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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 92 of 2012

United India Insurance Company Limited, Branch Manager, Branch Office, Stadium Road T. P. Nagar, Korba, District Korba (CG), through authorized authority United India Insurance Co. Ltd. Divisional Office, Rajendra Nagar Chowk, Bilaspur (CG)

---- Appellant

Versus

1. Anita Kesharwani Wd/o late Satyendra Kesharwani, aged 40 years, occupation nothing, R/o near Vindhyavasini Mandir, Ward No.4, Kawardha, PO Kawardha, District Kabeerdham (CG)
2. Versha Kesharwani D/o late Satyendra Kesharwani, aged 17 years, minor, through her mother Smt. Anita Kesharwani Wd/o late Satyendra kesharwani, R/o near Vindhyavasini Mandir, Ward No.4, Kawardha, PO Kawardha, District Kabeerdham (CG)
3. Vasu Kesharwani S/o late Satyendra Kesharwani, aged 16 years, minor, through his mother Smt. Anita Kesharwani Wd/o late Satyendra kesharwani, R/o near Vindhyavasini Mandir, Ward No.4, Kawardha, PO Kawardha, District Kabeerdham (CG)
4. Gokul Prasad Agrawal, R/o Chandania Para, Janjgir, PO Janjgir, District Janjgir-Champa (CG)

---- Respondents

Misc. Appeal (C) No. 93 of 2012

United India Insurance Company Limited, Branch Manager, Branch Office, Stadium Road T. P. Nagar, Korba, District Korba (CG), through authorized authority United India Insurance Co. Ltd. Divisional Office, Rajendra Nagar Chowk, Bilaspur (CG)

---- Appellant

Versus

1. Vasu Kesharwani S/o late Satyendra Kesharwani, aged 16 years, minor, through his mother Smt. Anita Kesharwani Wd/o late Satyendra

kesharwani, R/o near Vindhyavasini Mandir, Ward No.4, Kawardha, PO Kawardha, District Kabeerdham (CG)

2. Gokul Prasad Agrawal, R/o Chandania Para, Janjgir, PO Janjgir, District Janjgir-Champa (CG)

---- Respondents

<u>Misc. Appeal (C) No. 94 of 2012</u>

United India Insurance Company Limited, Branch Manager, Branch Office, Stadium Road T. P. Nagar, Korba, District Korba (CG), through authorized authority United India Insurance Co. Ltd. Divisional Office, Rajendra Nagar Chowk, Bilaspur (CG)

---- Appellant

Versus

1. Anita Kesharwani Wd/o late Satyendra Kesharwani, aged 40 years, occupation nothing, R/o near Vindhyavasini Mandir, Ward No.4, Kawardha, PO Kawardha, District Kabeerdham (CG)

2. Gokul Prasad Agrawal, R/o Chandania Para, Janjgir, PO Janjgir, District Janjgir-Champa (CG)

---- Respondents

<u>Misc. Appeal (C) No. 95 of 2012</u>

United India Insurance Company Limited, Branch Manager, Branch Office, Stadium Road T. P. Nagar, Korba, District Korba (CG), through authorized authority United India Insurance Co. Ltd. Divisional Office, Rajendra Nagar Chowk, Bilaspur (CG)

---- Appellant

Versus

1. Versha Kesharwani D/o late Satyendra Kesharwani, aged 17 years, minor, through her mother Smt. Anita Kesharwani Wd/o late Satyendra kesharwani, R/o near Vindhyavasini Mandir, Ward No.4, Kawardha, PO Kawardha, District Kabeerdham (CG)

2. Gokul Prasad Agrawal, R/o Chandania Para, Janjgir, PO Janjgir, District Janjgir-Champa (CG)

---- Respondents

For Appellant – Insurance Co. : Shri Dashrath Gupta, Advocate
For Respondents 1 to 3 – Claimants : Shri H. S. Patel, Advocate
For Respondent no.4 – Owner : Shri Basant Dewangan, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

07/03/2018

These are four appeals challenging a common order dated 19.10.2011 passed by the Motor Accident Claims Tribunal, Kabeerdham (Kawardha) (CG) in Claim Case Nos. 99/09, 100/09, 101/09 & 102/09. Vide the impugned award, the Tribunal, has awarded compensation of Rs.30,000/- in Claim Case No.99/09, Rs.70,000/- in Claim Case No.100/09, Rs.30,000/- in Claim Case No. 101/09 and Rs.18,00,000/- in Claim Case No.102/09. In all the cases the rate of interest has been awarded @ 9% per annum from the date of application.

2. MAC Nos. 92/12, 93/12, 94/12 & 95/12 arise out of Claim Case Nos.102/09, 99/09, 100/09 & 101/09 respectively. While passing the impugned award the liability has been fastened upon the appellant Insurance Company.

