NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 622 of 2014

- The United India Insurance Company Limited, Through- its Branch Manager, Branch Office, Near Gurudwara, Station Road, Durg, Tah. And Distt. Durg C.G.

----Appellant

Versus

1. Churaman Singh Chandrakar S/o Budharu Ram Chandrakar, aged about 50 Years R/o Dundera, Shankar Nagar, Ward No. 65, Nagar Nigam Bhilai, P.S. Utai, Tah. And Distt. Durg C.G.

2. Smt. Mungeshwari Bai W/o Churaman Chandrakar, aged about 47 Years R/o Nagar Panchayat, Utai, Sadbhavan Chowk, Hathkhoj Para, Ward No. 05, Tah. And Distt. Durg C.G.

---- Respondents

For Appellant	Shri Dashrath Gupta, Advocate.
For Respondent Nos. 1 & 2	Shri C.K. Sahu, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board

07/03/2019

1. This is insurer’s appeal against the award dated 26.03.2014 passed by the 1st Additional Motor Accident Claims Tribunal, Durg, District Durg, C.G. in claim case no.22/11.

2. As against the compensation of Rs.4,31,600/- claimed by the Mother of deceased – Shailendra Kumar, by filing claim application under Section 163(A) of the Motor Vehicles Act, 1988 (for short ‘the Act’) for her son's death in the motor accident on 31.08.2010, the Tribunal awarded a total sum of Rs.3,49,000/- as compensation along with interest @6% per annum from the date of application till its actual payment, fastening the liability upon the Insurance Company i.e. appellant/non-applicant

no.1 along with non-applicant no.2 jointly and severally.

3. Learned counsel for the appellant/Insurance Company submits that the deceased was the son of the non-applicant no.2, who was the owner of the motorcycle and motorcycle was borrowed by the deceased, therefore, application under Section 163A is not tenable and the learned Tribunal has wrongly fastened liability of paying compensation to the claimants on the Insurance Company. Alternatively, he submits that if there is any liability on the Insurance Company, the sum cannot exceed beyond Rs.1,00,000/- as per the terms and conditions of the Insurance Policy and law laid down in the matters of ***National Insurance Co. Ltd. Vs. Swaran Singh and others, (2004) 3 SCC 297 & Oriental Insurance company Limited Vs. Rajni Devi and others (2008) 5 SCC 736.***

4. Counsel for the Respondents supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

5. Heard learned counsel for the parties and perused the impugned award.

6. It is not disputed by both the parties that owner of the vehicle is non-applicant no.2 and deceased was the son of non-applicant no.2 and claimant is mother of the deceased. As per Ex.D-1C i.e. certificate of registration this fact is proved that owner of the vehicle is non-applicant no.2, vehicle is insured with non-applicant no.1 as per Ex.D-2 and premium of Rs.50/- was taken by the Insurance Company towards PA coverage of Rs.1,00,000/-. Admittedly, deceased was the son of non-applicant no.2, who is the owner of the offending vehicle and since on

the date of accident, the deceased riding the motorcycle of non-applicant no.2/owner, he had stepped into the shoes of the owner. As per Insurance Policy Ex.D-3, the Insurance Company had taken premium of Rs.50/- towards PA coverage of owner-driver and its liability towards owner-driver was limited to Rs.1,00,000/-. Therefore, keeping in view the decision of the Hon'ble Supreme Court in matters of ***Swaran Singh & Rajni Devi*** *(supra)**,*** this Court is of the opinion that the Tribunal was not justified in fastening liability on the Insurance Company of paying compensation of Rs.3,49,000/- to the claimant whereas its liability is limited to pay only Rs.1,00,000/- as compensation in terms of the Insurance Policy.

7. In the result, the appeal is allowed in part. The impugned award is hereby modified to the extent that Insurance Company is liable to pay only Rs.1,00,000/- with interest as awarded by the Tribunal to the claimant. However, the amount, if any, deposited by the Insurance Company in excess of its liability, it shall be entitled to recover the same from the claimant in accordance with law. However, rest of the conditions of the impugned award shall remain intact.

Sd/-
Gautam Chourdiya
Judge

Akhilesh