IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAF) NO.2426/2018
AND
FIRST APPEAL STAMP NO.9925/2016

The Oriental Insurance Co. Ltd., Nagpur
..Vs..
Smt. Chandraprabha @ Reena Wd/o Rajendra Choudhari and others

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Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

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Shri D.N. Kukday, Advocate for the applicant / appellant.

CORAM : NITIN W. SAMBRE, J.
DATED : 27.9.2019

1] Heard.

2] This appeal is by insurance company. There is a delay of 10 days caused in preferring an appeal against the judgment of award of compensation of Rs.4,00,000/- by the M.A.C.T. Gondia.

3] In the application, the name of the vehicle owner i.e. Babulal S/o Mayaram Choudhari, who was insured with the appellant, is already deleted which was an offending vehicle of which this Court is required to take judicial note.

4] Said Babulal S/o Mayaram Choudhari was owner of motorcycle Hero Honda make bearing registration No.MH-35/M-1146. Deceased Rajendra S/o Babulal was riding said motorcycle which dashed against the motorcycle No.MH35/M-3681. As consequences of injuries suffered in the accident, Rajendra and Harishkumar died on the spot.

5] The claimants are dependents of Rajendra. Alleging that his earning capacity of Rs.5,000/- per month, who was of 32 years at the relevant time, a compensation of Rs.4,00,000/- is sought.

6] The vehicle on which deceased was riding and owned by his father was insured with the appellant.

7] In support of the claim Form ‘AA’ at Exh.35, F.I.R Exh. 36, spot-panchanama Exh. 37 were relied upon.

8] The deceased was holding a valid driving licence Exh.40 and insurance policies are at Exhs.42 and 55.

9] The Tribunal considered the risk of the deceased being covered under the insurance policy issued to his father in the motorcycle in question and awarded compensation.

10] Shri Kukday, learned Counsel would urge that since deceased Rajendra was son of vehicle owner Babulal, and Babulal was issued a policy which covered third party risk only, the Tribunal ought not have granted the compensation. He has drawn support from the judgment of Apex Court in the matter of *Oriental Insurance Company Limited V/s. Meena Variyal and others* reported in **IV (2007) ACC 335 (SC)**. According to him, since deceased was legal heir of the respondent No.4 as such he cannot be termed as a third party hence the risk is not covered.

11] As such according to him, the judgment impugned is liable to be upset.

12] Considered the submissions.

13] The claim was preferred under Section 166 of the Motor Vehicles Act and deceased Rajendra son of respondent No.4 Babulal was holding a valid driving licence whereas the policy issued by the appellant is not in dispute.

14] In the aforesaid backdrop of the submissions, this Court is required to appreciate whether deceased Rajendra could be termed as a third party.

15] The learned Counsel Shri Kukday though has tried to rely upon the pleadings, relations between the deceased and the insured, he is unable to demonstrate any statutory embargo or position of law to infer that deceased Rajendra son of vehicle owner i.e. respondent Babulal cannot be termed as a third party and as such the risk is not covered against the policy. The judgment relied upon in the matter of *Oriental Insurance Company Limited V/s. Meena Variyal and others* (supra) will have hardly any applicability to the case in hand. In the said case deceased was an employee and driving a four wheeler of the company with whom he was employed without any licence. In the case in hand, the deceased was son of the vehicle owner and was holding a valid driving licence. That being so, the Apex Court in the judgment of Oriental Insurance Company had held that the employee without holding any driving licence if met with an accident cannot be termed as third party, will not be equated in the facts of the case in hand. The Tribunal has rightly held that deceased Rajendra can be granted compensation being covered as a third party in view of the insurance policy issued by the appellant. That being so, no case for interference is made out. The appeal fails. It is **dismissed** accordingly. No costs.

16] The amount of compensation be forthwith relegated to the Tribunal so as to entitle the claimants to withdraw the same.

JUDGE

Tambaskar.