3. The solitary ground of challenge by the appellant is that the Insurance Company cannot be fastened with the liability of payment of compensation since the injured and the deceased persons were not covered under the risk from the policy which was issued to the owner of the offending vehicle.

4. Facts of the case, in brief, are that in the intervening night of 14/15.06.2009, deceased Satyendra Kesharwani, aged around 42 years, an advocate by profession along his family members was travelling in a Mahindra Maxx private car bearing registration No. CG 11B 0997. The said vehicle was owned by respondent Gokul Prasad Agrawal and was driven by

Siyaram Kewat. The said vehicle in which the deceased and the injured persons were travelling from Kawardha to Janjgir, enroute met with an accident when it collided with a stationary truck bearing registration No. BR 47 G 1956 from the back side. As a result of the said accident, the driver of the said car namely Siyaram Kewat and Satyendra Kesharwani succumbed to the injuries sustained and other persons namely Vasu Kesharwani, Anita Kesharwani & Versha Kesharwani sustained injuries. The three injured persons namely Vasu, Anita and Varsa filed claim applications under Section 166 of Motor Vehicles Act for the injuries sustained which was registered as Claim Case Nos. 99/09, 100/09 and 101/09. The legal representatives of deceased Satyendra Kesharwani preferred a claim application which was registered as Claim Case No. 102 of 2009. The claim applications were filed against the owner of Mahindra Maxx private car bearing registration No. CG 11B 0997 in which they were travelling and the Insurance Company which had insured the said vehicle.

5. The Tribunal, vide the impugned award dated 19.10.2011, has awarded compensation in favour of each of the claimants and fastened the liability of payment of compensation upon the Insurance Company.

6. It is this award which is under challenge in the present appeals.

7. The grievance of the Insurance Company is that the policy which was issued by the Insurance Company was a liability only policy i.e. an act only policy where the risk covered is only that of the driver of the offending vehicle and the death or injury caused to third party. According to the counsel for the Insurance Company, the deceased Satyendra and the three injured persons were travelling in the private car and as such they were not third party rather they were occupants of the said vehicle. He submits that the policy which was issued did not cover the risk of occupants of the vehicle. No extra premium was also paid by the owner in this regard. Hence, the liability of the Insurance

Company would be only for indemnifying the injured or a death of a third party and that of the driver of the vehicle and not the occupants. He submits that it is settled position that the occupants of the car by itself cannot be declared to be a third party even if they were non fare paying passengers. Thus, prayed that the the liability part may be shifted upon the owner Gokul Prasad Agrawal from that of the Insurance Company.

8. Counsel appearing for the claimants and the owner, on the contrary, opposing the appeal, submits that undisputedly an accident did occur and the vehicle was also duly insured, the liability of payment of compensation automatically stands fastened with the Insurance Company. They submit that at least, the doctrine of pay and recovery should be applied in the instant case in as much as there is no doubt that the vehicle was insured with the appellant Insurance Company. They further submit that the finding of the Tribunal is based on the judicial pronouncements as it stood then and prayed for rejection of the appeals.

9. Counsel appearing for the claimants in MAC No. 92/12 which arise out of Claim Case No. 102/09 submits that he has filed a cross objection seeking enhancement of compensation. He submits that in the light of the recent judgment of the Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and Ors. decided on 31st October, 2017**, the claimants would be entitled for compensation under the future prospects so also the compensation under conventional head should also have been much more than what has been awarded by the Tribunal. Thus, prayed for suitable enhancement of the compensation.

10. Having heard the contentions put forth by the Parties and on perusal of the record, the facts which are not in dispute rather admitted are the date of accident which took place on 14/15.06.2009 and the vehicle involved in the accident in which the deceased and the injured persons were travelling was

Mahindra Maxx bearing registration No. CG 11B 0997 driven by one Siyaram Kewat. The said vehicle was insured with the appellant Insurance Company and the policy of which is Ex. NA-1. The said policy was a liability only policy which is also termed as an act only policy. The act only policy normally covers the risk of only third party as well as the driver of the vehicle insured. For covering the risk of the persons travelling in the said vehicle under the act only policy, extra premium has to be paid by the owner. In the instant case, Ex.NA-1 does not show any extra premium to have been paid by the owner covering the risk of any of the occupants travelling in the said car.

11. At this juncture it would be relevant to refer to the judgment of the Supreme Court in the case of **National Insurance Company Limited Vs. Balakrishnan and Another, (2013) 1 SCC 731** wherein referring to a judgment of the **Delhi High Court in the case of Yashpal Luthra v. United India Insurance Co. Ltd., 2011 ACJ 1415 (Del)** in paragraphs - 26 & 27 the Supreme Court has held as under:

> “26. In view of the aforesaid factual position, there is no scintilla of doubt that a “comprehensive/package policy” would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an “Act Policy” stands on a different footing from a “Comprehensive/Package Policy”. As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a “Comprehensive/Package Policy” covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the “Act Policy” which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a “Comprehensive/Package Policy”, the liability would be covered. These aspects were not noticed in the case of Bhagyalakshmi (supra) and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same.
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> 27. In view of the aforesaid legal position, the question that emerges for consideration is whether in the case at hand, the policy is an “Act Policy” or “Comprehensive/Package Policy”.

