NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 982 of 2014

- United India Insurance Company Limited Branch Office, Ambikapur, Distt. Surguja C.G., Thru- Its Divisional Manager, Divisional Office, 2nd Floor, Gurukripa Towers, Vyapar Vihar Road, Bilaspur, Distt. Bilaspur C.G.,

---- Appellant (Non-Applicant No.2)

Versus

1. Manashvi, D/o Lachhan Singh Aged About 2 Years Minor, Thru- Grand Father (Guardian)- Ram Dev Singh Gaharwar, S/o Dev Prasad Singh, R/o Manendragarh, P.S. And Tah. Manendragarh, Distt. Koriya C.G., (Applicant)

2. Ravishankar Arya S/o M.L. Arya R/o Ward No. 07, Chainpur, P.S. And Tah. Manendragarh, Distt. Koriya C.G., (Non-applicant No.1)

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate
For Respondent No.1	:	None appears, though served.
For Respondent No.2	:	Shri Anil Gulati, Advocate

Hon'ble Shri Justice Sanjay Agrawal

Award On Board

12.07.2019

1. This Miscellaneous Appeal has been preferred by non-applicant No.2/United India Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988) questioning the legality and propriety of the Award dated 18.07.2014 passed by 1st Additional Motor Accidents Claims Tribunal, Manendragarh, Dist. Koriya (for short, the Claims Tribunal) in Claim Case No. 53/2014, by which, the Claims Tribunal awarded total amount of compensation to the tune of Rs.4,09,000/- with 7.5% interest per annum from the date of filing of Claim Petition till its realisation.

2. Briefly stated the facts of the case are that on 03.06.2007, the deceased Ranjana Singh, while sitting as pillion rider on the motorcycle of non-

applicant No.1, Ravi Shankar Arya, was coming from Manendragarh to Bilaspur. At the relevant time, the alleged motorcycle bearing its registration No. C.G-16-C/7472, insured with the appellant/insurance company, was being driven rashly and negligently by him at high speed, as a result of which, it jumped at a speed breaker near the tank at village Barour. Owing to which, she fell down and sustained serious injuries and was admitted immediately into the Hospital where she passed away during the course of her treatment at 11.15 PM. According to the Claim Petition, the deceased Ranjana Singh, a 30 years old, was a teacher and used to earn Rs.5000/- per month and the claimant, a minor girl, was dependent upon her and total amount of compensation of Rs.24,40,000/- has been claimed by her through maternal grandfather (नाना) as a guardian.

3. While disputing the monthly income of the deceased, it is stated by non-applicant No.1/owner of the vehicle in question that the alleged accident occurred because of break failure of the vehicle, however, he was riding the vehicle cautiously. It is pleaded further that the vehicle in question was insured with non-applicant No.2/insurance company, therefore, in case of any liability being fastened, the same could be indemnified by the insurance company.

4. The insurer (appellant herein) while contesting the claim, pleaded that the policy was the 'Act' policy, which does not cover the risk of pillion rider and pleaded further that since the pillion rider does not fall within the purview of third party, therefore, no liability could be fastened upon it. It is contested further on the ground that the driver of the said vehicle was not possessed the valid and effective driving licence, and therefore, on that count also, the insurance company is entitled to be exonerated.

5. After considering the evidence led by the parties, the Claims Tribunal arrived at a conclusion that the alleged accident occurred due to rash and negligent driving of the vehicle by its driver (non-applicant No.1 Ravi Shankar Arya), resulting in sad demise of the deceased Ranjana Singh. It held further that the deceased used to earn a sum of Rs.4,000/- per month and that by applying the multiplier of 16, awarded total amount of compensation of Rs.4,09,000/- with 7.5% interest per annum from the date of filing of Claim Petition till its realisation while fastening the liability upon the insurance company as the insurer has failed to prove that the alleged vehicle was being used in violation of the policy of insurance.

6. Being aggrieved, non-applicant No.2/insurance company has preferred this appeal. Shri Dashrath Gupta, learned counsel for the appellant submits that the award under appeal as passed by the Claims Tribunal while fastening the liability upon the insurance company is apparently contrary to law. According to him, the policy was the 'Act' policy and a bare perusal of the same would show that no premium was collected for covering the risk of the pillion rider. Therefore, the insurance company has wrongly been held liable to indemnify the insured by the Claims Tribunal. In support, he placed his reliance upon the decision rendered in the matter of ***General Manager, United India Insurance Co. Ltd.*** vs. ***M. Laxmi and others*** reported in **2009 (1) T.A.C. 6 (S.C.).**

7. On the other hand, Shri Anil Gulati, learned counsel for respondent No.2/owner, while supporting the award impugned, submits that the burden was heavily upon the insurance company to establish the fact that risk of pillion rider was not covered, however, no evidence as such was adduced in this regard. The Claims Tribunal has, therefore, not committed any illegality in fastening the liability upon the insurance company.

