NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 582 of 2014

1. Smt. Fekan Bai W/o Late Surendra Patel, aged about 35 years,
2. Ku. Anju D/o Late Surendra Patel, aged about 15 years,
3. Pushpendra Kumar S/o Late Surendra Patel, aged about 12 years,
4. Prithviraj S/o Late Surendra Patel, aged about 10 years,
5. Umesh Kumar S/o Late Surendra Patel, aged about 7 years,
6. Smt. Rajbai W/o Raja Ram Patel, aged about 58 years,
7. Raja Ram Patel S/o Late Ranjan Patel, aged about 60 years,

Appellant Nos. 2,3,4 & 5 are minor through legal guardian mother Smt. Fekan Bai W/o Late Surendra Patel,

All are resident of ward no.3 Police Station Khamhariya, Tahsil Than Khamhariya, District Durg, C.G.

---- Appellants/Claimants

Versus

1. Dhansai Lodhi S/o Netram Verma @ Neturam, aged about 20 years, (Owner of alleged offending Motorcycle bearing registration no. CG07-Lt-9228) R/o Village & Post Patpar, Post Ranjitpur, Police Station & Tahsil Sahaspur Lohara District Kawardha, C.G.
2. United India Insurance Company Ltd. Registered and Head Office Chennai Fort Mumbari 400001 near Gurudwara Station Road Durg, C.G. (Insurer of alleged offending Motorcycle bearing registration no.CG07-LT-9228)

---- Respondents

For Appellants	:	Shri C.R. Sahu, Advocate.
For Respondent No.1	:	Shri Amit Kumar Sahu, Advocate.
For Respondent No.2	:	Shri H.B. Agrawal, Senior Advocate with Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

25.01.2019

1. This appeal is preferred by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award dated 15.07.2013 passed by 5th Additional Motor Accident Claims Tribunal, Durg, District Durg, C.G. in Claim Case No. 101/2013 dismissing the claim petition of the claimants filed under Section 163A of the Act being not maintainable.

2. As per claim petition, on 13.10.2010 deceased Surendra Patel, aged about 38 years, earning Rs.3,300/- per month as Labour and also running cycle repairing shop was riding motorcycle Hero Honda bearing no.CG07-LT-9228 with moderate speed. However, on the way driver of unknown vehicle by driving the vehicle in a rash and negligent manner dashed the said motorcycle, as a result of which Surendra Patel sustained grievous injuries and died during treatment. At the time of accident, the said Hero Honda Motorcycle was owned by non-applicant no.1/respondent no.1- Dhansai Lodhi and insured with non-applicant no.2/respondent no.2- United India Insurance Company Ltd.

3. On claim petition being filed by the claimants i.e. wife, children and parents of deceased under Section 163A of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

4. Learned counsel for the appellants/claimants submits that the Tribunal has wrongly dismissed the claim petition as not been maintainable on the ground that the deceased died due to his own negligence. He submits that claim petition was filed by the parents, wife and children of the deceased under Section 163A and as such negligence is not required to be considered in such cases. He submits that as per Insurance Policy Ex.D-1 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 at least Rs.1 lakh as compensation to the claimants for the death of the deceased.

5. On the other hand, learned counsel for the respondent/Insurance Company supporting the impugned award and submits that the Tribunal considering all the relevant aspect of the matter has 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 13.10.2010 when the unfortunate accident took place in which he died. As per Insurance Policy i.e. Ex.D-1 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 escape 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 deceased. Accordingly, to the terms of contract of Insurance, the liability of the Insurance Company was confined to Rs.1,00,000/-. It was liable to the said extent and not any sum exceeding the said amount.

Gautam Chourdiya
Judge

a