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HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 507 of 2012

The New India Insurance Co. Ltd., Zonal Office Power House, G.E. Road, Bhilai, District Durg Chhattisgarh

---- Appellant

Versus

1. Chintaram Yadav Aged about 45 years, S/o Late Sadaram Yadav
2. Smt. Amarbatti Bai Aged about 40 years, W/o Chintaram Yadav,
3. Ramchandra Aged about 10 years, S/o Chintaram Yadav,
4. Kumari Sartiya Aged about 8 years, D/o Chintaram Yadav
5. Bharat Aged about 6 years, S/o Chintaram Yadav,
6. Shatrughan Aged about 1 years, S/o Chintaram Yadav,

   No. 3 to 6 are Minors, through natural guardian father Chintaram Yadav.

   All are R/o Village Masul, Police Station Ghumka, Tahsil And District Rajnandgaon Chhattisgarh (Claimants)
7. Gouratn Damle S/o Jaymal Damle, Aged about 30 years, R/o Stationpara Word No. 10, Under Over Bridge, Rajnandgaon Chhattisgarh

---- Respondents

For Appellant	:	Mr. Pankaj Agrawal, Advocate
For Respondent No.7	:	Mr. A.D. Kuldeep, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

21/02/2018

1. None for the respondents-Claimants though served.

2. The present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act. Challenge is to the award dated 05.03.2012, passed by the 1st Additional Motor Accident Claims Tribunal, Rajnandgaon, Chhattisgarh, in Claim Case No. 100/2011.

3. 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.1,96,500/- with interest @ 6% per annum from the date of application.

4. While passing the award, the liability of payment of compensation has been saddled upon the present appellant-Insurance Company. The contention of the counsel for the appellant is that the deceased in the instant case Ramsukh had borrowed the motorcycle bearing registration No. CG/07/ZN/5996 and met with an accident and succumbed to the injuries caused from the accident. He further submits that it is a case where the deceased was in fact hit by an unknown vehicle. He further submits that since the deceased Ramsukh would not fall within the definition of third party, therefore, the Insurance Company should not be fastened with the liability of payment of compensation. He further submits that the deceased also not being the actual Owner of the motorcycle, even then he would not get the advantage of the personal accident premium which was charged by the Insurance Company and thus prayed for the award to be suitably modified. He further submits that the case of the Insurance Company has been also proved by a witness examined on behalf of the Insurance Company i.e. Ashish Kumar Bhavte.

5. Per contra, the counsel for the respondent No.7 opposes the appeal and holds that the award passed is fair and reasonable and therefore does not warrant any interference.

6. What is undisputed is the fact that an accident did take place on 07.09.2006. The deceased Ramsukh met with an accidental death from the said accident. The accident occurred when the deceased was riding the motorcycle owned by the respondent No.7 bearing registration No. CG/07/ZN/5996. The evidence which have come on record shows that the deceased in fact had borrowed the vehicle from the Owner. Since the vehicle was duly borrowed by the deceased from the Owner and who had willingly given the vehicle to

the deceased, for all practical purposes, the deceased would step into the shoes of the Owner and likewise the deceased would also have to be considered as if he was the Owner of the vehicle at the time of accident.

7. The policy which was issued in the instant case was an Act Only Policy and there was an extra premium charged by the Insurance Company from the registered Owner covering the risk of the Owner-cum-Driver of the said vehicle.

8. In view of the fact that an extra premium has been charged, the appellant-Insurance Company would be liable to indemnify the deceased also who has stepped into the shoes of the Owner indemnifying the Owner to the extent of the liability covered under the risk. Since an extra premium was paid of Rs.50/- and the liability was limited to the extent of Rs.1,00,000/-, this Court quantifies the amount of compensation payable to the Claimant at Rs.1,00,000/- and the impugned award stands modified to the extent that the Claimant in the instant case shall be entitled for a compensation of only Rs.1,00,000/- instead of Rs.1,96,500/-.

9. The said amount shall carry interest at the same rate as awarded by the Tribunal. Let the Insurance Company deposit the amount of Rs.1,00,000/- at the earliest with interest.

10. The Registry is directed to send a copy of this judgment to the Secretary, District Legal Services Authority, Rajnandgaon, Chhattisgarh, who in turn, is directed to make all efforts to ensure serving a copy of this judgment to the Claimants at the address shown in the cause title.

Sd/-
(P. Sam Koshy)
Judge

Ved