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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 235 of 2012

- Branch Manager National Insurance Company Limited, Branch Kamthi Line Rajnandgaon, District Rajnandgaon (CG) Through Authorized Signatory for National Insurance Company Limited, Divisional Office, Bilaspur (CG)

---- Appellant

Versus

1. Dilip, S/o Baisakhu Satnami, aged 46 years.

2. Smt. Ahilya Bai, W/o Dilip Kumar, aged 44 years.

   Both R/o Village Bihrikala, Police Station Ambagarh Chouki, District Rajnandgaon (CG)

3. Premgir Goswami S/o Tribhuvan Gir Goswami, aged 35 years, R/o Sambalpur, Police Station Dongargaon, District Rajnadgaon (CG)

4. Dr. Thomas, S/o P.A. Abrahim, B.E.O, M/s Christian Fellowship Hospital Shore Chandmari, Rajnandgaon, District Rajnandgaon (CG)

---- Respondents

For Appellant	:	Shri B.N. Nande, Advocate
For Respondents No.1 & 2	:	Shri Shashibhushan Tiwary, Advocate on behalf of Shri Rakesh Thakur, Advocate
For Respondent No.3	:	Shri Puneet Ruparel, Advocate

Order On Board By Hon'ble Shri Justice Parth Prateem Sahu

15/01/019

1. The Impugned award dated 16.12.2011 passed by the learned Additional Motor Accident Claims Tribunal, Rajnandgaon (for short 'the Claims Tribunal') in Claim Case No.66/09 has been assailed by the appellant Insurance Company on the ground that the learned Claims Tribunal had wrongly fastened the liability upon the insurance company as the policy of the offending vehicle is 'Act Only Policy' and no premium has been paid by the insurer for the occupants of the vehicle.

2. Brief facts of the case are that on 2.1.2009 at 7.30 p.m. deceased Sanjeev Kumar Sawai was travelling as a pillion rider on the motorcycle bearing registration number CG08-E-8319 for performing his duty as Field Worker. When they reached near Sangli Bridge of village Kotra, due to rash and negligent driving by the driver, said motorcycle dashed against the said bridge as a result of which the deceased fell down, sustained fatal injuries on his head and died on the spot. A report of the said accident was lodged with the concerned police station with brief narration as to how accident took place. A claim case was filed by the claimants/respondents No.1 & 2 claiming compensation to the tune of Rs.42,00,000/- under various heads, inter alia, pleading that at the time of accident the deceased was working as Field Supervisor in Christian Fellowship Hospital, Shore Chandmari and getting monthly salary of Rs.6,000/-. He was also earning Rs.2,000/- per month from other sources. They were dependent on him, however, on account of untimely death of the deceased a loss of income had occasioned to them and therefore they are entitled to the compensation, as claimed by them.

3. Respondent No.3, driver of offending motorcycle, filed his reply to the claim application stating that the motorcycle is owned by respondent No.4 and on the date of accident he was having valid and effective driving license to drive the said motorcycle. It has been further mentioned that on the date of accident the motorcycle was insured with the insurance company and that he has been acquitted of the charges levelled against him in criminal case.

4. Respondent No.4, owner of offending vehicle, has also filed his reply to the claim application denying the adverse averments pleaded in the claim application stated that the claim application is devoid of merits and the

same is liable to be dismissed.

5. Appellant-Insurance Company also filed its reply stating that as the motorcycle in question was insured with it for the period 19.5.2008 to 18.5.2009 under a 'liability only policy', therefore, the insurance company is not liable for payment of any compensation to the claimants on account of death of deceased who was occupant of the vehicle as a pillion rider.

6. After considering the pleadings, evidence and other materials on record, the Claims Tribunal has arrived at a conclusion that the policy exhibited on record as Ex.D-1A is not 'act only policy' and therefore the claimants are entitled for compensation on account of death of their son in a road accident. The Claims Tribunal has awarded Rs.2,00,000/- as compensation to the claimants making the appellant and respondent No.3 & 4, jointly and severally, liable for payment of compensation so awarded.

7. Learned counsel for the appellant Insurance Company has admitted that on the date of accident there was a valid insurance policy issued by the appellant covering the risk of the owner of the offending vehicle. However, he submits that the policy issued in respect of the offending vehicle was a 'liability only policy' and not a comprehensive policy. He referred to the Schedule of Premium annexed along with the policy (Ex.D-1A) wherein the premium has been paid with respect to third party basic and compuslory PA to Owner cum driver. He further submitted that as the policy issued in respect of offending vehicle was 'liability only policy', therefore, the insurance company cannot be made liable for payment of compensation on account of death or bodily injuries of a pillion rider.

