HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 316 of 2014

National Insurance Company Limited through Its Divisional Manager, Divisional Office, B-1 Taha Complex, 1st Floor, Ring Road-1, Priyadarshini Nagar, Vyapar Vihar Road, Bilaspur, Distt. Bilaspur C.G.

---- Appellant

Versus

1. Smt.Buttan Bai Nirmalkar Wd/o Late Baldau Nirmalkar Aged About 48 Years.
2. Dinesh Kumar Nirmalkar S/o Late Baldau Nirmalkar Aged About 22 Years.
3. Smt. Kadam Bai Nirmalkar Wd/o Late Nanki Ram Nirmalkar Aged About 75 Years

   Respondents No. 1 to 3 all are R/o Nariyara, Tah. Akaltara, Distt. Janjgir-Champa C.G.

   Hall Mukam- Goundpara, P.S. City Kotwali, Tah. & Distt. Bilaspur C.G.
4. Selendra Kumar Singh S/o Ramsingar Kshatri Aged About 30 Years R/o Akayeel, P.S. Pakadi, Distt. Balia U.P.

   Hall Mukam- Bhanpuri, Bilasnagar, Raipur, P.S. Khamtarai, Tah. & Distt. Raipur C.G. (Driver of the Vehicle No. CG/07C/4604).
5. J.C.C. India, 90 Light Industrial Area, Bhilai, Durg, Distt. Durg C.G. (Owner of the Vehicle No. CG/07C/4604).

---- Respondents

For Appellant : Mr. Dashrath Gupta, Advocate.

For Respondents : None.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

24/07/2018

1. This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 against the award dated 18.12.2013 passed by 3rd Additional Motor Accident Claims Tribunal, Bilaspur (C.G.) in Claim Case No. 32/2012 wherein, the said tribunal awarded compensation of Rs. 2,74,000/- against the appellant on account of death of one Baldau Nirmalkar in motor accident dated 18.03.2012.

2. As per the claim petition, deceased Baldau Nirmalkar was sitting in a motorcycle bearing registration No. CG/11/BC/3360 and was

going to purchase some medicine. When they reached near village-Nariyara, the trailer bearing registration No. CG/07/C/4604 dashed the motorcycle injuring the deceased who succumb to the injury on 19.03.2012. Learned tribunal after assessing dependency of respondents No. 1, 2 & 3 to the tune of Rs. 24,000/- per annum awarded as mentioned above.

3. Learned counsel for the appellant submits that it is a case of collision between trailer and motorcycle and therefore, the tribunal ought to have apportioned liability on both the vehicles. He further submits that three persons were sitting in the motor cycle contrary to the provisions of Motor Vehicles Act, 1988 therefore, the insurance company is not liable to pay the compensation.

4. Admittedly, the deceased was sitting in motorcycle and it was dashed by trailer, therefore, the deceased is third party against the owner and insurance company of the trailer.

5. Again, from the evidence, it is not established that it is a case of contributing negligent cause. From the evidence it is established that only trailer is the offending vehicle. As per section 149 (2) of the Motor Vehicles Act, 1988, the insurance company is limited to defence available in the said provisions which is mentioned as under:-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely -

(i) a condition excluding the use of the vehicle -

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

6. In absence of evidence, it is not a case of contributing negligent and the defence of contributing negligent is not available.

7. In view of this, the defence available to the insurance company is limited to the conditions in terms of the policy. If any breach is caused to insurance contract then only it is open for the insurance company to raise such plea. In absence of any breach of insurance contract, the appellant/ insurance company is liable to pay the compensation.

8. Accordingly, the appeal without substance liable to be and is hereby dismissed.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun