NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 1054 of 2013

The New India Assurance Com. Ltd. Branch Office 99 Floor, R.D.A. Building, Raipur, Distt. Raipur C.G., Through- Its Divisional Manager, The New India Assurance Co.Ltd., 2nd Floor, Rama Trade Centre, Opposite Rajeev Plaza, Bus Stand Road, Bilaspur C.G.

---- Appellant

Versus

1. Pushpa Bai W/o Late Nareshpal Aged About 24 Years
2. Chandrashekhar S/o Late Nareshpal Aged About 3 Years
3. Archana D/o Late Nareshpal Aged About 1 Years
   Respondents No.2&3 are Minor, Through Mother Pushpa Bai, Respondent No.1.
4. Shyampal S/o Durgu Ram Pal Aged About 55 Years
5. Mehtarin Bai W/o Shyampal Aged About 50 Years
   Respondents No.1 to 5 are R/o Kukurmuda Atariya, P.S. & Tah. Chhuikhadan, Distt. Rajnandgaon C.G.
6. Sanchit Singh S/o Nirmal Singh Chandel Aged About 21 Years R/o Reve, P.S. Berla, Tah. Berla, Distt. Durg C.G.
7. Shivkumar S/o Munnalal Sinha R/o Reve, P.S. Berla, Tah. Berla, Distt. Durg C.G.
8. Nandlal S/o Harishchand Chouhan Aged About 45 Years R/o Subhash Chowk, Birgaon, Raipur, Distt. Raipur C.G.

---- Respondents

For Appellant	:	Shri Sourabh Sharma, Advocate.
For Claimants	:	Smt. Indira Tripathi, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

04.01.2018

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the Insurance Company assailing the award dated 30.08.2013 passed by the Additional Motor Accident Claims Tribunal, Khairagarh, Distt. Rajnandgaon (in short, the Tribunal) in Claim Case No. 54/2010. Vide the said impugned award, the Tribunal has awarded a compensation of Rs.5,17,125/- along with interest @ 6 percent per annum from the date of application to the claimants. While passing the

award, the Tribunal has assessed the liability to be paid by the appellant-insurance company as 50 percent of the total compensation awarded.

2. Learned counsel for the appellant submits that the findings of the Tribunal is erroneous on more than one grounds. Firstly, the deceased in the instant case met with an accident because of his own fault and negligence. Secondly, at the time of accident the deceased did not have a valid license to drive the motorcycle. Further, it is a case where no extra premium has been charged by the insurance company covering the risk of driver or owner of the motorcycle and that the premium, if any, has been paid only for own damages and the risk of third party. Therefore, the liability of compensation, if any, at all would not be on the part of the insurance company as the insurance company has not indemnified the owner.

3. Referring to documents enclosed with the records, counsel for the appellant submits that the policy as well as the license would show that no extra premium has been paid by the owner of the motorcycle to cover the risk of owner or the driver. Neither does the license which the deceased was having, had an endorsement permitting him to drive motorcycle. The license which the deceased was having was only valid for driving Light Motor Vehicle and Heavy Goods Vehicle and not motorcycle.

4. The counsel for the respondents-claimants submits that the impugned award does not warrant any interference as the Tribunal has passed well reasoned and speaking award and have discussed all these facts including the grounds which have been raised by the appellant-

insurance company, and therefore, there is no scope of further interference with the impugned award.

5. Having considered the rival contentions put forth on either side and on perusal of record, it would be relevant at this juncture to refer the decision of Supreme Court in case of Oriental Insurance Co. Ltd. Vs. Zaharulnisha & Ors., 2008(12)SCC 385, wherein it has been categorically held that Scooterist who was not holding license for driving two wheeler or motorcycle and holding H.G.V. license, the insurer could not be held liable to pay the compensation. Under such circumstances, applying the same analogy if we look into the facts of the present case, it clearly reflects that the deceased in the instant case had a license to drive Light Motor Vehicle and Heavy Goods Vehicle, but he did not have license to drive a motorcycle. Thus, the facts of the case squarely fits to the facts in case of Zaharulnisha (Supra).
6. In addition to this, what is also reflected is that the deceased was driving the motorcycle when the accident occurred and as such he steps into the shoes of the owner and that no extra premium has been paid by the owner covering the risk of owner-cum-driver with which the insurance company could indemnify the owner. For this reason also, this court finds the impugned award to be erroneous.
7. Thus, the impugned award dated 30.08.2013 stands modified to the extent of the liability which has been fastened upon the present appellant-insurance company and the award to that extent is set aside. The payment of compensation, if any, shall be that upon the owner of the motorcycle to the extent of the share which have been

fastened upon the present appellant-insurance company. However, the remaining 50 percent of the award amount can be recovered from the respondents No.6&7. Whatever amount deposited by the appellant-insurance company, be disbursed to the claimants and the insurance company shall have the liberty to recover the same from the respondents No.6&7.

8. The appeal of the insurance company thus stands allowed and disposed of.

Sd/-
(P.Sam Koshy)
Judge

inder