

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 498 of 2012**

1. The Oriental Insurance Co. Ltd. Through, Divisional Manager, Rajendra Park Chowk, Malaviya Nagar, Durg Tehsil and Zilla Durg (C.G.). (Insurer of motorcycle bearing registration No.- CG-07-LA-6738).

---- Appellant**Versus**

1. Smt. Sunita Choudhary w/o Late Utthan Singh Choudhary, aged about 38 years,
2. Utpal Choudhary, S/o Late Utthan Singh Choudhary, aged about 18 years,
3. Ekta Choudhary, d/o Late Utthan Singh Choudhary, aged about 16 years. (Minor through legal guardian mother Smt. Sunita Choudhary)
4. Bhav Singh Choudhary, s/o Late Lakshman Singh Choudhary, age about 65 years.
5. Smt. Bodhni Choudhary, W/o Bhav Singh Choudhary, aged about 60 years.

All are residents of village Aamti, Post- Nikum, Thana- Anda, Tehsil and Zilla Durg.

6. Vimal @ Sugru Nishad, aged about 32 years, S/o Baldau Nishad, Resident: Village and post Surdung, Thana Purana Bhilai, Tehsil and Zilla Durg (C.G.) (Driver and registered owner of motorcycle bearing registration No. CG07-LR/1387).
7. J. K. Choudhary, S/o Bhav Singh Choudhary, aged about 42 years, Resident: Village Aamti, Post Nikum, Thana Anda, Tehsil and Zilla Durg (C.G.) (Owner of Motorcycle bearing registration No. CG07-LA/6738)

---- Respondents

For Appellant

: Ms. Chitra Shrivastava,
Advocate.

For Respondent Nos. 1 to 5

: Shri C. R. Sahu, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

09.05. 2019

This appeal is by the insurance company under Section 173 of the Motor Vehicles Act, 1988 against the award 29.02.2012 passed by 3rd Additional Motor Accident Claims Tribunal, Durg, C.G. in Claim Case No. 202/2011 awarding total compensation of Rs. 2,12,250/- with interest @ 7.5% per annum from the date of application till realization. The Tribunal directed that out of the said amount Rs. 1,00,000/- shall be payable to the claimants by the non-applicant No. 3- The Oriental Insurance Company and remaining amount i.e. Rs. 1,12,250/- shall be payable to the claimants by non-applicant No. 1-Vimal @ Sugru.

02. As per claim petition, on 07.11.2010 while Uthhan Singh Chaudhari was going from village- Aamti to Anda on his motorcycle bearing registration No. CG07-LA/6738, on the way, non-applicant No. 1- Vimal @ Suguru by rash & negligently riding of the motorcycle bearing No. CG07-LR/1387 (offending vehicle) dashed the motorcycle of the deceased due to which he suffered grievous injuries and died on spot. The vehicle is owned by the Non-applicant No. 2 and insured with non-applicant No. 3/ insurance company.

03. On claim petition being filed by the claimants/wife, children & parents of the deceased under Section 163-A of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

04. No any appeal filed by the respondent No. 7/owner of the motorcycle bearing No. CG07-LA/6738.

05, Today one MAC No. 955/2012 filed by the driver/owner of the

offending vehicle is dismissed for want of prosecution as no one appeared on behalf of the appellant.

04. Learned counsel for the appellant/insurance company submits that at the time of accident, the vehicle on which the deceased was riding is insured under the Act policy and as against the policy, the premium of Rs.50/- taken by the insurance company towards PA coverage. As per Insurance policy, risk of owner and risk of third party is covered under the said policy but the deceased was not the owner or the third party regarding the aforesaid vehicle therefore, the risk of the deceased would not be covered as per terms and conditions of the insurance policy. Therefore, it is prayed to exonerate the insurance Company from its liability to pay the compensation to the claimants.

05. On the other hand, learned counsel for the respondents/claimants supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court.

06. No counter appeal has been filed by the respondents/claimants as submitted by learned counsel for the parties.

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

08. It is not disputed that the deceased died due to motorcycle accident. It is also not disputed that the vehicle was owned by non-applicant No. 2. In this case the Insurance policy is a liability only policy and as per policy, the premium of Rs. 50/- was taken towards PA coverage of owner driver and liability of Insurance Company was limited of Rs. 1,00000/-. Admittedly in the instant case, the vehicle in

question was ridden by the deceased on the instruction of owner of the motorcycle and as such he had stepped into the shoes of the owner and riding the motorcycle in the capacity of the owner therefore, considering the terms and conditions of the insurance policy and the decisions of the Hon'ble Supreme Court in **Ningamma vs. United India Insurance Co. Ltd. AIR 2009 (SC) 3056** and **Oriental Insurance company Limited Vs. Rajni Devi and others (2008) 5 SCC 736**, this Court is of the opinion that the Tribunal was justified in fastening liability of paying compensation of Rs. 1,00,000/- on the insurance company.

09. In the result, the appeal being without any substance is liable to be dismissed, accordingly, dismissed.

Sd/-

(Gautam Chourdiya)
Judge