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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 23 of 2013

- United India Insurance Co. Ltd. Thru- it's Branch Manager, United India Insurance Co. Ltd. Branch- Jagdalpur, P.S. Jagdalpur, Distt. Bastar, Chhattisgarh

---- Appellant

Versus

1. Subhash Savad, S/o Bhagwan Savad Aged About 32 Years r/o Village- Jaipur, P.S. Jaipur, Orissa
2. Smt. Shakuntala Devi Parakh W/o Late Gyan Chand Parakh Aged About 55 Years R/o Circuit House Road, Jagdalpur, P.S. Jagdalpur, Distt. Bastar Chhattisgarh
3. Manoj Parakh S/o Late Gyan Chand Parakh Aged About 39 Years R/o Circuit House Road, Jagdalpur, P.S. Jagdalpur, Distt. Bastar Chhattisgarh

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate
For Respondents- 2 and 3	:	Shri Prafull Bharat and Shri Keshav Dewangan, Advocates
For Respondent- 1	:	None appears

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

14.05.2019

1. This appeal is filed by Insurance Company challenging the impugned award dated 20.11.2012 passed by learned Second Additional Claim Tribunal, Bastar at Jagdalpur (for short,'Claims Tribunal') in claim case No.143 of 2012 whereby learned Claims Tribunal allowed claim application in part and awarded a total sum of Rs.8,80,658/-.

2. Brief facts for disposal of this appeal are that on 06.04.2001 one Indica car bearing No.MP 25 C-0036 (hereafter, offending vehicle) driven by respondent- 1 and owned by Gyanchand, husband of Claimant/respondent- 2 met with an accident. On 06.04.2001 Gyanchand was travelling in aforementioned car along with his daughter and grand children from Raipur to Jagdalpur and on the way near PTS Borgaon, offending vehicle dashed

against a tree which was standing on side of road. In the said accident, Gyanchand suffered head injury including other injuries on various parts of his body. He was immediately taken to hospital at Kanker where he succumbed to injuries. Matter was reported to concerned Police station and Crime No.53 of 2001 was registered for commission of offences punishable under Sections 279, 337, 304A of IPC against driver of offending vehicle.

3. Claimants who are wife and son of deceased Gyanchand filed claim application on account of his death wherein Rs.37 lakhs were claimed against non-applicants therein.

4. Non-applicant- 1 driver of offending vehicle did not appear before learned Claims Tribunal and therefore, he was proceeded *exparte*.

5. Appellant/non-applicant-2 Insurance Company submitted its reply to claim application and denied facts mentioned therein. It was pleaded that on the date of accident driver of offending vehicle was not possessing a valid and effective driving license; further it was pleaded that premium had not been paid by owner of offending vehicle in accordance with Section 64 VB of Insurance Act. Therefore, claim application be dismissed.

6. Learned Claims Tribunal while appreciating pleading and evidence available on record, initially dismissed claim application bearing No.75 of 2002 vide award dated 31.12.2003 by recording a finding that driver and owner of offending vehicle were not covered under the policy issued for offending vehicle. Further that Insured did not pay any amount of premium towards personal accident of owner/driver of vehicle. The said award passed by learned Claims Tribunal in Claim Case No.75 of 2002 was challenged

before this Court in MAC-486 of 2004 which was decided on 16.11.2011. This Court allowed appeal filed by claimants, who are wife and son of deceased and held that as at the time of accident owner of offending vehicle was travelling as passenger in offending vehicle and some other person was driving vehicle, therefore, they will be entitled for amount of compensation as applicable to claimants under the policy and the matter was remitted to learned Claims Tribunal for deciding the claim afresh. Learned Claims Tribunal in pursuance to pleadings and evidence, considered and decided claim application afresh vide impugned award and held that claimants are entitled for a total sum of Rs.8,80,658/- as compensation from Insurance Company. Hence, this appeal by Insurance Company.

7. Learned counsel for appellant /Insurance Company submits that learned Claims Tribunal committed error in passing award towards claim filed by claimants on account of death of owner of offending vehicle. He further argued that policy issued for offending vehicle was 'Act only' policy, wherein risk of four occupants and driver was covered towards limited liability as per premium paid by owner of vehicle. Deceased/insured/owner was travelling in offending vehicle without any premium being paid for himself and therefore, he will not be entitled for any amount of claim.

8. Per contra, learned counsel appearing for respondents-claimants argued that in earlier round of litigation this Court held that claim application is maintainable and claimants are entitled for compensation. Matter was remanded back to learned Claims Tribunal to decide the same afresh. Therefore, learned Claims Tribunal has rightly passed award afresh which do not require any interference.

9. I have heard learned counsel for parties and perused records.

10. It is not in dispute that deceased was owner of offending vehicle. He purchased policy (Ex.D/1) which is an 'Act only Policy'. Perusal of policy would show that premium towards four persons @ Rs.50/- each was paid which covers risk of one lakh each and premium of Rs.15/- was paid for driver. Premium was not paid towards PA coverage for owner-cum- driver. This court in earlier rounds of litigation considering contents of policy and premium paid for covering risk towards four persons as occupants, remanded the case filed by claimants and held that owner of offending vehicle though travelling in his own car but he was not driving the vehicle, he was travelling in it with status of an occupant and held that deceased will be entitled for claim to the extent of an occupant of vehicle under policy. Order of this court wherein owner of offending vehicle has been directed to be treated as one of the occupants of vehicle and his entitlement under the policy for claim as an occupant has not been challenged by Insurance Company in an appeal before High Court and therefore, the same has attained finality. Appellant/ Insurance Company is estopped from raising said ground before this court in this appeal.

11. Now the question arises whether learned claims tribunal passed impugned award strictly in accordance with law or not?

12. Insurance Policy specifically bears risk of four persons of vehicle as occupants. Premium was paid @ Rs. 50/- each which covers risk @ Rs.1 lakh each. Policy specifically bears risk of four persons as occupants and premium of Rs.50/- for each of the occupants has been paid to cover risk @

Rs.1 lakh each. Therefore, in light of aforementioned direction issued by this court in earlier round of litigation and contents of policy (Ex.D1), claimants will be entitled for compensation of Rs.1.00 lakh which is limited liability accepted by Insurance Company for each occupant of offending vehicle.

13. Learned Claims Tribunal committed gross illegality in not considering intent of order passed by this Court in earlier round of litigation and also in not considering contents of policy. Therefore, impugned award passed by learned Claims Tribunal so far as it relates to awarding an amount of Rs.8,80,000/- as compensation is set aside.

14. Though the claimants may not be entitled for total compensation against death of owner of vehicle but as I have held that deceased will be treated as one of the occupants for claim, therefore under policy, risk of Rs.1 lakh was covered for occupant. Now, claimants will be entitled for an amount of Rs.1 lakh towards their claim along with interest @ 8% per annum from the date of filing of their application.

15. Appeal is allowed in part and the impugned award is modified to the extent as indicated above.

16. The appellant will be entitled to recover the excess amount if any paid to claimants than their in accordance with law.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma