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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 303 of 2014

- National Insurance Company Ltd. Through Branch Manager, Meenu Complex, Kosabadi, Korba, Distt. Korba C.G.

---- Appellant/insurer

Versus

1. Smt. Mamta Singh W/o Late Daya Shanker Singh Aged About 24 Years

2. Rahul Singh S/o Late Dayashanker Singh Age- 7 Months, Minor, Through natural guardian Mother Smt. Mamta Singh, W/o Late Shri Dayashanker Singh, aged about 24 years,

Both R/o Qr. No. 137/6/A, Balco Nagar, Korba, Distt. Korba C.G. - (Claimants)

3. Ramesh Kumar Mishra S/o Ram Hitkari Mishra Aged About 27 Years R/o Qr. No. 355/sector-3/A, Balco Nagar, Korba, Distt. Korba C.G. (Driver)

4. Kailash Nath Singh S/o Yudhnath Singh Aged About 54 Years R/o Qr. No. 281/3/A, Balco Nagar, Korba, Distt. Korba C.G. (Father)

5. Smt. Dharma Devi W/o Kailashnath Singh Aged About 48 Years R/o Qr. No. 281/3/A, Balco Nagar, Korba, Distt. Korba C.G. (Mother)

---- Respondents

For Appellant	:	Shri Raj Awasthi, Advocate.
For Respondent Nos. 1 & 2	:	Shri Samir Singh, Advocate.
For Respondent No.3	:	None though served.
For Respondent Nos. 4 & 5	:	Shri AL Singroul, Advocate.

MAC No. 304 of 2014

- National Insurance Company Ltd. Through Branch Manager, Meenu Complex, Kosabadi, Korba, Distt. Korba C.G.

---- Appellant/insurer

Versus

1. Kailash Nath Singh S/o Yudhnath Singh Aged About 54 Years
2. Smt. Dharma Devi W/o Kailash Nath Singh Aged About 48 Years

   Both R/o Qr. No. 281/3/A, Balco Nagar, Korba, Distt. Korba C.G.

3. Ramesh Kumar Mishra S/o Ram Hitkari Mishra Aged About 27 Years, R/o Qr. No. 355/Sector-3/A, Balco Nagar, Korba, Distt. Korba C.G.

---- Respondents

For Appellant	:	Shri Raj Awasthi, Advocate.
For Respondent Nos. 1 & 2	:	Shri AL Singhroul, Advocate.
For Respondent No.3	:	None though served.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

23/01/2019

As both these appeals filed under Section 173 of the Motor Vehicles Act by the insurer arise out of the common award dated 7.10.2013 passed by Additional Motor Accident Claims Tribunal (FTC), Korba (CG) in Claim Cases No.226/2013 & 227/2013, they are being disposed of by this common judgment.

02. As per averments in the claim petitions, on 21.2.2004 deceased Dayashankar, aged about 32 years, earning Rs.21,000-30,000/- per month by working as agent in LIC Ltd. Office and doing RTO related work, was going from Ambikapur towards Korba on motorcycle Hero Honda (Passion) bearing No. CG 12-B-6864, which was being ridden non-applicant No.1 Ramesh Kumar Mishra in a rash and negligent manner. However, while crossing the barrier, head of Dayashankar got hit against the barrier, he suffered grievous injuries and died on the way to hospital.

03. Against the death of Dayashankar, two claim petitions were filed under Section 166 of the Motor Vehicles Act, 1988, one by wife and minor son of the deceased i.e. Claim Case No.226/2013 and another

by parents of the deceased i.e. Claim Case No.227/2013. The Tribunal considering the pleadings of the respective parties and the evidence led by them, passed an award, thereby assessing the total compensation at Rs.15,28,500/- with interest @ 6% per annum from the date of application till realization. While making apportionment of compensation, the Tribunal ordered that each of claimants Smt. Mamta Singh, Rahul Singh and Smt. Dharma Devi, who are wife, minor son and mother of the deceased respectively, shall be entitled for 1/3rd share of the compensation amount.

04. Learned counsel for the appellant/insurance company submits that though he has raised various grounds in the memo of appeals assailing the award of the Tribunal, however, he is confining his argument only to the extent that the Tribunal was not justified in granting compensation to the claimants to the tune of Rs.15,28,500/- because as per insurance policy Ex.D/30, the maximum liability of the insurance company towards the deceased/owner of the motorcycle is limited to only Rs.1 lac. From the evidence on record it is proved that the deceased was owner of the Hero Honda (Passion) (Passion) bearing No. CG 12-B-6864, which was being ridden by non-applicant No.1, and he was sitting on the same as a pillion rider. However, merely because the deceased was a pillion rider, he cannot be treated as third party and he remains the owner of the vehicle, against whom the PA coverage is limited to Rs. 1 lac only.

Reliance has been placed on the judgments in the matters of ***Mohammed Yusuf Vs. Divisional Manager, New India Assurance Co. Ltd., 2013 ACJ 116; New India Assurance Co. Ltd. Vs. Prabha Devi and others, 2013 (II) DMP 3 (SC); New India Assurance Co. Ltd. Vs. Latha, Laws (Mad) 2018 2 347*** and ***United India Insurance Co. Ltd. Vs. Chander Prabha Bhatt and others, 2006(1) TAC 818 (HP)***.

