NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 469 of 2017

1. Champa Bai W/o Kunjram Patrey, Aged About 46 Years,

2. Kunjram Patrey S/o Kajuram Patrey, Aged About 50 Years,

   Both are R/o Village Ameri Akbari, Post Dagori, Police Station And Tehsil Bilha, District Bilaspur (C.G.)

---- Appellants/Claimants

Versus

1. Anil Kumar Narang S/o Sukhdass Narang, Aged About 25 Years R/o Village Ameri Akbari, Post Dagori, Police Station And Tehsil Bilha, District Bilaspur (C.G.) (**Owner**)

2. Branch Manager, ICICI Lombard General Insurance Company Limited, Branch Office Ground Floor, Vanijya Bhawan, Devendra Nagar Road, Police Station Devendra Nagar, Tehsil And District Raipur, Chhattisgarh, Local Address V.R.Plaza, Ground Floor, Link Road, Bilaspur, Tehsil And District Bilaspur (C.G.) (**Insurer**)

---- Respondents

For Appellants	:	Shri A.L. Singroul, Advocate.
For Respondent No. 2	:	Shri K. Rohan, Advocate on behalf of Shri Amrito Das, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

24/04/2019

1. This appeal is preferred by the claimants under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred as “Act”) against the award dated 28/11/2016 passed by Additional Motor Accident Claims Tribunal, Bilaspur District Bilaspur (C.G.) in Claim Case No. 190/2015 dismissing the claim of the claimants under Section 163(A) of the Act being not maintainable. Deceased was not a third Party and he would be stepped into the shoes of the owner of motor vehicle but on the relief clause

the learned Tribunal awarded Rs. 50000 /- under no fault liability aggrieved of this finding and quantum awarded by the learned Tribunal for seeking enhancement this appeal is filed by the parents of the deceased under section 173 of MVA.

2. As per claim on 16/08/2012 around 10:10 PM deceased Sashi Patrey, 20 years of age, working as labour had gone to Takhatpur and was returning to his village Ameri Akbari. He was riding motorcycle bearing No. CG10 EM 9159, owned by respondent No. 1 and insured with respondent No. 2. On the way, when he reached near Kathakoni, he found a pothole on the road due to which he lost his control over the motorcycle and collided with an electric pole. As a result of this accident, he suffered grievous injuries, which proved fatal and resulted his death.

3. On claim petition being filed by the claimants, parents of the deceased under Section 163-A of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

4. Learned counsel for the appellants/claimants submits that the Tribunal has wrongly dismissed the claim petition has been not maintainable on the ground that the deceased died due to his own negligence. He submits that claim petition was filed by the parents of the deceased under section 163(A) of Motor Vehicle Act and it is not disputed by the appellants/claimants the deceased was borrowed the vehicle from Anil Kumar Narang, who is respondent No. 1 owner f the vehicle and no other vehicle involved in this accident. Looking to the Insurance Policy Rs. 1 lakh as per premium was taken by the Insurance Company regarding the driver Rs. 50 limited liability 1 Lakh need to be awarded in favour of claimant but learned Tribunal wrongly has no fault liability Rs. 50000/- awarded and no interest is passed in favour of the claimant. Therefore, suitably enhance alongwith interest is also required to be passed in favour of the claimant.

5. On the other hand learned counsel for respondent/Insurance Company opposed the contention made by the appellant counsel, he support the award and also submitted in this case no any interest is claimed by the claimant and already no any interest is awarded by the learned Tribunal. Therefore, no need to be passed any interest in favour of claimant.

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

7. From perusal of the record, it is seen that the deceased had borrowed the vehicle in question from its registered owner i.e. Non-applicant No. 1 and vehicle is insured with Non-applicant No. 2 and was riding the same on dated 16/08/2012 when the unfortunate accident took place in which he died. As per Insurance Policy dated 05/09/2011 available on record, which is not been disputed by the parties.

It is admitted fact that policy issued in favour of the owner of the vehicle and PA is cover for owner-driver Rs. 50 to extended liability to compensation Rs. 1 lakh. Therefore, under section 163 of Motor vehicles Act, application is not tenable but for sake of justice as per the limited liability Rs. 1 Lakh passed in favour claimant alongwith 6% interest from the date of application till realization. Respondents are directed to pay the same within two months. No fault liability Rs. 50,000/- set aside and in place of 163A Rs. 1 lakh as a limited liability as per policy is awarded in favour of claimant.

Therefore, keeping in view the decisions of Hon'ble Supreme Court in ***Ningamma vs. United India Insurance Co. Ltd. AIR 2009 (SC) 3056*** *and* ***Oriental Insurance company Limited Vs. Rajni Devi and others (2008) 5 SCC 736.*** The Insurance Company cannot escaped its liability of paying Rs. 1 Lakh as compensation against the death of the deceased to the claimants.

8. In the result, the appeal is allowed in part. The impugned award is hereby set aside. The Non-applicant No.2/Insurance Company is held liable to pay Rs. 1 Lakh with interest @ 6% per annum from the date of filing of claim petition till realization to the claimants as compensation for the death of the Sashi Patrey. Accordingly, to the terms of contract of insurance, the liability of the insurance Company was confined to Rs. 1,00,000/- (Rupees one lakh only). It was liable to the said extent and not any sum exceeding the said amount. The Insurance Company shall pay the aforesaid amount of compensation within two months from the date of passing of this judgment.

-Sd/-
(Gautam Chourdiya)
Judge

Chandrakant