

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 14-8-2018****Delivered on 20-8-2018****Misc. Appeal (C) No. 64/2013**

(Arising out of award dated 11-10-2012 passed by the Motor Accident Claims Tribunal, Koriya (Baikunthpur) CG in Motor Accident Claims Case No. 14/2011)

United India Insurance Co. Ltd. Thru- Its Divisional Manager,
Divisional Office- 2nd Floor, Guru Kripa Towers, Vyapar Vihar
Road, Bilaspur, P.S. Tarbahar, P.O. Bilaspur, Distt. Bilaspur
C.G., Pin- 495001, CG

---- Appellant**Versus**

1. Smt. Shantibai Wd/o Late Bhorelal Aged About 44 Years occupation Housewife.
 2. Kaushilya Bai D/o Late Bhorelal Aged About 29 Years
 3. Laxmi Bai D/o Late Bhorelal Aged About 25 Years
 4. Durga D/o Late Bhorelal Aged About 16 Years occupation Student
 5. Raja S/o Late Bhorelal Aged About 12 Years occupation student
- Respondents No. 4 to 5 are minor through their mother- Shanti Bai Wd/o. Late Bhorelal (Respondent No. 1)
- All above respondents are R/o Village- Patna (Jhumarpara), P.O. Patna, Tah. Baikunthpur, Distt. Koriya C.G.
6. Lalan Prasad Sonwani S/o Maheshwar Ram Sonwani Aged About 42 Years Village- Sarbhoka, P.S. And P.O. Patna, Tah. Baikunthpur, Distt. Koriya C.G.,
 7. Balgovind S/o Bhukhsai Panika Aged About 55 Years Village- Bhakuma, P.S. and Tah. Ramanujnagar, Distt. Surguja C.G., Hal Mukam- Sonamani, P.S. Chirmari, Tah. Khadgwa, Distt. Koriya C.G.

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Adv.
For R-1 to 5	:	Shri Pawan Kesharwani, Adv.
For R 6 and 7	:	None appears.

CAV ORDER**Hon'ble Shri Justice Sharad Kumar Gupta**

1. In this MAC, the challenge levied is to the award dated 11-10-2012 passed by the Motor Accident Claims Tribunal, Korea (Baikunthpur) in Motor Accident Claims Case No. 14/2011 whereby and whereunder the appellant has also been held liable along with respondents No. 6 and 7 jointly and severally to pay the compensation Rs. 2,74,600/- to respondents No. 1 to 5/ claimants and also pay interest from the date of registration of the claim case till its realization.
2. This is admitted by respondents No. 5 and 6 that Bhorelal has died. This is also admitted by respondent No. 5 that he and deceased Bhorelal were going on his scooter. Deceased Bhorelal was a pillion rider. The scooter met with an accident. On 9-10-2010 Bhorelal died due to injuries sustained by him. This is also admitted by respondent No. 6 that prior to the accident he had sold the offending vehicle Bajaj Chetak scooter bearing No. MP 27 D 2363 to respondent No. 5. This is also admitted by the appellant that the offending vehicle was insured by it on 17-10-1997, at the time of the accident the offending vehicle was insured.
3. In brief the case of the respondents No. 1 to 5 is that respondent No. 6 had a valid and effective driving licence. At the time of accident, the respondent No. 5 was driving the offending vehicle rashly and negligently. Thus, the appellant, respondents No. 6 and 7 are liable to pay the compensation to them.

4. In brief, case of the respondent No. 6 is that he was driving the offending vehicle carefully. He is not liable to pay any compensation.
5. In brief the case of the respondent No. 7 is that he had already sold the offending vehicle to respondent No. 6 thus he is not liable to pay any compensation.
6. In brief, case of the appellant is that at the time of the accident the respondent No. 6 did not have valid and effective driving licence. The intimation of the transfer of the offending vehicle was not given by respondent No. 7. Thus, insurance company is also not liable to pay the compensation.
7. After the conclusion of the trial, said Claims Tribunal passed the aforesaid award. Being aggrieved the appellant has preferred this appeal.
8. Counsel for the appellant vehemently argued that the risk of pillion rider was not covered under the insurance policy of the offending vehicle. Thus, the appellant cannot be held liable to pay any compensation along with respondents No. 6 and 7 jointly and severally to the respondents No. 1 to 5. He placed reliance on a decision of Hon'ble Supreme Court in the matter of **the General Manager, United Insurance Co. Ltd. -v- M. Laxmi and others** passed in Civil Appeal No. 6659/2008 dated 14-11-2008.
9. Counsel for the respondents No. 1 to 5 argued that the offending vehicle was insured with the appellant, thus the appellant is

liable to pay the compensation.

10. None for respondents No. 6 and 7.

11. Points for determination:-

There are following points for determination in the case :-

(i) Whether the risk of pillion rider was not covered under the insurance policy of the offending vehicle, and therefore, the appellant cannot be held liable to pay any compensation along with respondents No. 6 and 7 jointly and severally due to death of Bhorelal ?

(ii) Relief and cost.

Point for determination No. 1 : findings with reasons:-

12. I have perused the record with utmost care and caution.

The W.S. of the appellant reveals that the appellant had not pleaded in his W.S. that the insurance policy of the offending vehicle does not cover the risk of pillion rider of the offending vehicle i.e. deceased Bhorelal. Therefore, the Claims Tribunal had not framed the issue regarding this matter. Because no issue was framed regarding this matter, thus the parties had not led any evidence in this regard. The appellant had raised aforesaid ground in appeal which he could have raised in his W.S. before the Claims Tribunal. In these circumstances, this Court finds that the appellant cannot raise this ground at the appellate stage that risk of the pillion rider was not covered under the insurance policy of the offending vehicle. Therefore, the contention of the insurance company that the insurance

company cannot be held liable to pay any compensation along with respondents No. 6 and 7 jointly and severally has no force. Thus, at this appellate stage the appellant does not get any help from the aforesaid case law of **the General Manager** (supra).

Point for determination No. 2 : findings with reasons :-

13. After the complete and full appreciation of the evidence discussed herebefore, this Court finds that appellant has failed to establish his appeal. The instant appeal is devoid of merits and deserves to be and is hereby dismissed.
14. Appellant shall bear its own costs as well as costs of respondents.

Sd/-
(Sharad Kumar Gupta)
Judge