CGHC010005642016 2026:CGHC:46079

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 541 of 2016

The date when the judgment is reserved	The date when the judgment is pronounced	The date when the judgment is uploaded on the website	
		Operative	Full
16/10/2026	30.10.2026	--------	30.10.2026

1 - Ku. Bhumika D/o Prakash Nisad, Aged About 7 Years Minor Through Guardian Smt. Sumrit Bai Nisad, W/o Late Baisakhu Nisad, Aged About 63 Years Nani, R/o Bhairav Basti, Sharda Para Bhilai, P.S. Chhaoni, District Durg, Chhattisgarh.

2 - Smt. Sumrit Bai Nisad Wd/o Late Baisakhu Nisad, Aged About 63 Years R/o Bhairav Basti, Sharda Para Bhilai, P.S. Chhaoni, District Durg, Chhattisgarh.

... Appellants /claimants

versus

1 - Vishal Shahi S/o Satya Prakash Shahi, Aged About 34 Years At Present R/o Baikunth Nagar, Pole No.2, House No.333, Camp-2, Bhilai, P.S. Chhoni, Tahsil And District Durg, Chhattisgarh.

.....Driver

2 - Ajay Pathak S/o R.G. Pathak, Aged About 47 Years R/o Qtr. No. 24/ B, Avanue-B, Sector-01, Bhilai, Tahsil And District Durg, Chhattisgarh.

.....Owner

3 - Divisional Manager, National Insurance Company Limited, Through G.E.Road, Power House Bhilai, Tahsil And District Durg, Chhattisgarh.

.....**Insurer**

... Respondents

{Cause title, as taken from Case Information System}

For Appellants	:	Mr. Utam Pandey, Advocate
For Respondents No.1 & 2	:	Mr. Vikas Kumar Bajpai, Advocate
For Respondent No.3	:	Mr. Dashrath Gupta, Advocate

{Hon'ble Shri Justice Santosh Sharma}

C A V Judgment

1. This appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "MV Act, 1988") has been preferred by the appellants/claimants seeking enhancement of the compensation awarded by the 6th Additional Motor Accident Claims Tribunal, Durg (hereinafter referred to as the "Claims Tribunal") in Claim Case No. 35 of 2014, vide award dated 23.01.2016, and also seeking fixation of liability on the Insurance Company in respect of the death of Meena Bai Nishad in a motor accident dated 08.08.2013.

2. The facts of the case, in brief, are that Meena Bai Nishad (daughter of appellant No. 2, Sumrit Bai Nishad, and mother of appellant No. 1, minor Bhoomika Nishad) was working as a labourer. On 08.08.2013, she was going to the worksite at

Risali Sector, where her contractor, Paras Bansod, was carrying out work. As she was not familiar with the location of the worksite, respondent No. 1 offered to drop her at Risali on his motorcycle, Hero Honda Karizma bearing Registration No. CG-07-AL-6147 (hereinafter referred to as the "offending vehicle"). Accordingly, the deceased was travelling on the said motorcycle along with respondent No. 1. Near the speed breaker ahead of Shankara Vidyalaya, Bhilai, respondent No. 1 allegedly drove the motorcycle rashly and negligently, due to which the motorcycle went out of control and the deceased fell from it, sustaining serious injuries. She was admitted to the District Hospital, Durg, where she succumbed to her injuries during treatment on 10.08.2013. The incident was reported to Bhilai Nagar Police Station, District Durg, where Crime No. 453/2013 was registered and investigated.

3. The appellants/claimants filed a claim application under Sections 166 and 160 of the MV Act, 1988, claiming compensation of Rs. 6,20,000/- for the death of Meena Bai Nishad in the motor accident dated 08.08.2013. The claimants contended that the deceased was a healthy woman aged about 40 years and was earning approximately Rs. 4,500/- per month through labour work. They claimed compensation towards loss of future income, loss of

dependency, medical expenses, funeral expenses and loss of love and affection.

