

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MA No. 1287 of 2005**

Branch Manager, National Insurance Company near Gazibo Hotel
through the Divisional Manager, Divisional Office, Bilaspur Branch,
Taha Complex Vyapar Vihar Road, Bilaspur.

---- Appellant**Versus**

1. Rajkumar@Raju Malghani son of Sachchanand Malghani, aged about 33 years, Resident of ward No.8, Chakarbhata Camp, post Chakarbhata, Tah.Bilha, District Bilaspur.
2. T.R.Sarathi, Chief Municipal Officer, Baloda Bazar, Tah. Baloda Bazar, District Raipur (C.G)
3. S.P.Mishra s/o J.P.Mishra the then Station house officer, P.S.Hirri, District Bilaspur (C.G)

---- Respondents

For Appellant : Shri Dashrath Gupta, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****24/07/2017**

1. The present is an appeal under Section 173 of the Motor Vehicles Act against the award dated 30.07.2005 passed by the 8th Additional Motor Accident Claims Tribunal (FTC) Bilaspur in Claim Case No.111/2004. Vide the said impugned award the Tribunal has fastened the liability upon the Appellant Insurance Company for payment of compensation of Rs.1,00,000/- to the Respondent No. 1 Claimant.
2. The fact and brief is that the Respondent No.1 met with an accident on 26/08/2003 when he was going on his motorcycle bearing Registration No.CG-10-ZL-6648 was dashed by another motorcycle belonging to the Respondent No.2 bearing Registration No.MP-18-B-

9592. In the said accident the Respondent No.1 sustained injuries for which he had undergone treatment. Subsequently an application under section 166 of Motor Vehicles Act was filed seeking compensation for the injuries caused.

3. The Tribunal considering the facts and circumstances of the case and also taking note of the fact that claimant was insured by the present Appellant and also taken policy covering the compulsory personal risk of the owner and driver for which extra premium of Rs.50/- was also charged and since there was a limit of Rs.1,00,000/-, thus awarded compensation of Rs.1,00,000/- to be payable by the present Appellant. It is this award which is under challenge in this appeal.
4. The ground raised for challenging the award is that fastening of liability upon the present appellant as the accident occurred because of rash and negligence driving of the motorcycle who had dashed the motorcycle of the Respondent No.1 and therefore the liability of payment of compensation should have been fastened upon the owner of the motorcycle who dashed the complainant's motorcycle as their motorcycle No. MP-18-B-9592 was not insured and since the driver of that motorcycle had died. It was further contended that limit of Rs.1,00,000/- which is envisaged in the policy is in the event of a death case and not otherwise, and therefore awarding of Rs.1,00,000/- also is bad in law.
5. The award under challenge is an award passed in the year 2005 almost about 12 years ago. This court had already ordered for payment of Rs.75,000/- against the impugned award. The only

balance left is that of Rs.25,000/-.

6. The ground of challenge raised by the Appellant is not sustainable for the reason that record does not show any evidence to have been led by the Insurance Company to prove the ground which has been raised by the Appellant in the present case. In the absence of any evidence led by the Insurance Company it would be difficult at this juncture to reach to a different conclusion than what has been arrived at by the Tribunal only relying upon the policy and policy conditions which were not produced before the Tribunal during the course of evidence except for the fact that indisputably the vehicle belonging to the Respondent No.1 claimant was duly insured with the present appellant.
7. In view of the same this court does not find any strong case for interference with the impugned award, the same therefore deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

inder