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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 783 of 2014

- Shri Ram General Insurance Company Limited, Through Manager, E/8, EPIP Rikka Industrial Area, Sitapur, Jaipur (Rajasthan)

---- Appellant/non-applicant No.2/Insurer

Versus

1. Smt. Rehana Begam Wd/of Late Usman Khan, aged about 24 years
2. Enush Khan S/o Late Usman Khan, aged about 6 years
3. Imran Khan S/o Late Usman Khan, aged about 4 years
4. Jahira Begam W/o Shakir Khan, aged about 50 years
5. Shakir Khan, aged about 55 years

No. 2 & 3 are minor, through natural guardian mother Smt. Rehana Begam Wd/o Late Usman Khan

All R/o Polsaypara, Durg, Tahsil & District- Durg (C.G.)

(Claimants)

6. Rajesh Kumar S/o Shiv Kumar Jaiswal, aged about 20 years, R/o Surajpura, Police Station Bodla, Tahsil & District Kabirdham (C.G.)
(Non-applicant No.1)

---- Respondents

And

Miscellaneous Appeal (Civil) No. 784 of 2014

- Shri Ram General Insurance Company Limited, Through Manager, E/8, EPIP Rikka Industrial Area, Sitapur, Jaipur (Rajasthan)

---- Appellant/non-applicant No.2/Insurer

Versus

1. Rohit Kumar S/o Late Murliram Kandra, aged about 28 years, R/o Harnabandha, Takiyapara, Ward No. 8, Police Station City Kotwali, Durg, Tahsil and District Durg (C.G.)
(Claimant)
2. Rajesh Kumar S/o Shiv Kumar Jaiswal, aged about 20 years, R/o Surajpura, Police Station Bodla, Tahsil & District Kabirdham (C.G.)
(Non-applicant No.1)

---- Respondents

For Appellant	:	Shri Pankaj Agrawal, Advocate
For Respondent/Non-applicant No.1	:	Shri Tarun Dadsena, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

15.02.2019

1. Both are insurer's appeals under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') against the common award dated 07.05.2014 passed by the First Additional Motor Accident Claims Tribunal, District

Durg in Claim Cases No. 66 of 2013 and 65 of 2013.

2. As both above appeals arise out of the same accident occurred on 10.10.2010 involving the same vehicle Mahindra Scorpio bearing registration No. CG-06/A/0131 (hereinafter referred to as "offending vehicle"), they are being disposed of by this common judgment.

3. In M.A.(C) No. 783 of 2014 (Claim Case No.66/2013), the Tribunal has assessed the amount of compensation of Rs.10,43,000/- and reduced the above amount by 50% towards contributory negligence of deceased- Usman Khan and awarded Rs.5,21,500/- as compensation to Claimants who are wife, children and parents of deceased- Usman Khan along with interest @ 6% per annum from the date of application till realization.

4. In M.A.(C) No. 784 of 2014 (Claim Case No. 65/2013), the Tribunal has awarded compensation of Rs.33,000/- along with interest @ 6% per annum from the date of application till realization in favour of the Claimant who is injured.

5. In both above claim cases the Tribunal has fastened the liability upon the Appellant/non-applicant No. 2/Insurance Company along with non-applicant No. 1/driver-owner jointly and severally to pay compensation to the Claimants.

6. Brief facts necessary for disposal of both appeals are that on the date of accident i.e. 10.10.2010 deceased- Usman Khan and his friend Rohit Kumar were going to visit Dongargarh for *Devi-darshan* by motorcycle bearing registration CG-07/LD/8459, the same was ridden by Usman Khan and Rohit Kumar was the pillion rider. When they reached near Village Dundera, the offending vehicle- Manhindra Scorpio which was being driven by non-applicant No.1, owned by non-applicant No.2, in a rash and negligent manner, dashed the motorcycle. As a result thereof, Usman Khan died on the spot and Rohit Kumar sustained grievous injuries.

7. Learned counsel for the Appellant/Insurance Company submits that on the date of accident, as per statement of Gautam Jain (AW-3), the offending vehicle was hired on rent as private car, therefore, there is a specific breach of policy conditions and the Insurance Company is not liable to pay compensation. He also submits that the amount of compensation awarded in both claim petitions by the Tribunal is on the higher side.

8. Learned counsel for the Respondent-Non-applicant No.1 submits that at the time of accident, the offending vehicle was insured with the Insurance Company and there is no breach of policy conditions. He submits that the Insurance Company cannot be absolved of its liability on the basis statement of Gautam Jain (AW-3) as he is not a person who hired the offending vehicle. He stated that as alleged one Narendra Kumar Jain has hired the offending vehicle but he has not been examined before the Tribunal and in casual manner without any cogent evidence, it cannot be said that the vehicle was hired for carrying passenger, therefore, the Tribunal has rightly fastened liability upon the Insurance Company.

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

10. First this Court considers the contention made by learned counsel for the Appellant regarding the use of offending vehicle on rent whereas the same was registered as private car. As per Policy (Ex.-D/1), the vehicle is insured under the private car package policy and the offending vehicle was being driven by the owner of the vehicle. As per statement of Gautam Jain (AW-3) in para-6, his brother-in-law Narendra Kumar alongwith his family members was coming from Raipur and going towards Dongargarh by Scorpio and Gautam Jain joined at Durg and the Scorpio was hired on rent. But, just contrary evidence given by the owner- Rajesh Jaiswal (NAW-1). He (AW-3) stated in para-3 of his cross-examination that the offending vehicle (Scorpio) belongs to friend of his brother-in-law. This fact is also proved by Rajesh Jaiswal (NAW-1) and in para-10, Rajesh Jaiswal denied this fact that the vehicle was used on rent for hired and reward. In para-11, Rajesh Jaiswal has admitted this fact that Narendra Kumar is friend of brother-in-law of Rajesh Jaiswal and Narendra Kumar was taken by Rajesh Jaiswal by his Scorpio to Dongargarh. Narendra Kumar Jain has not been examined before the Tribunal and Gautam Jain (AW-3) is a hearsay witness.

11. As per material available on record, it has not come in the record that the offending vehicle was going on the wrong side and dashed the motorcycle of the deceased. At the place of accident, both offending vehicle and motorcycle were running on straight road which was wide enough. The accident occurred on middle of the road where a slight turn was there on the road. Therefore, the Tribunal has rightly held the contributory negligence of non-applicant No.1 and the deceased in Claim Case No. 66/2013.

12. Therefore, after deducting 50% towards contributory negligence on the part of deceased- Usman Khan, the amount of compensation of Rs.5,21,500/- in Claim Case No. 66/2013 on account of death of deceased and the amount of compensation of Rs.33,000/- in Claim Case No. 65/2013 on account of injury sustained by Rohit Kumar awarded by the Tribunal appears to be based on proper appreciation of overall evidence available on record and therefore, it cannot be said to be on higher side. Further, there is no breach of policy conditions and the Tribunal has rightly fastened liability on the non-applicant No.2 along with non-applicant No.1 jointly & severally. Being so, this Court is of the opinion that there is no scope for interference with the finding of the Tribunal regarding liability and the quantum of compensation.

13. In the result, the above appeals being without any substance are liable to be dismissed and are accordingly dismissed.

14. No order as to cost.

Sd/-

(Gautam Chourdiya)
Judge

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