8. On the other hand, learned counsel appearing on behalf of respondent No.3 would submit that apart from basic premium in respect of third party

risk, additional amount of Rs.50/- was paid under the head 'Compulsory PA to Owner cum Driver' and therefore the policy (Ex.D-1A) comes within the category of 'comprehensive policy' and not within purview of 'liability only policy' or 'act only policy'. Hence, the Claims Tribunal has rightly fastened the liability upon the insurance company considering the policy to be a comprehensive policy and the impugned award does not call for any interference.

9. While adopting the arguments advanced by learned counsel appearing on behalf of the respondents No.1 & 2, he submits that the award passed by the Claims Tribunal fastening the liability on the insurance company to indemnify the owner of the vehicle is just and proper and the same does not call for any interference.

10. I have heard learned counsel for the parties and perused the record of the Claims Tribunal.

11. For the purpose of appreciating rival contentions of the parties to this appeal, it would be appropriate to peruse the insurance policy Ex.D-1A. Perusal of the policy Ex.D-1A reveals that there is clear mentioning in the policy that it is 'liability only' policy issued in respect of the offending motorcycle bearing registration number CG08-E-8319 and it was for the period from 19.5.2008 to 18.5.2009. Schedule of Premium attached to the policy would also show that a sum of Rs.300/- has been paid towards third party basic and Rs.50/- towards Compulsory PA to Owner cum Driver.

12. Admittedly, the policy (Ex.D-1A) does not appear to be comprehensive or two wheeler package policy. There is a different between 'comprehensive/package policy' & 'act only/liability only' policy. The insurance policy is a result of a contract between the insurer and insured.

under which the insurer agrees to indemnify the insured against the liability incurred by him against third party. However, in case of claim of pillion rider, the insurance company cannot be held liable to indemnify the claim on account of death or bodily injury with respect to a pillion rider where the policy is liability only policy.

13. In **United India Assurance Company Limited, Shimla vs. Tilak Singh** reported in **(2006) 4 SCC 404** the Hon'ble Supreme Court while dealing with the issue with respect to liability of the insurance company in cases of 'act only' or 'liability only' policy held thus;-

> "In our view, although the observation made in Asha Rani's case (supra) 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 must uphold the contention of the appellant-insurance company that it owed no liability toward 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 gratuitous passenger."

14. The view expressed in Tilak Singh's case (supra) has been reiterated In General Manager, United Indian Insurance Co. Ltd. vs. M. Laxmi & others reported in 2009 (1) T.A.C. 6 (SC) also.

15. In National Insurance Company Ld. vs. Balkrishnan & another reported in 2013 (1) T.A.C. 1 (SC) also the issue was with regard to liability of insurance company under the comprehensive package policy and act only policy was considered and the Hon'ble Apex Court after considering its

earlier judgements has held thus:-

> “20. It is also worthy to note that the High Court, after referring to individual circulars issued by various insurance companies, eventually stated thus:
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> > “In view of the aforesaid, it is clear that the comprehensive package policy of a two wheeler covers a pillion rider and comprehensive package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive package policy, there is no need for Motor Accident Claims Tribunal to go into the question whether the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC's directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case.”
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> “21 In view of the aforesaid factual position, there is no scintilla of doubt that a “comprehensive/package policy” would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an “Act Policy” stands on a different footing from a “Comprehensive/Package Policy”. As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a “Comprehensive/Package Policy” covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the “Act Policy” which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a “Comprehensive/Package Policy”, the liability would bes covered. These aspects were not noticed in the case of BHagyalakshmi (supra) and, therefore, the matter was reformed to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position be issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same.”

16. In the light of the above law laid down by the Hon'ble Apex Court, if we consider the facts of the case in hand, indisputably the insurance policy of the offending vehicle is a 'liability only policy' and not a 'comprehensive policy' and therefore the liability to pay compensation in respect of death of a pillion rider cannot be fastened on the appellant insurance company. Reliance placed by learned counsel for the respondent No.3 in the matter

of (United India Insurance Co. Ltd. vs. Smt. Pramila Devi & ors reported in 2009 (11) ACC 370 (CG) is misplaced one for the reason that in the said case the policy was a comprehensive policy and not the liability only or act only policy.

17. For the foregoing discussions, the appeal is partly allowed and the impugned award to the extent of fastening liability on the appellant-insurance company to satisfy the impugned award is set aside and the insurance company is exonerated from its liability. It is directed that respondent No.3-owner alone is liable to pay compensation to the claimants as awarded by the learned Claims Tribunal. Rest of the conditions of the impugned award will remain intact.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-