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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 17 of 2019

- Iffco-Tokio General Insurance Company Ltd. Through Its Authorised Officer, 205-Mm Plaza, Ring Road-1, Near Khanij Bhawan, Raipur, Chhattisgarh

----Appellant

Versus

- Smt. Ramesharin W/o Late Lalji Nishad Aged About 35 Years R/o Village Pendri, Post Bhatbhera, Police Station Suhela, District Baloda Bazar, Present Address Avanti Vihar, Near Sai Care Hospital, Telibandha, Raipur Chhattisgarh.

---- Respondent

For Appellant	Shri Vaibhav Shukla, Advocate.
For Respondent	None.

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

01/02/2019

1. Heard on **I.A. No.1**

2. This is an application for condonation of delay of 01 day in filing the MAC.

3. For the reasons mentioned in the application and which is duly supported by affidavit, the same is allowed and delay in filing the MAC is condoned.

4. Also heard on admission.

5. This is insurer's appeal against the award dated 28.07.2018 passed by the Additional Motor Accidents Claims Tribunal, Raipur, District, Chhattisgarh in claim case 98/2017.

6. As against the compensation of Rs.1,00,000/- claimed by the unfortunate widow of deceased – Lalji Nishad by filing claim application under Section 163A of the Motor Vehicles Act, 1988 (for short 'the Act') for his death in the motor accident on 15.07.2016, the Tribunal awarded a total sum of Rs.1,00,000/- as compensation along with interest @ 9% per annum from the date of application till its actual payment, fastening the liability on the Insurance Company.

7. The Tribunal, on a close scrutiny of the evidence led by both the parties held that on 15.07.2016 at about 4 pm, deceased- Lalji Nishad died in the motor vehicle accident caused due to rash and negligent driving of motorcycle bearing no. CG22-AC-3059 which was being driven and owned and one Laxmi Narayan Dhruw, as a result of which deceased suffered grievous injuries on his body and during treatment he died.

8. Learned counsel for the appellant/Insurance Company submits that the Tribunal has wrongly fastened liability on the Insurance Company of paying Rs.1,00,000/- to the claimants because as per Insurance company, the risk of owner-driver and the third party was only covered. In this case, the deceased was neither owner of the vehicle nor was the third party. Further, the deceased was not having a valid and effective driving licence to drive the motorcycle, therefore, the Tribunal was not justified in fastening the liability on the Insurance Company.

9. Heard learned counsel for the appellant and perused the impugned award.

10. So far as the issue of the deceased not having a valid and effective driving licence is concerned, the Insurance company has not adduced any oral or documentary evidence to substantiate its plea that the deceased was not having a valid and effective driving licence on the date of accident to drive the motorcycle in question. The claimant has pleaded that the driving licence of the deceased has been lost. It is not in dispute that insurance policy was issued in favour of the deceased. At the time of issuance of insurance policy, all the necessary information in respect of the insured is obtained by the Insurance Company and as such the Insurance Company was required to lead evidence that the deceased was driving the vehicle without licence as it had all the necessary and requisite information in respect of the deceased and the vehicle in question. However, the Insurance Company did not adduce any such evidence which could show that the deceased was driving the vehicle without valid and effective driving licence on the date of accident.

11. So far as quantum of compensation is concerned, from perusal of the impugned award, it is seen that premium of Rs.50 was paid by the deceased towards PA coverage of owner-driver and in lieu that premium, the Insurance Company had the limited liability of Rs.1,00,000/- towards owner-driver. Since the deceased was owner of the vehicle in question and died in the accident, in view of insurance policy where premium of Rs.50 was taken by the Insurance Company towards PA coverage of owner-driver and keeping in view the decision of Hon'ble Supreme court in the matters of ***Ningamma vs. United India Insurance Co. Ltd. AIR***

***2009 (SC) 3056* & *Oriental Insurance company Limited Vs. Rajni Devi and others (2008) 5 SCC 736*,** this Court is of the opinion that the Tribunal was justified in fastening the liability on the Insurance Company of paying Rs.1,00,000/- to the claimant with interest @ 9 per annum from the date of application till its realization.

12. In the result, appeal being without any substance is liable to be dismissed at the admission stage itself and is, accordingly, dismissed. Insurance Company is held liable to pay the entire amount of compensation to the claimants.

Sd/-
Gautam Chourdiya
Judge

Akhilesh