

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 252 of 2013**

1. Nehru Soni S/o Late Sagnu Soni Aged About 40 Years,
2. Smt. Sapro Bai W/o Nehru Soni Aged About 38 Years,

Both are R/o Shankar Para, New Khursipar, Bhilai-12, P.S. New Khursipar, Bhilai, Tah. And Distt. Durg (C.G.).

---- Appellants/Claimants**Versus**

1. Smt. Sita Bai W/o Gopo Bandhu Aged About 30 Years, R/o Chandrama Chowk, Shivaji Nagar, Khursipar, P.S. Khursipar, Bhilai, Tah. And Distt. Durg C.G., Chhattisgarh
2. Branch Manager National Insurance Co.Ltd., Branch Office- 1st Floor, Gill Complex, Near Gurudwara, Station Road, Durg, Tah. And Distt. Durg C.G., District : Durg, Chhattisgarh

---- Respondents

For Appellants	:	Shri Amiyakant Tiwari, Advocate.
For Respondent No. 3	:	Shri R.N. Pusty, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****15/04/2019**

1. This appeal is preferred by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award dated 30/11/2012 passed by IVth Motor Accident Claims Tribunal, Durg, District Durg (C.G.) in Claim Case No. 40/2012 dismissing the claim of the claimants under Section 163-A of the Act being not maintainable.
2. As per claim petition, on 13/08/2011 around 06:00 PM deceased Gokul Soni, 19 years, earning Rs. 3,300/- per month from private job was riding his TVS Scooty bearing No. CG07 LZ 5334 and his friend Bhola Prasad was sitting as a pillion rider, they were

going towards Sector-1, near Central Avenue Road, Bhilai. However, all of a sudden on the way on cow came in front of the TVS Scooty. Though Gokul Soni tried to save the cattle but in this process the said Scooty got dashed against the divider of the road. As a result of this accident, Gokul soni and his friend Bhola Prasad suffered grievous injuries and Gokul Soni died during treatment. At the time of accident, the TVS Scooty was owned by non-applicant No. 1/Smt. Sita Bai and insured with non-applicant No. 2/National Insurance Co. Ltd.

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 as such negligence is not required to be considered in such cases. He submits that as per Insurance Policy dated 12/05/2011 available on record filed by the Insurance Company before the Tribunal it is evident that premium of Rs. 50 was taken by the Insurance Company towards compulsory PA coverage of owner-driver for its limited liability of Rs. 1 Lakh. From the evidence available on record, since the deceased had entered into the shoes of the owner, the Insurance Company is liable to pay atleast Rs. 1 Lakh as compensation to the claimants for the death of the deceased Gokul Soni.
5. On the other hand learned counsel for respondent/Insurance Company supporting the impugned award and submits that the Tribunal considering all the relevant aspect of the matter and rightly dismissed the claim petition as being not maintainable, which does not call for any interference by this Court.

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 was riding the same on dated 13/08/2011 when the unfortunate accident took place in which he died. As per Insurance Policy dated 12/05/2011 available on record, which is not been disputed by the parties. It is evident that Rs. 50 was taken by the Insurance Company towards PA coverage of owner-driver and the liability of the Insurance Company was limited to Rs. 1 Lakh towards such PA coverage. 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 Gokul Soni 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 deceased Gokul Soni. 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