4. Respondent Nos. 1 and 2, being the driver and owner of the offending vehicle, respectively, filed their written statement admitting that respondent No. 1 was the driver and respondent No. 2 was the owner of the motorcycle bearing Registration No. CG-07-AL-6147. However, they contended that the claimants had exaggerated the facts and presented misleading and imaginary facts. They further contended that the deceased herself was negligent and had jumped from the moving motorcycle near the speed breaker, resulting in the accident. It was submitted that respondent No. 1 possessed a valid and effective driving licence bearing No. CG-07-20030008335, valid from 26.06.2013 to 25.06.2014, and that the offending vehicle was covered by a comprehensive insurance policy issued by National Insurance Company Limited for the period from 26.06.2013 to 25.06.2014. Accordingly, they contended that, if any compensation was payable to the claimants, the same was liable to be paid by respondent No. 3/Insurance Company.

5. Respondent No. 3/Insurance Company, in its written statement, denied that the offending vehicle was insured with it. It further contended that respondent No. 1 did not possess

a valid and effective driving licence on the date of the accident and that respondent No. 2 was not related to respondent No. 1. It was also contended that respondent No. 2 had not given any intimation regarding the accident to the Insurance Company and that the vehicle had been driven in violation of the terms and conditions of the insurance policy. On these grounds, the Insurance Company disputed its liability to pay compensation and sought dismissal of the claim application.

6. The Claims Tribunal, upon consideration of the pleadings, oral and documentary evidence and submissions made by the parties, held that the accident had occurred due to rash and negligent driving of the offending motorcycle by respondent No. 1, resulting in the death of Meena Bai Nishad. It further held that the offending vehicle was insured with respondent No. 3 on the date of the accident and that respondent Nos. 1 and 2 had not violated the terms and conditions of the insurance policy. However, relying upon the applicable legal principles concerning the liability of an insurer towards a pillion rider under an Act-only policy, the Claims Tribunal held that respondent No. 3/Insurance Company was not liable to pay compensation. The Claims Tribunal assessed the compensation payable to the claimants at Rs. 10,45,000/- and held respondent Nos. 1

and 2 jointly and severally liable to pay the said amount, with respondent No. 2 being primarily liable for payment. The Tribunal further awarded interest at the rate of 9% per annum from the date of filing of the claim application, i.e., 24.03.2014, till realization.

7. Learned counsel for the appellants submits that the appellants have raised several grounds in the appeal, contending that the award passed by the learned Claims Tribunal is bad in law. It is submitted that the learned Tribunal has failed to consider the circular dated 18.03.1978 issued by the Tariff Advisory Committee and the circulars dated 16.11.2009 and 03.12.2009 issued by the Insurance Regulatory and Development Authority. The policy in question was a comprehensive/package policy, under which the risk of the deceased was covered. Therefore, the learned Tribunal ought to have fastened the liability upon the Insurance Company instead of exonerating it from its liability. It is further submitted that the learned Tribunal has committed a serious error of law, which deserves to be set aside.

8. Learned counsel for the appellants further submits that the learned Claims Tribunal ought to have appreciated the nature of the insurance policy, which was a package policy,

and that the risk of the deceased was covered thereunder. It is also submitted that the learned Claims Tribunal has awarded compensation under the head of funeral expenses, i.e., Rs. 50,000/-, and under the head of loss of love and affection, amounting to Rs. 1,00,000/-.

9. On the other hand, learned counsel appearing for respondent No. 3/Insurance Company vehemently opposes the submissions made on behalf of the appellants and submits that the learned Claims Tribunal has rightly held that the policy issued in respect of the offending vehicle was an Act-only policy and, therefore, the Insurance Company was not liable to pay compensation.

10. I have heard learned counsel for the respective parties and perused the material available on record.

11. The main issue which arises for consideration in this appeal is as to whether the insurance policy issued by respondent No. 3 in respect of the offending vehicle was an Act-only policy or a Comprehensive/Package Policy and, consequently, whether the risk of the deceased, who was travelling as a pillion rider, was covered thereunder.

