**NAFR**

# HIGH COURT OF CHHATTISGARH, BILASPUR

**MAC No. 810 of 2013**

- Sunil Kumar Jain S/o Gulabchand Jain Aged About 41 Years R/o Berla, P.S. Berla, Distt. Bemetara, Civil And Revenue Distt. Raipur, Chhattisgarh

**---- Appellant**

**Versus**

1. Smt Kusum Soni, W/o Late Dhani Ram Soni Aged About 40 Years
2. Ku. Sangeeta Soni D/o Late Dhani Ram Soni Aged About 19 Years
3. Ku. Reshmi Soni D/o Late Dhani Ram Soni Aged About 17 Years Minor
4. Ku. Roshni Soni D/o Late Dhani Ram Soni Aged About 13 Years Minor

   Appellants- 3 & 4 Thru- Mother Smt. Kusum Soni

5. Smt. Savitri Soni W/o Late Bhukkha Soni Aged About 63 Years

   All R/o village Berla, Ward No. 11, Indira Aawasiya Parisar, Thana And Tah. Berla, Distt. Bemetara, At Present C/o Ramgopal Soni, Santoshipara, Camp-2, Bhilai, Distt. Durg, Chhattisgarh

6. Branch Manager Thru- The United India Company Ltd., Parash Complex, S.B.I. Gurudwara Station Road, Durg, District : Durg, Chhattisgarh

**---- Respondents**

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| For Appellant | : | Shri Suresh Verma, Advocate |
| For Respondents-1 to 5 | : | Shri Vedant Bhelonde, Advocate on behalf of Shri PR Patankar, Advocate |
| For Respondent- 6 | : | Shri Dashrath Gupta, Advocate |

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**Hon'ble Shri Justice Parth Prateem Sahu**

**Order on Board**

**03.05.2019**

1. Appellant/Owner of offending vehicle has filed this appeal challenging the impugned award dated 10.06.2010 passed in Claim Case No. 90 of 2012 by Additional Motor Accident Claims Tribunal, Bemetara (for short, 'Claims Tribunal'), whereby learned Claims Tribunal partly allowed the claim application and while exonerating Insurance Company from its liability, fastened liability on owner of the vehicle.

2. Brief facts for disposal of this appeal are that on 22.02.2012 at about 7.30 pm Dhaniram was travelling as pillion rider on motorcycle bearing No.CG-04 DN 7855 (offending vehicle), driven by one Sunil Kumar / non-applicant No.1 and returning from Raipur to Berla. On the way near village Sankra, offending vehicle came down from road and fell in a ditch. In the aforesaid accident, Dhaniram sustained grievous injuries on his head, chest along with other internal injuries. He was taken to hospital at Berla but looking to his serious condition, he was referred to Apollo BSR Hospital, where during the course of treatment, he succumbed to injuries on 27.02.2012.

3. Claimants who are widow, children and mother of deceased- Dhaniram filed claim application claiming compensation of Rs.46,70,000/- against the appellant as well as the Insurance Company on the grounds mentioned therein. Appellant submitted his reply to the claim application. He denied the fact of accident as pleaded in claim application and stated that deceased- Dhaniram sustained injuries in accident with another four wheeler vehicle. He also stated that motorcycle was hit by unknown four wheeler due to which accident took place and deceased- Dhaniram sustained grievous injuries. The motorcycle was insured with non-applicant 2.

4. Insurance Company submitted reply to claim application and denied pleadings with respect to income of deceased as well as the expenditure made towards medical treatment. It was also pleaded that the policy issued for offending vehicle was 'Liability Only Policy' and it does not cover the risk of driver and pillion rider of the said motorcycle.

5. Learned Claims Tribunal while appreciating the pleadings and evidence available on record, had held that offending vehicle though insured with non-applicant 2 / Insurance Company, but policy issued was a 'Liability Only Policy' which does not cover the risk of driver and pillion rider of offending vehicle and exonerated the Insurance Company. Learned Claims Tribunal partly allowed the claim application and awarded a total sum of Rs. 4,74,131/- as compensation to respondents- 1 to 5/claimants.

6. Learned counsel for the appellant submitted that motorcycle was insured with United India Insurance Company Limited and learned Claims Tribunal erred in holding that risk of driver and pillion rider of offending vehicle is not covered in the policy. He also argued that pillion rider is a third party and therefore, policy issued for offending vehicle which is 'Liability Only Policy' would also cover risk of pillion rider. He further argued that learned Claims Tribunal has wrongly held that there is violation of conditions of Insurance Policy even after recording that the driver of motorcycle was possessing a valid and effective driving license on the date of accident.

7. Per contra, learned counsel for respondents- 1 to 5/ claimants supported the award and argued that learned Claims Tribunal has rightly assessed the amount of compensation which does not require any interference.

8. Learned counsel appearing for Insurance Company supported the award passed by learned Claims Tribunal and further argued that

Insurance Policy purchased by appellant is 'Liability Only Policy' which covers risk of third party whereas deceased being a pillion rider and occupant, he cannot be treated as third party.

9. I have heard learned counsel for the parties and perused the records. The only question which is germane for deciding this appeal is that whether in the facts and circumstances, risk of pillion rider is covered under policy (Ex.D-11) or not. Perusal of Ex.D-11 would show that it is issued for motorcycle/scooter under the head- 'Liability Only Policy'. Schedule of premium in Ex.D-11 would show that the third party basic premium has been paid as Rs.350/-, Service Tax- Rs.36/- and stamp duty of Re.1, total amount of premium Rs.386/-. Aforementioned particulars available with policy Ex.D-11 would clearly show that the policy is not a 'package policy' nor any amount has been paid towards pillion rider.

10. Admittedly no amount of premium has been paid for covering risk of pillion rider and the policy also being 'Liability Only Policy' and deceased being pillion rider/ occupant of offending vehicle, was a gratuitous passenger, the issue with respect to coverage of risk of pillion rider under Statutory Policy / Liability Only Policy has been considered by Hon'ble Supreme Court in the matter of **United India Insurance Company Limited, Shimla Vs Tilak Singh and others** reported in 2006 (4) SCC 404 and Hon'ble Supreme Court has held as under :

> “21. In our view, although the observations made in ***Asha Rani case***[1] were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we

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[1] New India Assurance Company Limited Vs Asha Rani (2003) 2 SCC 223

> must uphold the contention of the appellant Insurance Company that it owed no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger."

11. In the case at hand, Policy purchased by the appellant was only a statutory policy and 'Liability Only Policy'. No premium was paid for covering risk of pillion rider therefore, aforementioned law laid down by Hon'ble Supreme Court will apply to the facts of present case with full force.

12. In light of aforementioned judgment, deceased- Dhaniram being a pillion rider is not covered under Insurance Policy and therefore, learned Claims Tribunal rightly exonerated Insurance Company from its liability.

13. No other ground has been raised by the appellant.

14. In view of above, appeal being devoid of any substance, it is liable to be and is hereby dismissed.

15. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

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