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HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 912 of 2012

Sandhya Singh W/o Late Surya Singh Alias Suryanarayan Singh Aged About 28 Years R/o Village Karkoti, Police Station -Jhilmili, Post- Bhaiyathan, District Surajpur, Chhattisgarh

---- Appellant

Versus

1. United India Insurance Company Limited Through Branch Manager, United India Insurance Company Limited, Branch Office -Bramha Road, Ambikapur District Sarguja, Chhattisgarh
2. Satish Chandra Gupta S/o Jangal Prasad Gupta Aged About 40 Years R/o Village Chindia, Post-Patna, District Koriya, Chhattisgarh

---- Respondents

AND

MAC No. 1174 of 2012

United India Insurance Company Limited, Branch Office Brambh Road, Ambikapur, District Surguja Chhattisgarh Through its Divisional Manager, Divisional Office 2nd Floor Guru Kripa Towers, Vyapar Vihar Road, Bilaspur, Police Station Tarbahar, P.O. Bilaspur, District Bilaspur Chhattisgarh

---- Appellant

Versus

1. Sandhya Singh W/o Late Surya Singh Alias Suryanarayan Singh Aged About 28 Years R/o Village Karkoti, Police Station -Jhilmili, Post- Bhaiyathan, District Surajpur, Chhattisgarh
2. Satishchandra Gupta S/o Jangal Prasad Gupta Aged About 40 Years R/o Village Chhindia, Post-Patna, Police Station Patna, District Korea, Chhattisgarh

---- Respondents

For Claimant	:	Mr. Surfaraz Khan , Advocate
For respective Insurance Companies	:	Mr. Dashrath Gupta, Advocate Mr. Anand Kumar Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

21/02/2018

1. These are two appeals arising out of the award dated 11.09.2012, passed by the 1st Additional Motor Accident Claims Tribunal, Surajpur, Chhattisgarh, in Claim Case No. 10/2010.

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.1,00,000/- with a lump sum amount of interest @ Rs.15,000/- and with a penal interest @ 9% per annum if the amount is not satisfied within a period of two months.

3. MAC No. 912/2012 is an appeal by the Claimant seeking enhancement and MAC No. 1174/2012 is an appeal by the Insurance Company challenging the liability.

4. So far as the appeal by the Claimant is concerned, he submits that the amount of Rs.1,00,000/- which has been ascertained by the Tribunal is on the lower side and the same deserves to be suitably enhanced. He submits that the Tribunal has erroneously confined his claim at Rs.1,00,000/- accepting the limited liability of the Insurance Company and thus prayed for the amount to be suitably enhanced.

5. So far as the appeal of the Insurance Company is concerned, it is the contention of the counsel for the Insurance Company that the deceased in the instant case Surya Singh did not have a license to drive a motorcycle. In fact the license which has been produced of the deceased before the Tribunal i.e. Exhibit NA-3 shows that the license which he had was only to drive Light Motor Vehicle and Heavy Goods Vehicle. There is no license issued permitting to drive a motorcycle with gear or without gear. In the absence of any such license in possession of the Claimant, it has to be presumed that the deceased Surya Singh did not have a license to drive a motorcycle and thus prayed for the award to be set-aside.

6. At this juncture, it is relevant to refer to the judgment of the Hon'ble Supreme Court in the case of ***"Oriental Insurance Company Limited vs. Zaharulnisha and Others"*** reported in ***(2008) 12 SCC 385,*** wherein it has been categorically held that unless the person has a license duly issued from the concerned R.T.O. permitting him to drive a particular class of vehicle, merely because he has a license of a different class or a higher class by itself would not enable him to drive all vehicles of lesser bit. The said judgment of Zaharulnisha (supra) has also been further followed by this Court in couple of the appeals. Since there is no evidence on record to show that the deceased Surya Singh had a license, wherein there was an endorsement permitting him to drive a motorcycle, it cannot be presumed that he had a valid license.

7. At this juncture it is relevant to refer to paragraph No.21 of the judgment in the case of Zaharulnisha (supra) passed by the Hon'ble Supreme Court, wherein it has been held as under:

> ***"21] In the light of the above-settled proposition of law, the appellant insurance company cannot be held liable to pay the amount of compensation to the claimants for the cause of death of Shukurullah in road accident which had occurred due to rash and negligent driving of scooter by Ram Surat who admittedly had no valid and effective licence to drive the vehicle on the day of accident. The scooterist was possessing driving licence of driving HMV and he was driving totally different class of vehicle, which act of his is in violation of Section 10(2) of the MV Act."***

8. In the light of authoritative judgment of the Hon'ble Supreme Court in the case of Zaharulnisha (supra), this Court is of the opinion that the deceased in the instant case did not have a license to drive a motorcycle and therefore the Insurance Company cannot be fastened with the liability indemnifying the Owner. The appeal of the

Insurance Company thus deserves to be allowed and the same stands allowed and the impugned award stands set-aside and it is held that the Claimant shall not be entitled for any compensation.

9. So far as the appeal of the Claimant seeking enhancement is concerned, once when it is held that the deceased did not have a license to drive a motorcycle on the date of accident, then the Claimant himself has to do blamed for the accident and for which he would not be entitled for any compensation.

10. The appeal of the Claimant i.e. MAC No. 912/2012 thus stands dismissed and it is held that in the light of the order passed by this Court in MAC No. 1174/2012, the Claimant shall not be entitled for any compensation.

11. The appeal of the Claimants i.e. MAC No. 912/2012 stands dismissed and the MAC No. 1174/2012 of the Insurance Company stands allowed.

Sd/-
(P. Sam Koshy)
Judge

Ved