

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 2034 of 2018**

- National Insurance Company Limited Through Its Divisional Manager, Divisional Office - Vyapar Vihar Road, Taha Complex, Bilaspur, District Bilaspur Chhattisgarh.

----Appellant**Versus**

1. Smt. Kavita Wd/o Late Kamalkant Sahu Aged About 26 Years
2. Ku. Khushbu D/o Late Kamalkant Sahu, Aged About 05 And 1/2 Years,
3. Aman Kumar S/o Late Kamalkant Sahu Aged About 3 Years
4. Ku. Mahak D/o Late Kamalkant Sahu, Aged About 01 And 1/2 Years,

Respondent Nos. 2 to 4 are (Minor) Through Their Mother Smt. Kavita (Res. No. 1)

5. Shri Chand Sahu S/o Late Jailu Ram Sahu Aged About 50 Years
6. Smt. Ramvati W/o Shri Chand Sahu Aged About 47 Years

All are R/o Village - Kodagi, P.O. Tamdand, P.S. And Tahsil - Khadgawan, District Korea Chhattisgarh.

7. Shiv Bhajan Singh S/o Ramnath Aged About 50 Years R/o Village - Kodagi, P.O. Tamdand, P.S. And Tahsil - Khadgawan, District Korea Chhattisgarh. (Owner)

---- Respondents

For Applicant	Shri Dashrath Gupta, Advocate.
For Respondents	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 301 days 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 27.10.2017 passed by the 2nd Additional Motor Accidents Claims Tribunal, Manendragarh, District Korea, Chhattisgarh in claim case 41/2015.
6. As against the compensation of Rs.25,70,000/- claimed by the unfortunate widow and minor sons of deceased – Kamalkant by filing claim application under Section 163(A) of the Motor Vehicles Act, 1988 (for short 'the Act') for his death in the motor accident on 21.04.2015, the Tribunal awarded a total sum of Rs.1,00,000/- as compensation along with interest @ 6% per annum from the date of application till its actual payment, fastening the liability upon the non-applicants jointly and severally.
7. The Tribunal, on a close scrutiny of the evidence led by the parties held that on 21.04.2015 at about 5.00 pm, Kamalkant was going to village Bachrapodi to his village Kodagi by riding motorcycle, however, on the way his motorcycle slipped, as a result thereof Kamalkant received grievous injuries on his body and during treatment in the hospital 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 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. On the contrary, as per the impugned award the claimants have filed Ex.A-5 and Ex.N-2, which relate to the driving licence of the deceased. In these circumstances, it cannot be held that the deceased was not having a valid and effective driving licence on the date of accident to drive the motorcycle.

11. As regards the quantum of compensation, from the pleadings of the parties and the evidence adduced by them it is proved that on the date of accident the deceased was riding the motorcycle after borrowing the same from its owner / non-applicant no.1 Shiv Bhajan Singh and as such he had stepped into the shoes of the owner. It is not in dispute that the said motorcycle was duly insured with the appellant/Insurance Company for a period from 20.01.2015 to 19.01.2016 and the accident occurred on 31.04.2015. Further it is also not in dispute that the Insurance Company had taken premium of Rs.50 towards PA coverage of owner-driver and its maximum liability for the owner-driver was limited to Rs.1,00,000/-.

12. The Tribunal considering the facts and circumstances of the case, pleadings of the respective parties and the evidence adduced in support thereof, the fact that the deceased had stepped into the shoes of the owner, as per Insurance Policy premium of Rs.50 was taken by the Insurance Company towards PA coverage of owner-driver and keeping in view the judgments of the Hon'ble Supreme Court in the matter of ***Ningamma vs. United India Insurance Co. Ltd. AIR 2009 (SC) 3056*** has fastened the liability on Insurance Company jointly and severally along with non-applicant nos. 1 / owner of paying Rs.1,00,000/- to the claimants as compensation with interest as aforementioned. The aforesaid finding of the Tribunal is also in accordance with principles of law laid down by the Hon'ble Supreme Court in the matter of ***Oriental Insurance company Limited Vs. Rajni Devi and others (2008) 5 SCC 736***, in the said matter the Hon'ble Supreme Court

held that in a case where third party is involved, the liability of the Insurance Company would be unlimited and where compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by qua contract, the claim of the Insurance company would depend upon the terms thereof. Accordingly, considering the terms of the contract of Insurance, the liability of the Insurance company was confined to Rs.1,00,000/- only in the said case. In view of above, this Court finds no illegality or infirmity in the findings so recorded by the Tribunal.

13. 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