12. Before examining the aforesaid issue, it would be appropriate to reproduce the relevant particulars of the insurance policy, which are as follows:

National Insurance Company Limited

A. Own Damage Premium Computation (Section I) in Rs.		B. Liability Premium Computation (Section II) in Rs.	
Basic Premium On		**Basic Premium Including Premium for TPPD**	
Vehicle	1233.00	Vehicle	420.00
Accessories	0.00	CNG/LPG/Bi-Fuel Kit	0.00
Electronic & Electric Accessories	0.00	Add a) Compulsory PA Cover (Owner Driver)	50.00
Bi-Fuel Kit		b) Optional PA Cover(Un Named Passenger)	0.00
Total	1233.00	***c) Optional PA Cover(Pillion Rider)***	***0.00***
Add Extras :		Legal Liability	
Geographical Extension	0.00	d) Legal Liability Cover (Paid Drivers, Cleaners)	0.00
ND Cover	185.00	e) Legal Liability Cover (Other then Paid Drivers, Cleaners)	0.00
For any other extra		Total Liablity Premium (B)	470.00
Sub Total	1418.00	Total Premium (A + B)	1888.00
Less Discounts		For any other extra	0.00
For anti-theft devices	0.00	Add Service Tax	234.00
Any other discount		Gross Premium	2122.00
NCB	0.00		
Total Deductions	0.00		
Net Own Damage Premium	***1418.00***		

13. A bare perusal of the aforesaid particulars of the insurance policy reveals that there is no specific mention as to whether the policy was an Act-only policy or a Comprehensive/Package Policy. It is also evident that respondent No. 3 did not specifically raise any defence in its written statement regarding the nature of the policy. Respondent No. 3 neither produced the complete insurance

policy along with its terms and conditions nor led any cogent evidence in this regard. The burden was upon respondent No. 3 to establish the nature of the policy and the extent of coverage thereunder, particularly when it sought to deny its liability on that ground. However, no such material has been brought on record by respondent No. 3.

14. In this connection, it is relevant to observe that the claimants seeking compensation under the MV Act are ordinarily not in possession of the insurance policy or its terms and conditions. The Insurance Company, being the custodian of such documents, is in a better position to produce the same before the Tribunal. This Court is of the view that where a party is in possession of a document which would assist the Court in arriving at a just and proper conclusion, such party ought to produce the said document and cannot be permitted to take shelter behind the abstract doctrine of burden of proof.

15. Upon perusal of the material available on record before the learned Claims Tribunal, it is evident that sufficient opportunity was afforded to respondent No. 3/Insurance Company to adduce evidence in support of its defence. However, it failed to lead any evidence. Consequently, the opportunity of respondent No. 3 to lead evidence was closed

by the learned Claims Tribunal.

16. It is also evident from the written statement filed by the Insurance Company before the learned Tribunal that no specific defence was raised regarding the nature and terms of the insurance policy, particularly as to whether it was an Act-only policy or a Comprehensive/Package Policy. Thus, the Insurance Company failed to specifically establish that the policy in question was merely an Act-only policy and did not cover the risk of the deceased pillion rider.

17. Despite the aforesaid facts and circumstances, the learned Claims Tribunal, without examining the complete terms and conditions of the insurance policy and without conducting any proper enquiry in this regard, arrived at the conclusion that the policy did not cover the risk of the deceased and consequently exonerated the Insurance Company from its liability.

18. It is pertinent to note that the insurance policy available on record does not clearly disclose the nature of the policy, as the heading/name of the document mentions “Two Wheeler Certificate-Cum-Policy Schedule”. Further, the particulars of the premium indicate that premium was paid under both the heads, namely, Own Damage Premium Computation

(Section I) and Liability Premium Computation (Section II). The policy also contains separate entries relating to compulsory personal accident cover for the owner-driver and optional personal accident cover for an unnamed passenger and a pillion rider.

19. In view of the aforesaid particulars, the nature and extent of coverage under the insurance policy cannot be conclusively determined merely on the basis of the policy schedule available on record. The fact that premium has been paid towards own-damage and liability components, by itself, would not be sufficient to conclude that the risk of the pillion rider was covered. At the same time, in the absence of the complete policy and its terms and conditions, it would also not be appropriate to conclude that the policy was merely an Act-only policy. Therefore, the learned Claims Tribunal ought to have examined the complete insurance policy, including the relevant terms, conditions and applicable endorsements, before arriving at any conclusion regarding the liability of the Insurance Company.

