

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 590 of 2021**

Order Reserved On : 18/10/2021

Order Passed On : 20/10/2021

1. Shubham Kumar Suryavanshi S/o Munnalal Suryavanshi, Aged About 25 Years R/o Village Sothi, P.S. Champa, District Janjgir Champa Chhattisgarh
2. Smt. Jhuleshwanri Devi, D/o Munnalal Suryavanshi Aged About 38 Years W/o Ramayan Suryavanshi, R/o S.B.S. Basti, Korba, P.S. Tahsil And District Korba Chhattisgarh
3. Smt. Lalita Devi D/o Munnalal Suryavanshi Aged About 35 Years W/o Ramkishan Khunte, R/o Village Taldevri, P.S. Bamnidih, Tahsil Champa, District Janjgir Champa (Chhattisgarh),
4. Smt. Sarita, D/o Munnalal Suryavanshi, Aged About 32 Years W/o Krishna Banwa, R/o Village Afreed, P.S. Saragaon, Tahsil Champa, District Janjgir Champa Chhattisgarh,
5. Smt. Shashi Kiran D/o Munnalal Suryavanshi, Aged About 29 Years W/o Gopal Prasad Kiran, R/o Village Ghanwa (Tilai), P.S. And Tahsil Janjgir, District Janjgir Champa Chhattisgarh,
6. Smt. Shakuntala D/o Munnalal Suryavanshi, Aged About 26 Years W/o Vickky Gawaskar, R/o Village Chainpur (Korba), P.S. Dipka, Tahsil Hardibazar, District Korba Chhattisgarh,

---- Appellant**Versus**

1. Munnalal Suryavanshi S/o Peelan Sai Suryavanshi, Aged About 63 Years R/o Village Sothi, P.S. And Tahsil Champa, District Janjgir Champa (Chhattisgarh) Vehicle Driver And Registered Owner,
2. United India Insurance Co. Ltd., 1st Floor, LIC Building, Magar Para Road, Bilaspur, District Bilaspur (Chhattisgarh) Insurer Of Motorcycle No. CG12AM-0106, District : Bilaspur, Chhattisgarh

---- Respondent

For Appellant : Shri HP Agrawal, Advocate.

Hon'ble Shri Deepak Kumar Tiwari, J

C A V Order

1. The present Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 (henceforth 'the Act') against the award dated 5th August, 2021 passed by the 1st Additional Motor Accident Claims Tribunal, Janjgir, District Janjgir Champa (for short 'the Tribunal') in Claim case No.37/2020. Vide the said award, the Tribunal has exonerated the Insurance Company (Respondent No.2 herein) and fastened the liability upon the father of the appellants/claimants (Respondent No.1) and has awarded an amount of Rs.7,20,000/- as compensation on account of death of mother of the appellants/claimants namely, Meena Bai Suryavanshi, who is also the wife of respondent No.1 herein.
2. Learned counsel for the appellants would assail the impugned judgment on the ground of quantum and would submit that the Tribunal has wrongly exonerated the Insurance Company from the liability.
3. Heard learned counsel for the appellants and perused the award passed by the learned Tribunal.
4. It is an admitted fact that on 27.1.2020 deceased Meena Bai along with her husband was returning from Champa to Village Sothi on a motorcycle bearing registration No.CG-12/AM-0106, which was being driven by her husband in a rash and negligent manner, due to which Meena Bai had fallen down and she received grievous injuries and died on the spot. The Insurance Company (Respondent No.2 herein) has specifically submitted in the written statement that the policy did not

cover the pillion rider. Hence there is no liability against the insurance company.

5. It is now well established by various pronouncements of the Hon'ble Supreme Court that the Insurance Company would not be liable to pay compensation to the pillion rider.
6. In the matter of **General Manager, United Insurance Co. Ltd Vs. M. Laxmi**¹, it was held that in the event of an accidental death of a pillion rider of a scooter, being a gratuitous passenger, the Insurance Company would not be liable to pay compensation.
7. In the matter of **Oriental Insurance Co. Ltd Vs. Sudhakaran K.V. and Others**², the following has been held in para-19:-

“19. The law which emerges from the said decisions, is : (i) the liability of the insurance company in a case of this nature is not extended to a pillion rider of the motor vehicle unless the requisite amount of premium is paid for covering his/her risk, (ii) the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of vehicle or the pillion rider; (iii) the pillion rider in a two wheeler was not to be treated as a third party when the accident has taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle.”

¹ AIR 2009 SC 626

² AIR 2008 SC 2729, decided on 16th May, 2008

8. In the matter of **United India Insurance Company Limited Vs. Tilak Singh and Others**³, it has been held in para-21 thus:-

“21. In our view, although the observations made in Asha Rani’s case, 2003 ACJ 1 (SC), were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant insurance company that it owed no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy and hence it did not cover the risk of death of or bodily injury to gratuitous passenger.”

9. Apart from the above, this Court in the matter of **Oriental Insurance Company Limited Vs. Kamta Prasad Sahu & Others** (MAC No.618/2013, decided on 6.5.2021) also reiterated the settled legal position that the pillion rider travelling on a two wheeler is not entitled to get any compensation or coverage under the ‘Act only policy’ i.e. policy issued strictly to meet the requirement under Section 147 of the Act. It is also settled law that, by virtue of the relevant Circulars/Notifications issued by the IRDA in the year 2009, the scope of which has already been discussed and explained by the Hon’ble Supreme Court on many a time, that the position is different if the policy is a ‘Comprehensive or Package policy, not being an ‘Act only

³ (2006) 4 SCC 404

policy.’

10. In view of the above authoritative pronouncements of the Hon’ble Supreme Court that an occupant/inmate/passenger in a private vehicle, is not a third party, the finding recorded by the Tribunal that the Insurance policy issued does not cover the risk of death of the deceased and, therefore, the Insurance Company is not liable to pay compensation is just and proper.

11. As the Insurance Company has rightly been exonerated from the liability, in the facts and circumstances of the case, the finding recorded by the Tribunal regarding quantum is not liable to be interfered with, as the claim was passed against the father of the appellants. Otherwise also, considering the fact that the calculation has been done by the Tribunal based upon judicial pronouncements given by the Hon’ble Supreme Court in the recent past, hence this Court does not find any perversity or illegality committed by the Tribunal while exonerating the Insurance Company from the liability.

12. Accordingly, the Appeal fails, the same is liable to be and is hereby dismissed.

Sd/-
(Deepak Kumar Tiwari)
Judge

HEADLINES

In the event of an accidental death of a pillion rider of a vehicle, being a gratuitous passenger, the Insurance Company would not be liable to pay compensation under the 'Act Only Policy'.