NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1269 of 2014

{Arising out of order dated 22.08.2014 passed by the learned Second Additional Member of the First Additional Motor Accident Claims Tribunal, Bilaspur, (C.G.) in Claim Case No. 93/2013}

- Iffco Tokio General Insurance Co. Limited S/o 3rd Floor, Shop No. 345-347, Ganga Shopping, G.Ew. Road, Raipur, Tah. And Distt. Raipur, Chhattisgarh

---- Appellant

Versus

1. Smt. Savitri Devi W/o Late Haribhuvan Singh Tanwar (Telsi) Aged About 45 Years
2. Rakesh Kumar S/o Late Haribhuvan Singh Tanwar (Telsi) Aged About 24 Years

Both the Respondents R/o Rama Kachhar, Post- Lafa, Thana- Pali, Tah. Pali, Distt. Korba, Chhattisgarh

---- Respondents

For Appellant : Shri P. Acharya, Advocate on behalf of Shri Amrito Das, Advocate.
For Respondents : Shri Rajesh Jain, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge

Judgment on Board

Per P. R. Ramachandra Menon, Chief Justice

25.09.2020

1. Award passed by the learned Second Additional Member of the First Additional Motor Accident Claims Tribunal, Bilaspur, (C.G.) (for short, 'the Tribunal') granting a compensation of Rs.1,00,000/- with interest as specified in respect of the demise of the insured/rider of the motor-cycle, under the 'personal accident cover' given to the owner-cum-rider on accepting additional premium, in a claim petition preferred under Section 163A of the Motor Vehicle Act, 1988 (for short, 'M.V. Act, 1988') is put to challenge at the instance of the Insurer.

2. The deceased by name Haribhuvan Singh on 23.08.2012 was riding his motor-cycle bearing Registration No. C.G. 12 AC 2779, when he met with an accident, allegedly because of collision with an unknown vehicle causing fatal injuries leading to his death. This was sought to be compensated by filing a claim petition before the Tribunal by the widow and the son of the deceased.

3. It was contended that the deceased was having income as a worker and also from the agriculture to an extent of Rs.3,300/- per month. It was accordingly, that various amounts were claimed under different heads, to a total extent of Rs.8,70,000/-.

4. The claim was resisted by the Appellant/Insurance Company contending that the claim was not maintainable under Section 163A of the M.V. Act, 1988. However, observing that there was coverage to an extent of Rs.1,00,000/- to the owner/driver, based on the additional premium of Rs.50/- collected in this regard. The said amount was directed to be satisfied by the Insurer of the motor-cycle belonging to the deceased with interest @ 7% from the date of filing the application till its realization; correctness of which is put to challenge in this appeal.

5. The learned counsel for the Appellant/Insurance Company submits that the accident had occurred when the motor-cycle was being ridden by the deceased himself and as such, he cannot be contested as a “3rd party” with reference to his own motor-cycle, which was insured by the Appellant/Insurance Company. This being the position, no compensation is payable, as it does not come within the purview of Section 147 of the M.V. Act, 1988.

6. There cannot be any dispute to the fact that the owner of a motor-cycle, if sustains death or injury cannot be regarded as a “3rd party” to be compensated by the Insurer of the said vehicle belonging to the Insured and such a claim does not come within the purview of Section 147 of the M.V. Act, 1988. In other words, there is no statutory coverage insofar as the owner-cum-driver of the vehicle is concerned. But this does not mean that no wider coverage can be sought for or obtained, which is purely a matter of contract between the Insurer and the Insured.

7. In the instant case, the policy issued by the Appellant, forming part of the file reveals that, besides the premium for 'own damage' to the vehicle and the basic '3rd party' premium, the Appellant/Insurer had collected a sum of Rs. 50/- towards the personal accident cover to the 'owner-cum-driver', with a capital sum insured of Rs. 1,00,000/-. By virtue of the offer and acceptance of the risk, on payment of valid consideration (additional premium of Rs.50/-), the Appellant/Insurer had agreed to cover the risk caused to owner-cum-driver because of any motor traffic accident with a cap/ceiling of sum insured as Rs. 1,00,000/-. Since the accident has resulted in the death of the Insured, the compensation payable by virtue of the additional coverage given by the Appellant/Insurer to an extent of Rs.1,00,000/-, based on the additional premium, is not liable to be watered down under any circumstance. In other words, the Appellant/Insurer is not justified in taking a somersault after covering the risk of the owner-cum-rider in respect of the personal accident, if any, to the above extent. This alone has been considered by the Tribunal and awarded while granting a sum of Rs. 1,00,000/-, fixing the liability upon the Appellant/Insurer, to have it satisfied with the interest @ 7% per annum from the date of filing the application, till its realization.

8. In the above facts and circumstances, we find that the Award passed by the Tribunal is strictly in conformity with the terms of the policy issued by the Appellant/Insurer and hence the challenge raised is not correct or sustainable. The appeal is devoid of any merit and none of the grounds raised in support of the same could be held as tenable. It stands dismissed, accordingly.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Hem