NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 11.11.2021
Pronounced on 16.11.2021
M.A(C) No.1311 of 2015

1. Chhotku Ram Yadaw S/o Shri Ram Khilawan Yadav, Aged About 52 Years R/o Village Sakrar, Police Station - Hirri, Tahsil And District Revenue And Civil - Bilaspur Chhattisgarh, Chhattisgarh
2. Smt. Sahodari Bai W/o Chhotku Yadaw, Aged About 50 Years R/o Village Sakrar, Police Station - Hirri, Tahsil And District Revenue And Civil - Bilaspur Chhattisgarh........Applicants **-- Appellants**

Versus

I. C. I. C. I. Lombard General Insurance Company Limited Through Its Branch Manager, Branch Office - Vir Sawarkar Marg, Near Prabha Devi Sidh Vinayak Mandir, Mumbai Maharastra Insurer Of The Offending Bus No. C. G. 10 T C 0189..........Non Applicant, Maharashtra **----Respondents**

For Appellants:	Shri Anand Kesarwani, Advocate.
For Respondent:	Shri T. Abraham on behalf of Shri Amrito Das, Advocates.

Single Bench: Hon'ble Shri Deepak Kumar Tiwari, J
C A V Judgment

1. This Appeal has been preferred by the Appellants/Claimants under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') questioning the legality and propriety of the award dated 06.07.2015 passed by the Motor Accident Claims Tribunal, Bilaspur, (for short 'the Tribunal') in Claim Case No.48/2015 whereby, the Tribunal has dismissed the Claim Petition on the ground of self negligence and non possession of effective and valid driving licence.

2. The facts of the case in brevity are that while deceased Vinod Yadav was going to his village Sakarra on his motorcycle bearing Registration No.CG 10TC 0189 after having completed his work at Hotel Khana Khazana, Raipur-Bilaspur road, in order to save an animal, got collided with the electric pole,

which resulted in his spot death.

3. Since the Respondent has taken Rs.50/- as an additional premium from the deceased during the time of inception of insurance policy to cover the risk of the owner of the motorcycle to an extent of Rs.1,00,000/-, therefore, the same has been claimed by the claimants/parents of the deceased as per the policy of contract.

4. The Respondent, in its written statement, has stated that the deceased was not having a valid and driving licence and does not come under the definition of third party, therefore, the insurance Company is not liable to pay compensation under the Act of 1988.

5. Learned Counsel for the Appellants submits that the Tribunal has ignored the fact that an additional premium of Rs.50/- was taken by the insurance Company to cover the risk of the owner of the motorcycle and therefore, the insurance Company ought to have paid Rs.1,00,000/- as per the terms of the insurance policy.

6. On the other hand, learned Counsel for the Respondent has supported the impugned award.

7. I have heard learned Counsel for the parties and perused the record carefully.

8. In this case, it is an admitted position that the deceased himself was riding the motorcycle at the time of accident. In the case of *Oriental Insurance Company Limited vs. Rajni Devi and Others* reported in **(2008) 5 SCC 736,** it has been held that in a case where third party is involved, the liability of the insurance Company would be unlimited. It was further held that where, however, compensation is claimed for the death of the owner of another passenger of the vehicle, the contract of insurance being governed by the

contract qua contract, the claim of the insurance Company would depend upon the terms thereof. It was also held that Section 163-A of the Act of 1988 cannot be said to have any application in regard to an accident wherein the owner of the motorcycle himself is involved, the liability under Section 163-A of the Act of 1988 is on the owner of the vehicle since a person cannot be both, a claimant and also a recipient with respect to a claim. Therefore, the claim of the parents of the deceased could not have been maintained in terms of Section 163-A of the said Act. However, the said ratio was relied on in the matter of ***Ningamma and Ors. vs. United India Insurance Co. Ltd.*** decided on *13.05.2009* in *Civil Appeal No.3538 of 2009 (MANU/SC/0802/2009).*

9. Therefore, it is expressive that where the claim relates to own damages, it cannot be adjudicated by the insurance Company, but it has to be decided by any forum i.e. forum created under the Consumer Protection Act, 1985. Before the Tribunal, there were essentially three parties i.e. insurer, insured and the claimants. On the contrary, before the Consumer Forums, there were two parties i.e. owner of the vehicle and the insurer. Therefore, the Tribunal has rightly held that the Claimants do not come under the purview of third party and accordingly, dismissed the claim Petition on the ground of maintainability.

10. In view of the foregoing discussions, the findings recorded by the Tribunal are affirmed and accordingly, the Appeal fails and is dismissed.

Sd/-

(Deepak Kumar Tiwari)
Judge

Priya