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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 307 of 2014

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

---- Appellant

Versus

1. Vaibhav Sharma S/o Late Gyanendra Kumar Sharma, age 20 years.
2. Kumari Ishpa Sharma D/o Late Gyanendra Kumar Sharma, age 19 years.

   All resident- Behind Maharshi Ashtang college, Chopda Para, Ambikapur, District- Sarguja (C.G.).

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

---- Respondents

For Appellant : Shri Sudhir Agrawal, Advocate
For Respondent No. 1 & 2. : Shri Vivek Tripathi, Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

26.02.2019

01. 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. 100/2011 challenging the liability fastened upon Insurance Company; and also challenging the quantum of compensation awarded by the Tribunal.

02. On claim petition being filed by the claimants, who are unfortunate son and daughter of the deceased-Gyandra Kumar, under Section 166 of the Motor Vehicles Act claiming compensation of Rs.34,26,000/- under various heads, the Tribunal considering the evidence led by both the parties, by the impugned award granted a total compensation of Rs. 2,00,000/- with interest @ 7.5% per annum from the date of filing of claim petition, till its actual payment.

03. As per averments in the claim petition, on 06.04.2008, Gyandra Kumar Sharma (since deceased) by driving Alto 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 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 Smt. Champa Sharma and insured by non-applicant No. 1/Insurance Company.

04. Learned counsel for the appellant/Insurance Company submits that once the Tribunal has recorded a finding on issue No. 4 that the accident occurred on account of negligence on the part of the deceased only, the application under Section 166 of the Motor Vehicle Act was not maintainable as such the Tribunal has wrongly awarded Rs. 2,00000/- as compensation to the claimants. He further submits that as per package policy of the offending vehicle available on record, which has not been disputed by the parties, premium of Rs. 100/- was taken by the Insurance

Company towards compulsory PA coverage and the liability of the Insurance Company for owner and driver is limited to Rs. 2,00000/-. Since in the present case deceased was neither the registered owner of the offending vehicle nor was the paid driver of the same, his risk was not covered under the Insurance Policy. He further submits that claim petition is not tenable because the claim petition has been filed under Section 166 of the Motor Vehicle Act whereas it ought to have been filed under Section 163-A of the Motor Vehicle Act, then only the policy conditions would be applicable in the case like the present one.

05. On the other hand, counsel for respondents/claimants supports the impugned award and submits that alleged vehicle i.e. Alto Maruti Car No. C.G. 15B/1521 was being driven by deceased- Gyandra Kumar Sharma, husband of the owner as unpaid driver and there is no any specific law that vehicle is always driven by paid driver.

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

07. From perusal of the record it is seen that the offending vehicle was duly insured with Non-applicant No. 1 under the package policy (Private vehicle) at the relevant time. As per insurance policy premium was taken towards PA coverage of owner-driver. According to the insurance policy risk of the occupant of the vehicle, its driver and owner is covered. Admittedly, in this case vehicle in question was being driven by the deceased husband of the owner of the offending vehicle namely Smt. Champa Sharma. This Court finds no substance in the argument of learned Counsel for the Insurance Company/appellant that the deceased

cannot be treated as driver of the vehicle because 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 Company 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. Even otherwise if viewed from another angle the deceased was one of the occupant/driver of the vehicle and it is not in dispute that the Insurance Company had taken premium for covering the risk of the occupant & driver of the vehicle. Therefore, considering the overall facts and circumstances of the case, the nature of insurance policy and the evidence available on record this Court is of the opinion that the Tribunal has not committed any illegality in fastening the liability on the Insurance Company of paying compensation of Rs. 2,00000/- to the claimants against the death of the deceased-Gyandra Kumar Sharma.

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

Sd/-

(Gautam Chourdiya)
Judge

Amita