



Division Bench
IN THE HIGH COURT OF JUDICATURE AT BILASPUR,
CHHATTISGARH

Miscellaneous Appeal No. 895 of 2005

MISCELLANEOUS APPEAL UNDER SECTION 173 OF THE
MOTOR VEHICLES ACT, 1988

APPELLANT/:
(Insurer)

The Oriental Insurance Co. Ltd.,
Through its Branch Manager,
Branch Office: Kamptee Line,
Rajnandgaon, Tehsil & District:
Rajnandgaon, Chhattisgarh.

- Versus -

RESPONDENTS/:
(Claimants)

1. Smt. Saraswati Bai Yadav,
Aged about 40 years,
Widow of Late Ramkumar
Yadav.
2. Khilendra Yadav,
Aged about 18 years,
S/o Late Ramkumar Yadav.
3. Chetan Yadav,
Aged about 16 years,
S/o Late Ramkumar Yadav.

Respondents No.2 & 3 are
represented by their natural
guardian mother Smt. Saraswati
Bai, Widow of Late Ramkumar
Yadav.

Respondents No.1 to 3 are
residents of Ward No.1, Ram
Nagar, Kawardha, Tehsil &
District: Kabirdham (Kawardha),
Chhattisgarh.

(Non-claimants)

- A. Badri Yadav,
Aged about 47 years,
S/o Bhagbali Yadav,
Occupation: Driver,
R/o Ward No.13,
Kawardha,
Tehsil: Kawardha,

P.R. No. 1989/05
Presented by Shri. Rajnandgaon, Tehsil
dated 19/1/05

District: Kabirdham,
Chhattisgarh.

5. Chief Medical and Health
Officer, Kawardha,
Tehsil: Kawardha,
District: Kabirdham,
Chhattisgarh.



(41)

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. No. 895/2005

APPELLANTThe Oriental Insurance Co.
Ltd.**Versus****RESPONDENTS**Smt. Saraswati Bai Yadav and
others

**DB:- HON'BLE SHRI I.M. QUDDUSI &
HON'BLE SHRI N.K. AGARWAL, JJ**

PRESENT :-

Shri Shaurab Sharma, Advocate for the appellant.
Shri M.K. Bhaduri, Advocate for respondents No. 1 to 3.
Shri G.P. Kurre, Advocate for the respondent No. 4.

ORAL ORDER

(31-8-2010)

Per N.K. Agarwal, J

1. This is insurer's appeal against the award dated 24-3-2005 passed by the Motor Accident Claims Tribunal, Kabirdham in Claim Case No. 9/2004 whereby and whereunder an amount of Rs. 3,86,000/- has been awarded in favour of the claimants, out of which the appellant/Insurance Company has been directed to pay Rs. 1,00,000/-.
2. Brief facts of the case are that the on 26-11-2004 deceased Shailendra Kumar alias Lalu Yadav was going on a Motorcycle to village Jagda, Bhatapara along with pillion rider Tijauram Devdas. Near Dharampura, the Ambulance bearing registration No. PB 32 AT 7487 being driven by respondent No. 4 and owned by respondent No. 5 dashed the motorcycle, as a result of which Shailendra Kumar died due to the injuries sustained by him in the accident. The claimants being mother and minor brothers of the deceased filed claim petition under Section 163A of the Motor Vehicles Act, 1988 (in short 'the Act') claiming Rs. 6,10,200/- as compensation for the death of the deceased in the said accident.

(42)

3. Learned Tribunal on a close scrutiny of the submissions made, evidence led and material placed awarded Rs. 3,86,000/- to the claimants and held the appellant/Insurance Company liable for payment of Rs. 1,00,000/- out of the total award. Being aggrieved by the above award, the Insurance Company has filed the instant appeal.
4. Learned counsel for the appellant submits that the deceased was owner of the motorcycle and he himself was driving the vehicles at the time of accident, therefore, he does not come within the definition of third party. The policy issued in the instant case only covers the third party risk therefore, the Insurance Company is not liable to pay any amount under the award.
5. On the other hand, learned counsel for the respondents would submit that by taking extra premium of Rs. 50/-, the appellant /Insurance Company has assumed the risk of owner to the extent of Rs. 1 lac. Thus learned Tribunal has rightly awarded Rs. 1 lac as compensation in favour of the claimant and the award deserves to be upheld.
6. We have heard learned counsel for the parties and perused the record of the Tribunal.
7. Indisputably, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 of the Act does not require the insurance company to assume risk for death of or bodily injury to the owner of the vehicle. However, the insurance company is not prohibited to cover risk over and above its statutory liability by taking extra premium therefor. In the instant case, it is not in dispute that by taking Rs. 50/- as premium, the appellant/Insurance Company has issued personal



43

accident cover in favour of the owner of the vehicle and assumed risk of owner to the extent of Rs. 1 lac.

8. In view of the above, learned Tribunal has rightly passed the impugned award awarding Rs. 1 lac as compensation in favour of the claimants who are legal representatives of the owner of the vehicle.
9. For the foregoing, we do not find any substance in the appeal. The appeal being devoid of substance, liable to be and is hereby dismissed.
10. However, in the facts and circumstances of the case, no order as to costs.

Sd/-
I.M. Quddusi
Judge

Sd/-
N. K. Agarwal
Judge

P/