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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 752 of 2013

Order reserved on 12-7-2018

Order delivered on 24-7-2018

- United India Insurance Company Limited Thru- Its Divisional Manager, Divisional Office, Guru Kripa Towers, Vyapar Vihar Road, Bilaspur, Distt. Bilaspur C.G., Chhattisgarh

---- Appellant

Versus

1. Banshidhar Uraon S/o Late Dururam Uraon Aged About 61 Years R/o Bankimongara, Katghora, Distt. Korba C.G., Chhattisgarh
2. Smt. Kusum Bai W/o Banshidhar Uraon Aged About 55 Years R/o Bankimongara, Katghora, Distt. Korba C.G., District : Korba, Chhattisgarh
3. Deepak Kumar S/o Banshidhar Uraon Aged About 30 Years R/o Hut In Front Of H.No. 46/1, Bankimongara, Katghora, Distt. Korba C.G., District : Korba, Chhattisgarh

---- Respondents

For Appellant : Shri Dashrath Gupta, Advocate

For Respondents : None though served.

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA

CAV Order

1. This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short, "the Act, 1988") against the award dated 13.3.2013, passed by the Additional Motor Accidents Claims Tribunal (for short, "the Tribunal"), Katghora, Civil District Korba (CG) in Claim Case No. 353/2007, wherein the said Tribunal has awarded compensation of Rs.1,76,500/- in favour of respondents 1 and 2.

2. As per the claim filed by respondents 1 and 2, on 4.3.2006 deceased Ajay Kumar was going to Bhatgaon by driving motorcycle bearing Registration No. CG 12B 6439 and in the dark night he met with an accident and died. The vehicle was insured for the period 9.2.2006 to 8.2.2007. After recording evidence of both the parties, the Tribunal has awarded the compensation as mentioned above.

3. It is contended on behalf of the appellant/Insurance Company that the deceased was driving the motorcycle himself rashly and negligently and no other vehicle is involved in the accident, therefore, the Insurance Company is not liable to pay the compensation. He argued that the deceased was not a third party, therefore, the Tribunal ought to have exonerated the Insurance Company from liability.

4. Now, the point for consideration is as to whether the finding arrived at by the Tribunal is based on material placed on record.

5. From the evidence, it appears that the Policy issued by the Insurance Company was a package policy and comprehensive one and premium was received for driver also, therefore, it is not a case where the policy is limited only for third party risk. In the matter of **Bhagyalakshmi and Others Vs. United Insurance Company Limited and Another**, **(2009) 7 SCC 148**, the Hon'ble Apex Court has held that if the owner was driver and he was driving the vehicle covered by comprehensive policy, then the occupant of the vehicle is covered by the comprehensive policy. The deceased was occupant of the vehicle and premium was paid for him, therefore, the Insurance company is liable to pay the compensation.

6. It is contended on behalf of the Insurance Company that the liability of the Company is limited to Rs.1,00,000/- and the Tribunal has awarded a

compensation of Rs.1,76,500/- which is not proper. Reliance has been placed on 2**015 (1) T.A.C.597 (P&H)** in the matter of **Cholamandlam Ms General Insurance Company Limited Vs. Smt. Rajesh and Others** and **2009 (1) T.A.C. 425 (S.C.), New India Assurance Company Ltd. Vs. Sadanand Mukhi and Others**.

7. Considering the facts and circumstances of the case and the material available on record, I am of the view that the Insurance Contract was entered in the year 2006 and compensation is yet to be paid in the year 2018. Looking to the rise in price index during these 12 years, the award passed by the Tribunal cannot be termed as excessive. Again, when the risk is covered for occupant of the vehicle, the Insurance Company cannot be permitted to minimize the amount in its discretion. The grounds raised in the appeal are not sustainable and the case law cited by the appellant/Insurance Company are distinguishable from the facts and circumstances of the present case. Thus, the Tribunal has rightly awarded the compensation of Rs.1,76,500/- in favour of respondents 1 and 2, which requires no interference invoking jurisdiction of appeal.

8. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed.

Sd/

(Ram Prasanna Sharma)
JUDGE

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