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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 306 of 2014

1. The New India Insurance Company Limited in front of Rajeev Plaza, Rama Trade Center near to bus stand Bilaspur, (C.G.).

---- Appellant

Versus

1. Smt. Champa Sharma W/o Late Gyanendra Kumar Sharma, Resident Chopda Para, Ambikapur, District- Sarguja (C.G.).

---- Respondent

For Appellant : Shri Sudhir Agrawal, Advocate
For Respondent : Shri Vivek Tripathi, Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

26.02.2019

(1) This is insurer's appeal preferred against the award dated 17.12.2013 passed by the First Additional Motor Accident Claims Tribunal, Sarguja (Ambikapur) (for short 'the Tribunal') in claim case No. 246/2011 challenging the liability fastened upon Insurance Company; and also challenging the quantum of compensation awarded by the Tribunal.

(2) On claim petition being filed by the claimant/injured, under Section 166 of the Motor Vehicles Act claiming compensation of Rs.3,32281/-, the Tribunal considering the evidence led by both the parties, by the impugned award granted a total compensation of Rs. 51,300/- with

interest @ 7.5% per annum from the date of filing of claim petition, till its actual payment.

(3) As per averment in the claim petition, Gyanendra Kumar Sharma on 06.04.2008, by driving Maruti car bearing registration No. CG15B/1521 in which his family members were also sitting, was going from Ambikapur to Chatarpur. However, on the way at Ambikapur and Katni road, the said vehicle met with an accident, as a result of which Gyandra K. Sharma, his wife- Smt. Champa Sharma/claimant and son Vaibhav Sharma suffered grievous injuries and Gyanendra Sharma succumbed to these injuries sustained by him. At the time of accident the said vehicle was owned by claimant- Smt. Champa Sharma and insured by non-applicant No. 1/Insurance Company.

(4) Learned counsel for the appellant/Insurance Company submits that claimant/injured being the owner of the offending vehicle(car) wrongly permitted to drive to the unpaid driver and due to above wrong permission(against the Policy) the appellant/Insurance Company may not be liable for payment of any compensation.

(5) On the other hand, counsel for respondent/claimant would support the impugned award and submits that alleged vehicle i.e. Maruti Car No. C.G. 15B/1521 was being driven by unpaid driver as there is no any specific law that vehicle is always driven by paid driver.

(6) I have heard learned counsel appearing for the parties and perused the record of Claims Tribunal including award impugned.

(7) As per insurance policy available on record premium of Rs. 100/-

was taken by the Insurance Company towards PA coverage for owner & driver and the liability of the Insurance Company was limited to Rs. 2,00000/-. This Court finds no substance in the argument of learned counsel for the appellant/Insurance Company that the deceased being the husband of claimant/owner can not be treated as driver for the reasons that it is up to the discretion of the owner of the vehicle to permit any person to drive his/her vehicle provided the person so permitted is competent in all respect to drive such vehicle. In this case there is no evidence adduced by the Insurance Co. that the deceased/driver was not having a valid and effective driving licence to drive the vehicle or in any manner not competent to drive the vehicle in question. Being so, merely on the ground of deceased being husband of the claimant/owner can not be said to be not falling within the definition of driver entitling the claimant to have the assured sum payable by the Insurance Company towards PA coverage of owner-cum- driver for which admittedly premium of Rs. 100/- was taken by the Insurance Company.

(8) In the result, the appeal being without any substance is liable to be dismissed and is accordingly, dismissed.

Sd/-

(Gautam Chourdiya)
Judge

Amita