8. I have heard learned counsel for the parties and perused the entire record carefully.

9. On account of the accident occurred on 03.06.2007, the deceased has expired when she was coming to Bilaspur from Manendragarh while sitting behind the driver of the alleged offending vehicle (motorcycle) owing to rashness and negligent driving of the said driver. A claim enumerated under Section 166 of the Act of 1988 has been made by her minor daughter claiming total amount of compensation to the tune of Rs.24,40,000/- as the deceased Ranjana Singh was a Teacher and used to earn Rs.5,000/- per month. After considering the evidence led by the parties, the Claims Tribunal has held that alleged accident occurred due to rashness and negligent driving of its driver and that by considering the income of the deceased to the tune of Rs.4,000/- per month, awarded total amount of compensation of Rs.4,09,000/- with 7.5% interest per annum from the date of filing of Claim petition till its realisation while fastening the liability upon the insurance company.

10. The main contention of the appellant herein is that since the insurance policy (Ex.N.A.1-2) was the 'Act' policy, and therefore, the insurance company cannot be held liable as a bare perusal of it would show that no premium amount was collected for covering the risk of the pillion rider and deceased was travelling as a pillion rider, therefore, no liability as such could be fastened upon the insurance company. In order to establish the terms and conditions of the alleged policy, the appellant/insurance company has produced its witness, namely, D.D.Poptani, Branch Manager of the said company. However, a bare perusal of his statement would show that affidavit alone was filed by him, as required under Order 18 Rule 4 of C.P.C., but failed to enter into the witness box thereafter for his cross-

examination. As such, his statement cannot be looked into. No other evidence has been adduced by the insurer in order to establish the terms and conditions of the alleged policy (Ex.N.A.1-2). As such, it is difficult to hold that the risk of pillion rider was not covered under the said policy, as contended by learned counsel for the appellant and the reliance as placed by him upon the principles laid down in the matter of **General Manager, United India Insurance Co. Ltd.** v. **M. Laxmi and others** (supra) would be held to be distinguishable from the facts and circumstances of the present case. In the said matter, the insurer has proved the terms and conditions of its policy, however, in the present case, as observed herein above, although the said witness, namely, D.D.Poptani has submitted his affidavit under Order 18 Rule 4 of C.P.C. but has failed to appear into the witness box for his cross-examination. Therefore, it cannot be said that risk of pillion rider was not covered for want of proof of terms and conditions of the alleged insurance policy (Ex.N.A.1-2).

11. It is the bounden duty of the insurer in order to get rid of its liability to prove the terms and conditions of the said policy. In this case, though the policy has been filed, but its terms and conditions have not been proved, as visualised from the perusal of the entire record. In such circumstances and based upon the aforesaid observations, the Claims Tribunal has not committed any illegality in fastening the liability upon the insurance company.

12. At this juncture, the principles laid down by this Court in the matter of ***Oriental Insurance Company Limited*** vs. ***Swatantra Kumar Verma and others*** passed on 20.09.2016 in M.A.No.216/2006 are to be seen wherein it has been held at paragraph 11 as under:-

> **"11.** As far as the second ground raised by the insurance company is concerned, I am not in agreement with the submission. If the insurance company, in any case, wants to prove that it is not liable or that its liability is limited, but admits that the vehicle was insured with it, it is bound to prove the terms of the insurance policy. In this case, though the policy has been filed on record, no attempt has been made to prove the policy or conditions thereof. It is urged by Learned Counsel for the insurance company that relying upon this very insurance policy, the insurance company has made liable. The insurance company has not denied the fact that it has issued the insurance policy. The defence raised by the Company is that as per the terms of policy, it is not liable to cover liability in respect of passengers travelling in motor vehicles. This has to be proved by the insurance company. An insurance policy can even be tendered if it is not objected by the other side. To get itself excluded or to limit its liability the insurance company will have to prove the policy of insurance."

13. In view of the foregoing discussions and in view of the principles laid down in the aforesaid case, the appeal deserves to be and is hereby dismissed. No order as to costs.

Sd/-

(**Sanjay Agrawal)**
Judge

Anjani