the motorcycle involved in the accident had while ensuring the vehicle had paid an extra premium covering the risk of Owner-cum-Driver by payment of extra premium of Rs.50/-. This payment of extra premium is covering the risk of any liability of the Owner-cum-Driver to the extent of Rs.1,00,000/-. This aspect has also come in the evidence which was adduced before the Tribunal.

10. In view of the same, this Court is of the opinion that the impugned award, so far as granting of compensation to the Claimants to the tune of Rs.1,72,000/- is bad in law. The Claimants shall be entitled for a compensation of Rs.1,00,000/- by virtue of the extra premium that has been paid by the Owner-cum-Driver of the motorcycle. The said amount of Rs.1,00,000/- shall also carry interest at the same rate as has been adjudicated by the Tribunal.
11. It is held that the Claimants shall be entitled for a total compensation of Rs.1,00,000/-. The impugned award thus stands modified to the aforesaid extent.
12. The interim order earlier granted stands merged with the final order passed today and whatever amount has already been deposited would stand merged with this order and the balance amount if any up to Rs.1,00,000/- would be required to be paid by the Insurance Company forthwith.

Sd/-
(P. Sam Koshy)
Judge