05. On the other hand, learned counsel for the respondents/claimants submit that the Tribunal has rightly fastened liability upon the insurance company of satisfying the entire award. It is true that the deceased was owner of the motorcycle in question,

however, he was not riding the motorcycle, it was being ridden by non-applicant No.1 Ramesh Kumar and the deceased was sitting in the vehicle in the capacity of pillion rider and therefore, the finding so recorded by the Tribunal holding the insurance company liable for paying entire amount of compensation to the claimants cannot be faulted with.

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

07. It is not in dispute that the accident occurred on 21.2.2004 in which deceased Dayashankar, who was sitting on Hero Honda (Passion) bearing No. CG 12-B-6864, as a pillion rider died and the said vehicle was being ridden by non-applicant No.1 Ramesh Kumar Mishra. It is also not in dispute that the said motorcycle was duly insured with non-applicant No.3 as per Ex.D/30 at the relevant time wherein the deceased has been mentioned as registered owner of the vehicle. From perusal of Ex. D/30, it is evident that Rs.50/- was taken as premium by the insurance company towards compulsory PA coverage to owner-driver of the vehicle, which was limited to Rs. 1 lac only. Though the deceased was sitting on the vehicle as a pillion rider at the time of accident, however, it would not affect the status of the deceased as owner of the vehicle, and pillion rider can be treated as third party provided he/she is not the owner/insured, as has been held by various High Courts and the Hon'ble Supreme Court in catena of their judicial pronouncements.

08. In the present case, the claim petitions under Section 166 of the Motor Vehicles Act, 1988 (in short “the Act”) were filed by wife, minor son and parents of the deceased claiming compensation against the death of Dayashanker, owner of the vehicle.

09. In the matter of *Mohammed Yusuf* (supra), it was held that owner of the vehicle cannot maintain a claim application against the insurance company of his vehicle for compensation for injuries sustained by him under Section 166 of the Act as risk of the owner under Section 146 of the Act is not covered.

10. In *New India Assurance Co. Ltd. Vs. Prabha Devi and others* (supra), where claim petition was filed under Section 166 of the Act claiming compensation by the legal representatives of the deceased, who was owner of the vehicle, the Hon'ble Supreme Court held that in view of Section 147 of the Act, claim of the claimants could not have been allowed and accordingly, set aside the award of the Tribunal and the judgment of the High Court affirming the award of the Tribunal.

11. In the case of *United India Insurance Co. Ltd. Vs. Chander Prabha Bhatt and others* (supra), where claim was raised against death of owner of a truck from the insurance company, it was held that since the policy does not cover the risk of owner, the insurer is not liable to pay any compensation to the claimants.

12. In a recent judgment in the matter of *New India Assurance Co. Ltd. Vs. Latha* (supra), considering various decisions of the Hon'ble Supreme Court, it was observed as under:

> “10. The learned counsel appearing for the appellant cited the Hon'ble Supreme Court Judgment in Oriental Insurance Co., Ltd., v Rajini Devi, reported in 2008 ACJ 1441 and contended that the insurance company is liable to pay only the agreed sum of Rs.1,00,000/- to the claimants, as per the policy. In the above ruling, it has been held as follows :
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> > "6. It is now a well settled principle of law that in a case where third party is involved, the liability of the insurance company would be unlimited. Where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the insurance company would depend upon the terms thereof."
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> 11. The coverage for third party is statutory as per Section 146 of the Motor Vehicles Act, 1988. Personal Accident cover to the owner by paying additional premium is purely contractual and non-statutory. The insurance company is liable to pay only to the extent as agreed under the contract.
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> 12. As per the terms of the policy, Personal Accident claim to the owner is limited to Rs.1,00,000/- for the two wheeler. Therefore as per the contract, the claimants are entitled to get compensation of Rs.1,00,000/- from the insurance company. For the aforesaid reasons, the award of the Tribunal is liable to be modified by awarding a total compensation of Rs.1,00,000/- to the claimants. In the result, this Civil Miscellaneous Appeal is partly allowed and the appellant / respondent is directed to

> pay a total compensation of Rs.1,00,000/- (Rupees One lakh only) along with the accrued interest at the rate of 7.5% p.a., to the respondents / claimants, within two months from the date of receipt of a copy of this order. The appellant / insurance company is permitted to withdraw the balance amount lying in the credit of the M.C.O.P.No.58 of 2013 on the file of the Motor Accident Claims Tribunal (I Additional District and Sessions Court), Vellore, Vellore District. Consequently, connected miscellaneous petition is closed. No costs."

13. Thus, considering the facts and circumstances of the case, in particular the fact that the deceased was registered owner of the vehicle in question who died in the accident, the claimants are his legal representatives/heirs, the insurance policy of Ex.D/30 which covers the PA of owner-driver to the extent of only Rs.1 lac in lieu of premium of Rs.50/- taken by it, keeping in view the aforesaid judicial pronouncements, this Court is of the opinion that the Tribunal was not justified in saddling the liability of satisfying the entire awarded amount on non-applicant No.3/insurance company. It is held that the insurance company is liable to pay only Rs. 1 lac to the claimants as compensation against the death of deceased-owner of the vehicle.

14. In the result, the appeals are allowed with modification in the impugned award to the extent that non-applicant No.3/insurance company is liable to pay Rs.1 lac with interest @ 6% per annum from the date of application till its actual payment to the claimants. Apportionment of the said amount amongst the claimants i.e. wife, minor son and mother of the deceased, shall be in the same manner as has been done by the Tribunal. The insurance company shall be entitled to receive the amount paid/deposited in excess of its above liability from the claimants in accordance with law.

Sd/

(Gautam Chourdiya)

Judge

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