20. At this stage, it would be relevant to refer to the judgment of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. v. Jugal Kishore, reported in (1988) 1 SCC 626***, wherein, while dealing with the distinction between an Act-only policy

and a Comprehensive Policy, the Hon'ble Supreme Court has observed in paragraph 6 as under :

> *"6. We have accordingly perused the photostat copy of the policy to ascertain whether risk for any amount higher than the amount of Rs 20,000 contemplated by clause (b) aforesaid was covered. Our attention was invited by learned counsel for the respondents to the circumstance that at the right hand corner on the top of page 1 of the policy the words "Commercial Vehicle Comprehensive" were printed. On this basis and on the basis that the premium paid was higher than the premium of an "act only" policy it was urged by the learned counsel for the respondents that the liability of the appellant was unlimited and not confined to Rs 20,000 only. We find it difficult to accept this submission. Even though it is not permissible to use a vehicle unless it is covered at least under an "act only" policy it is not obligatory for the owner of a vehicle to get it comprehensively insured. In case, however, it is got comprehensively insured a higher premium than for an "act only" policy is payable depending on the estimated value of the vehicle. Such insurance entitles the owner to claim reimbursement of the entire amount of loss or damage suffered up to the estimated value of the vehicle calculated according to the rules and regulations framed in this behalf. Comprehensive insurance of the vehicle and payment of higher premium on this score, however, do not mean that*

the limit of the liability with regard to third party risk becomes unlimited or higher than the statutory liability fixed under sub-section (2) of Section 95 of the Act. For this purpose a specific agreement has to be arrived at between the owner and the insurance company and separate premium has to be paid on the amount of liability undertaken by the insurance company in this behalf. Likewise, if risk of any other nature for instance, with regard to the driver or passengers etc. in excess of statutory liability, if any, is sought to be covered it has to be clearly specified in the policy and separate premium paid therefor. This is the requirement of the tariff regula- tions framed for the purpose. Coming to the photostat copy of the policy in the instant case it would be seen that Section II thereof deals with liability to third parties. Sub-section (1) minus the proviso thereto reads as hereunder :

(1) Subject to the Limits of Liability the Company will indemnify the insured against all sums including claimant's cost and expenses which the insured shall become legally liable to pay in respect of -

(i) death or bodily injury to any person caused by or arising out of the use (including the loading and or unloading) of the motor vehicle

(ii) damage to property caused by the use (including the loading and/or unloading) of

the motor vehicle."

21. The aforesaid judgment makes it clear that merely because a higher premium has been paid or the policy is described as a Comprehensive Policy, the extent of liability of the Insurance Company cannot automatically be presumed. The terms and conditions of the policy, together with the relevant endorsements and premium paid for the particular risk, are required to be examined to determine the extent of coverage. Therefore, the complete policy document assumes significance in the present case.

22. In the present case, it was incumbent upon respondent No. 3/Insurance Company to produce the complete insurance policy along with all relevant terms and conditions and endorsements before the learned Claims Tribunal so that the nature and extent of coverage could be properly examined. However, despite having been afforded sufficient opportunity, the Insurance Company failed to produce the necessary documents and lead evidence in this regard. In these circumstances, the conclusion arrived at by the learned Claims Tribunal regarding the nature of the policy and exclusion of the risk of the deceased cannot be sustained without a proper enquiry.

23. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that the matter deserves to be remitted to the learned Claims Tribunal for a limited enquiry into the nature of the insurance policy, i.e., whether it was an Act-only policy or a Comprehensive/Package Policy and whether the risk of the deceased pillion rider was covered thereunder. For this purpose, the learned Claims Tribunal shall afford an opportunity to the parties to produce the relevant documents and adduce evidence, if any, and thereafter decide the question of liability of the Insurance Company in accordance with law.

24. This Court is conscious of the fact that the claim petition was filed on 24.03.2014 and that, even after more than twelve years of litigation, the matter has not attained finality. Therefore, this Court expects the learned Claims Tribunal to conduct the aforesaid enquiry and conclude the same as expeditiously as possible, preferably within two months from the date of receipt of a copy of this order.

25. It is further directed that the learned Claims Tribunal need not issue fresh notices to the parties. The parties shall appear before the learned Claims Tribunal on **23.12.2026** at their own responsibility.

26. In view of the aforesaid observations and directions, the miscellaneous appeal is **disposed of** by remitting the matter to the learned Claims Tribunal for the limited purpose indicated hereinabove.

27. There shall be no order as to costs.

Sd/-
(Santosh Sharma)
JUDGE

Rahul Dewangan