NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 937 of 2013

Order reserved on 12.09.2019

Order pronounced on 19.12.2019

United India Insurance Company, Limited through its Branch Manager, United India Insurance Company Limited, Station Road, Near Gurudwara Durg PS Mohan Nagar, District Durg, CG.

---- Appellant

Versus

1. Chandra Kumar Sahu, S/o. Shri Panchram Sahu, R/o Village Kathiya, P.S. Arjunda, Tahsil and District Balod, CG. (Owner of the Vehicle Motor Cycle No. CG 07 L 5158).
2. Bahur Singh Sahu, S/o. Shri Sitaram Sahu, aged about 52 years,
3. Tikam Sahu, S/o. Bahur Singh Sahu, aged about 30 years,

Both R/o. Village Mohandipath, PS Arjunda, Tahsil Gunderdehi, District Balod, CG.

--- Respondents

For Appellant : Mr. Dashrath Gupta, Advocate

For Respondent No. 2 & 3 : Shri Vedant Bhelonde on behalf of Shri P.R. Patnakar, Advocate

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Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

This appeal arise under Section 173 of the Motor Vehicle Act, 1988 the Insurance Company challenging the award dated 05.07.2013 passed in Claim Case No.192/2013 in favour of the respondents/claimants No.2 and 3 passed by the Motor Accident Claims Tribunal.

2. The respondents/claimants No. 2 and 3 have filed the claim petition before the Tribunal with plea that deceased Durpati Bai @ Dropati Bai on 18.01.2011 coming to her village Mohandipath with her husband on Motor Cycle bearing registration No. CG-07-L-5158 which was insured with appellant/Insurance Company. When they reached near the village Chirchar a stray dog started running behind the said vehicle, as a result of which deceased Dropati Bai fell down and received grievous injuries and during treatment in the District Hospital Rajnandgaon she had died.

Respondents No.2 and 3 claiming themselves to be the husband and son dependent on the deceased had filed the claim petition claiming the compensation of Rs.4,45,000/-.

3. Respondent No.1 filing the reply, had denied the liability on the plea that the vehicle was insured with the appellant/Insurance Company.

4. The appellant by filing the reply had also opposed the claim.

5. The Claim Tribunal after permitting the parties to adduce evidence and after examining the same, had came to the conclusion that deceased Durpati Bai has died due to the use of alleged vehicle bearing registration No.CG 07-L-5158 in which she had received injuries. Learned Tribunal further found that the vehicle was not driven in violation of any policy condition and accordingly held the appellant/Insurance Company liable for the claim compensation. The objection of the appellant that respondents No.2 and 3 are not entitled to claim compensation, has also been considered and objection has been negatived. The Claims Tribunal accordingly has awarded a sum at Rs.3,12,000/- under the head of loss of dependency; Rs.5000/- under the head of funeral expenses; Rs.5000/- under the head of loss of estate and Rs.5000/- under the head of loss of consortium. Hence the respondents No.2 and 3 held entitled to receive compensation of Rs.3,27,000/- along with the interest of 7% per annum from the date of filing of application.

6. Learned counsel appearing for the appellant submits that the Tribunal has committed an error in awarding the compensation to the respondents No.2 and 3 because respondents were not dependent on deceased Durpati Bai.

7. On the other hand, opposing the arguments of appellant learned counsel for the respondents No.2 and 3 submits that the respondents being dependent on the deceased have rightly been awarded the compensation amount.

8. The appellant/Insurance company in its reply before the Tribunal had raised the plea that the respondents No.2 and 3 were not dependent nor examined any witness or filed any document to prove the same.

9. In the case of **Chandan Singh and anothers Vs. SEW Construction Co. Ltd. and others** reported in **(2003) ACJ 1382** it is held that:-

> **"the compensation cannot be denied to any legal representative on the ground that he did not depend upon the deceased for survival".**

10. The vehicle in question was insured by the Insurance Company through a comprehensive/package policy issued for the period from 12.01.2011 to 11.01.2012 and it was fully covered third party risks on the date of accident which took place on 18.01.2011. The third party risk was covered under the said policy and in claims under Section 163A, three ingredients are need to be proved.

> **(i) Whether any accident took place.**
>
> **(ii) Whether accident happened due to vehicle.**
>
> **(iii) Whether any injury or death is caused as a result of said accident.**

11. In the case of **Shivaji Vs. Divisional Manager, United India** reported in **AIR 2018 SC 3705,** it is held that:-

> **"The Court observed that if an insurer was permitted to raise a defence of negligence under Section 163A of the Act, it would "bring a proceeding under Section 163A of the Act at par with the proceeding under Section 166 of the Act which would not only be self- contradictory but also defeat the very legislative intention". Consequently, it was held that in a proceeding under Section 163A of the Act, the insurer cannot raise any defence of negligence on the part of the victim to counter a claim for compensation."**

12. Having regard to the aforesaid factual legal position, I do not find any merit in this appeal which is accordingly dismissed.

Sd/-

(Vimla Singh Kapoor)
Judge

Ajay