AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 442 of 2019

1. Beena W/o Late Gopal Das Aged About 36 Years
2. Roopa Kumari D/o Late Gopal Das Aged About 18 Years
3. Teena Kumari D/o Late Gopal Das Aged About 9 Years
4. Shankar Vaishnav S/o Late Gopal Das Aged About 6 Years
5. Ragini Vaishnav D/o Late Gopal Das Aged About 2 Years

   Appellants No. 3 to 5 are minor through their legal guardian mother Smt. Beena.
6. Dilsudan S/o Parmanand Aged About 65 Years
7. Bahura Bai Vaishnav W/o Dilsudan Aged About 63 Years

   All are R/o Village Karnaud, Tahsil Champa, Civil And Revenue District - Janjgir - Champa Chhattisgarh.

---- Appellants/claimants

Versus

- The United India Insurance Company Limited Through The Branch Manager, Branch Office Korba, Civil And Revenue District - Korba Chhattisgarh. ---(Insurer Of The Offending Vehicle Motor Cycle Platina No. C.G./11/AG/2801)

---- Respondent

For Appellants	:	Shri PM Shrivas, Advocate.
For Respondent	:	None.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

27/02/2019

Heard on admission.

02. This appeal is by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award 28.11.2018 passed by III Additional Motor Accident Claims Tribunal, Distt. Janjgir-Champa in Claim Case No.18/2018 dismissing claim petition of the claimants.

03. As per claim petition, on 1.5.2017 Gopal Vaishnav along with his friend was riding motorcycle bearing No. CG 11 AG 2801, owned by his father Dilsudan (claimant No.6). However, on the way, as the said motorcycle got uncontrolled due to pit on the road, the vehicle skidded and Gopal Das suffered grievous injuries and ultimately succumbed to the same on 9.5.2017. At the time of accident, the vehicle was insured

with non-applicant United India Insurance Co. Ltd.

04. On claim petition being filed by the claimants, wife, children and parents of the deceased, under Section 163A of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties dismissed the claim petition.

05. Learned counsel for the appellants/claimants submits that the Tribunal without considering the pleadings of the claimants and the evidence adduced by them in its proper perspective has dismissed the claim petition in a mechanical manner whereas admittedly the vehicle was insured with the insurance company on the date of accident.

06. Heard learned counsel for the appellant and perused the impugned award.

07. From perusal of the impugned award, it is seen that the deceased died while he was riding the motorcycle of his father i.e. claimant No.6 Dilsudan. True it is that on the date of accident, the vehicle in question was duly insured with the insurance company, however, since the deceased had stepped into the shoes of the owner and there is nothing to show that the insurance company had taken any premium for covering the risk of the owner and that the deceased was not a third party, the claim petition of the claimants was not maintainable. Thus, considering the facts and circumstances of the case, keeping in view the decisions of the Hon'ble Supreme Court in the matters of the ***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 fully justified in dismissing the claim petition of the claimants. Accordingly, the appeal being without any substance is hereby dismissed at the admission stage itself.

Sd/

(Gautam Chourdiya)

Judge

Khan