> There has been no discussion either by the tribunal or the High Court in this regard. True it is, before us, Annexure P-1 has been filed which is a policy issued by the insurer. It only mentions the policy to be a "comprehensive policy" but we are inclined to think that there has to be a scanning of the terms of the entire policy to arrive at the conclusion whether it is really a "package policy" to cover the liability of an occupant in a car."

12. A similar view has been taken by the Gauhati High Court in the case of **United India Insurance Co. Ltd. Vs. Smt. Pratima Basak and Other, 2014 (2) T.A.C. 559 (Gau.)** where in paragraphs - 9 & 10 it has been held as under:

> "9. In the present case, the policy produced is an Act policy and no special premium is paid to cover the risk of the inmates of the vehicle.
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> 10. In that view of the matter, the award made against the insurer by the Tribunal is set aside. The compensation awarded is, however, payable by the owner of the vehicle. The appeals are accordingly allowed. The amount of compensation deposited, if not disbursed to the claimant, shall be refunded to the appellant."

The Madhya Pradesh High Court also in the case of **Siyaram alias Jaisiyaram Vs. Smt. Devkuwar and Other** reported in **2014 (2) T.A.C. 112** (M.P.) has taken a similar view.

13. In the light of the aforesaid decisions of the Supreme Court as well as the two High Courts, when the facts of the present case is compared, it reveals that the vehicle involved in the instant case was covered by a policy Ex. NA-1 which was a liability only policy with no extra premium paid by the owner covering the risk of any of the occupants in the said vehicle. Thus, the Insurance Company cannot be fastened with the liability of payment of compensation for whom the risk had not been covered and for whom no premium had been received by the Insurance Company.

14. At this juncture counsel for the appellant refers to a recent decision of the Supreme Court reported in the case of Pappu and others v. Vinod Kumar

Lamba and another reported in AIR 2018 SC 592 requesting for applying the principle of 'pay and recovery' upon the Insurance Company.

15. However, the facts of the said case are entirely different from that of the present case. In the said case, there was an allegation of breach of policy condition whereas in the present case, the stand of the Insurance Company all along was that none of the claimants and the deceased persons were covered under the policy. Since there was no contract covering risk of the claimants and the deceased by the Insurance Company qua the owner, the Insurance Company cannot be held liable for indemnifying the owner under such circumstance. Moreover, what is also relevant at this juncture is that the Supreme Court in the said case of Pappu and others (supra) has also in paragraph-11 has held that the Insurance Company can be fastened with the liability only on the basis of a valid Insurance Policy where the basic facts are pleaded and established by the owner of the offending vehicle. Once when it is established that there was no premium paid by the owner covering the risk of any of the occupants in the said car and the policy was only a liability only policy, this Court is of the opinion that it is the judgment of the Supreme Court in the case of Balakrishnan (supra) which would be applicable in the present case and the Insurance Company thus would be exonerated of its liability under such circumstance. It is ordered accordingly.

16. Thus, the liability of payment of compensation stands shifted upon the owner Gokul Prasad Agrawal. As a consequence, the impugned award passed by the Tribunal stands modified to the extent that the compensation awarded shall be payable by the owner of the vehicle i.e. Gokul Prasad Verma. If the amount of compensation deposited by the Insurance Company has not been disbursed, the same shall be refunded to the appellant Insurance Company with liberty to the claimants for initiating appropriate proceeding against the owner if the amount of compensation is not deposited by the owner.

17. So far as the cross objection of the claimants in MAC No. 92/12 is concerned, this Court is of the opinion that there is sufficient force in the argument of the counsel for the claimants that the claimants would be entitled for compensation towards future prospects so also under conventional head. The Tribunal has assessed income of the deceased at Rs.15,000/- a month and Rs.1,80,000/- yearly on which the claimants would be entitled for 25% towards future prospects which comes to Rs.45,000/- making the yearly income at Rs.2,25,000/-. If 1/3rd of the said amount is deducted towards personal expenses, the amount left would be 1,50,000/- which if multiplied applying the multiplier of 14, the amount comes to Rs.21,00,000/-. It is ordered accordingly that the claimants would be entitled for Rs.21,00,000/- as loss of dependency. In addition, the claimants would also be entitled for Rs.70,000/- under conventional heads. Thus, the claimants in MAC No.92/12 shall be entitled for a total compensation of Rs.21,70,000/- in stead of Rs.18,00,000/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been fixed by the Tribunal.

18. The four appeals filed by the Insurance Company and the cross objection filed by the claimants in MAC No. 92/12 stand allowed.

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

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