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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 556 of 2018

1. United India Insurance Company, Limited Regional Office, Block No. 02, 2nd Floor Paryas Bhavan Arera Hills Bhopal Through Manager United India Insurance Company Private Limited Opposite Kutchery Square Raipur Tehsil & District Raipur Through : Authorised Signatory United India Insurance Company Limited Divisional Office 2nd Floor Divisional Office Gurukripa Towers Vyapar Vihar Road Bilaspur (C.G.).

---- Appellant

Versus

1. Smt. Rajni Rana aged 22 years Wd/o Late Aditya Rana.

2. Ku. Mamta Rana aged 02 years D/o Late Aditya Rana Through Guardian Natural Mother Smt. Rajini Rana Wd/o Late Aditya Rana. Wd/o Late Aditya Rana.

3. Smt. Punam Rana aged 46 years W/o Mohan Rana.

4. Mohan Rana aged 50 years S/o Ram Sing Rana

   All above R/o Maharishi Balmiki Ward No. 28 Rajiv Gandhi Nagar, Labhandi, Avanti Vihar Teli Bandha, Raiur Tehsil and District- Raipur (C.G.).

---- Respondents

For Appellant : Shri B. N. Nande, Advocate.
For Respondents :.Shri C. R. Sahu, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

05.02.2019

This appeal is by the insurance company under Section 173 of the Motor Vehicles Act, 1988 against the award dated 12.10.2017 passed by the 9th Additional Motor Accident Claims Tribunal, Raipur (C.G.) in Claim Case No.72/2012 awarding total compensation of Rs. 8,03,000/- alongwith interest @ 9% per annum from the date of application till realization, fastening liability on the appellant/ United India Insurance Company Limited.

02. As per claim petition, on 26.05.2011, at about 2.00 pm while Aditya Rana, aged about 25 years, was riding motorcycle bearing registration No. C.G.04DW/8709, on National High Way No. 53 towards his Village Baldidih near Lallu Dhaba, he lost his control over vehicle and slipped, due to which he sustained multiple injuries and during treatment at Ambedkar Hospital Raipur died. The said vehicle is owned by the deceased himself and insured with appellant/non-applicant No. 1/ Insurance Company.

03. On claim petition being filed by the claimants/ wife, minor daughter through his natural guardian & 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. Learned counsel for the appellant/insurance company submits that at the time of accident, the deceased did not have any licence and neither any licence even was seized nor produced before the Police or before the Tribunal, therefore, it is a case of no licence but the learned Tribunal overlook this fact and awarded the huge amount of compensation. He also submits that as per Insurance policy Ex. D/1, the limited liability of Rs. 1 lacs as compensation would be against the death of owner-driver as against the premium taken by the insurance company, but deceased himself was the owner of the motorcycle (offending vehicle) which was being driven by himself at the time of accident would thus not come within the purview of the 'third party' 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 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 deceased himself.

09. So far as the driving licence of the deceased is concerned, as per the statement of Abdan Minj (NAW-1)- the Insurance Company asked the wife of the deceased about the documents relating to driving licence of the deceased and in that regard, notice 'D/2' has also been issued but on postal receipt i.e. D/3 and its acknowledgment i.e. D/4, he did not know that who has signed in the same and also the licence could not be produced before the Tribunal therefore, it cannot be said that at the time of accident the deceased/driver of the offending vehicle did not have the valid & effective driving licence. In this case the Insurance policy Ex. D/1 is a package policy and as per policy, the limited liability of Rs. 1,00,000/- as compensation would be against the death of owner-driver as against the premium taken by the insurance company. 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 not justified in fastening liability of paying compensation amount of Rs. 8,03,000/- therefore only the liability of Rs.1,00,000/- on the insurance company and it is liable to pay to the claimants as compensation against the death of the deceased. Thus, the claimants would become entitle for Rs. 1,00,000/- only as compensation in place of Rs. 8,03,000/- as awarded by the Tribunal.

10. In the result, the appeal filed by the appellant/Insurance Company is allowed in part. Now, the appellant/ United India Insurance Company Ltd. is granted two months' time to deposit abovementioned amount of Rs.1,00,000/- only along with interest 9% per annum from the date of application till its actual payment before the concerned Tribunal. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

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