NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 558 of 2014

- The Oriental Insurance Company Ltd. Through- Its Divisional Manager, Divisional Office, 1st Floor, Rama Trade Centre, Near Bus Stand, Civil and Revenue District, Bilaspur, C.G.

---- Appellant

Versus

1. Smt. Aparna Sharma Wd/o Late Pradeep Kumar Sharma Aged About 45 Years, Occupation House Wife.

2. Pranay Sharma S/o Late Pradeep Kumar Sharma Aged About 23 Years, student.

3. Ayushman Sharma S/o Late Pradeep Kumar Sharma Aged About 16 Years, student

Respondent No.3 Minor, represented Thru- Mother and natural guardian respondent No.1 Smt. Aparna Sharma, Wd/o Late Shri Pradeep Kumar Sharma,

All are R/o Namnakala, P.O. Ambikapur, Tah. Ambikapur, Distt. Sarguja C.G.

4. Manish Gupta S/o Vinod Gupta, Occupation Transport Operator, R/o Mayapur, Shastri Ward, Ambikapur, Tah. Ambikapur, Civil and Revenue, Distt. Sarguja C.G.

5. Mansai S/o Rama, Occupation Bus Driver, R/o Darridih, P.O. Raghunathpur, Civl and Revenue, Distt. Sarguja C.G.

---- Respondents

For Appellant	Shri Pallav Mishra, Advocate.
For Respondent	Shri Ashok Kumar Shukla, Advocate & Shri Anurag Singh, Advocate for respective respondents.

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

24/10/2018

1. This is insurer's appeal against the award dated 20.03.2014

passed by the learned Motor Accidental Claims Tribunal, Sarguja (Ambikapur) C.G. (for short 'the Tribunal') in claim case No.83/2011.

2. As against compensation of Rs.75,50,000/- claimed by the widow & children of the deceased Pradeep Kumar Sharma by filing application before the Tribunal under Section 166 of the Motor Vehicles Act, 1988 (for short ‘MV Act’) for his death in the motor accident on 11.03.2010, the Tribunal awarded a total sum of Rs.13,45,800/- along with interest @ 6 percent per annum from the date of application till its actual payment.

3. As per claim petition on the date of accident i.e. 11.03.2010, deceased was returning home on a motor cycle bearing registration No. CG15/CC/0569 from Lundra, where he had gone in connection with his legal profession as an advocate. At that time respondent No.5, who was coming from the opposite direction driving Mahindra Bus No. CG15/A/7327 rashly and negligently, dashed the deceased and as a result, the deceased sustained injuries and died on the spot. At the time of accident deceased was aged about 46 years, and was earning Rs.12,500/- from his occupation and additionally he was earning Rs.85,000/- from agriculture.

4. Counsel for the appellant submits that the Tribunal has failed to see that offending vehicle was being plied in violation of

terms of policy conditions, as the vehicle was being driven on a route other than the route prescribed in the permit.

5. On the other hand, learned counsel appearing for respondents supported the award impugned and would submit in the facts and circumstances of the case, the Tribunal has rightly saddled the liability upon the appellant/insurance company to pay compensation to the claimant which does not call for any interference.

6. Heard learned counsel for the parties and perused the material available on record.

7. So far as liability part is concerned, the Tribunal has observed that the Insurance Company has filed only certified copy of the insurance policy and not the permit. Further, the Insurance Company has not adduced any evidence that the vehicle in question was being driven in the direction other than what was prescribed in the permit. While saddling the liability on the Insurance Company, the Tribunal has placed reliance on the decision of this Court in the matter of ***Bajaj Allianz General Insurance Co. Ltd. Vs. Power Julius and others, reported in 2013(1) CG.L.R.W. 226***, wherein it has been observed that as per Section 149(2) of the Motor Vehicle Act, the Insurance Company has got limited defence and violation of permit condition by the offending vehicle does not amount to violation of conditions of insurance policy.

8. Thus, considering the over all evidence available on record, oral and documentary, it cannot be said that the vehicle in question was being driven in breach of policy conditions which could entitle the Insurance Company for exoneration of its liability to pay compensation the claimants. There is no illegality or infirmity in the finding recorded by the Tribunal holding the Insurance Company liable for satisfying the award.

9. In the result, the appeal being without any substance is liable to be dismissed and is accordingly dismissed as such.

Sd/-
Gautam Chourdiya
Judge

Akhilesh