NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 860 of 2011

The Oriental Insurance Co. Ltd. Through Divisional Office/Manager, The Oriental Insurance Company Ltd., Near Bus Stand Bilaspur, Tahsil and District Bilaspur, Chhattisgarh

---- Appellant

Versus

1. Smt. Pyar Begum, Aged about 45 years, W/o. Late Kadar Khan @ Kadum Khan,
2. Husain Khan, Aged about 29 years, S/o. Late Kadar Khan @ Kadum Khan,
3. Shakil Khan, Aged about 17 years, S/o. Late Kadar Khan @ Kadum Khan,
4. Sakir Khan, Aged about 15 years, S/o. Late Kadar Khan @ Kadum Khan,
5. Shakilunnisa, Aged about 13 years, S/o. Late Kadar Khan @ Kadum Khan,

   Respondent No. 3 to 5 are Minor, Guardian Mother, Respondent No.1 Smt. Pyar Begum.

   All R/o. Village Ratanpur, Police Station Ratanpur, Tahsil Kota, District Bilaspur, Chhattisgarh
6. Natwar Lal, S/o. Hetram, Aged about 25 years, R/o. Thakurdei Kharsia, Tahsil Kharsia, District Raigarh Chhattisgarh

----Respondents

For Appellant	:	Mr. Sudhir Agrawal, Advocate
For Resp.No.1 to 5/Claimants	:	Mr. Ali Asgar, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

16/01/2018

1. Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 23.03.2011, passed by the 3rd Additional Motor Accident Claims Tribunal, Bilaspur, Chhattisgarh, in Claim Case No. 116/2010.

2. Vide the impugned award, the Tribunal in a death case under Section 163-A of Motor Vehicles Act has awarded a compensation of

Rs.65,000/- with interest @ 9% per annum from the date of application.

3. The contention of the counsel for the appellant while assailing the award is that the finding of the Tribunal is erroneous on three grounds, firstly, the deceased in the instant case did not have a driving license, secondly, the policy which was issued did not cover the risk on a personal accident and third, the suit was not maintainable for the reason that the deceased himself was responsible for the accident and as such since there was no negligence on the part of any third party, the Claimants would not be entitled for any compensation.

4. So far as the maintainability of the claim case is concerned, the issue is no longer ***res integra*** in the light of the recent Larger Bench decision of the Hon'ble Supreme Court in the case of ***"United India Insurance Company Limited vs. Sunil Kumar & Others."*** decided on 24.11.2017, reported in ***(2017) 13 Scale 652***, wherein it has been specifically held that so far as the case under Section 163 is concerned, the plea of negligence cannot be taken by the respondents for contesting the case.

5. As regards the issue of the deceased not having a valid driving license, it is pertinent to mention that the Insurance Company had led the evidence of one Asgar Ali Khan, NAW-1, who was an employee of the office of R.T.O. Bilaspur, who has deposed that the photocopy of the license, which has been produced in the record stands issued in the name of one Kadum Khan and that address shown in the license was the same address, which has been shown by the Claimants in the cause title. The stand of the Claimants all

along was that the deceased Kudam Khan was also known as Kadar Khan and as such it does not appear to have been conclusively proved by the Insurance Company or for that matter by the witness from the R.T.O. that the license which was produced before the Tribunal in the name of Kadum Khan was not issued to the deceased. Thus, the appeal of the Insurance Company on this ground also does not have much strength or force.

6. Now coming to the third grounds raised by the appellant so far as the policy not covering the risk in a personal accident, the record shows that the Insurance Company had produced the conditions attached to a two wheeler package policy, as the vehicle in the instant case was issued with a policy that was a package policy, which is also known as a comprehensive policy. Section 2 deals with the liability to third party and one of the clauses in the said clause of the said conditions to the policy clearly reflects that the Insurance Company shall also be liable to cover the risk of the insured in respect of death or bodily injured to any person including occupants carried in the insured vehicle.

7. Undisputedly, the deceased in the instant case was not the Owner of the said vehicle. On the contrary, it has been established that the deceased was an employee of the Owner. That at the behest of the Owner; the deceased was going for some official work when the accident took place. In the given circumstances, the said ground of the non-coverage of risk of personal accident also would not come to the aid of the Insurance Company.

8. As far as the judgment, which has been referred to by the counsel for the Insurance Company i.e. ***"Dhanraj vs. New India Assurance***

Co. ltd. and Another" (2004) 8 SCC 553, with great respect the said judgment is distinguishable on its fact itself as in the said case it was the Owner of the vehicle, who was driving the vehicle when the accident took place, unlike in the present case, where the Owner was not driving the vehicle and that the deceased in the instant case was deputed by the Owner for some official work and as such the ratio laid down in the said judgment could not be applicable in the present case. In the given facts and circumstances of the case, this Court is of the opinion that no strong case has been made out by the appellant- Insurance Company to interfere with the impugned award.

9. So far as the cross-objection is concerned, if we consider the income assessed by the Tribunal, this Court has no hesitation in holding that the amount of income assessed by the Tribunal is unreasonably low.

10. Considering the fact that it was an accident of the year 2008, where an unskilled labour would had been earning more than Rs.100/- a day, this Court assesses the income of the deceased at Rs.3000/- a month and Rs.36,000/- annually, of which if 1/3 is deducted towards personal expenses, the amount comes to Rs.24,000/- which if multiplied applying the multiplier of 7, the amount comes to Rs.1,68,000/-. Considering the peculiar facts and circumstances of the case and also consider the total number of Claimants and taking into account the date of accident, this Court assesses the compensation under the conventional head at Rs.70,000/- in the light of the recent Larger Bench's decision of the Hon'ble Supreme Court in the case of ***"National Insurance Company Limited vs. Pranay Setthy and Others" decided on 31.10.2017, in Civil Appeal No. 25590/2014***. Thus, making the total compensation

payable at Rs.2,38,000/- instead of Rs.65,000/- as has been awarded by the Tribunal.

11. The awarded amount shall also carry interest at the rate of 6% per annum from the date the application before the Tribunal was filed. The enhanced rate of interest shall also be applicable for the entire amount from the date of application.

Sd/-
(P. Sam Koshy)
Judge

Ved