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IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. (C) No. 1165 OF 2011

(APPEAL VALUED AT Rs 2,38,200 /-)

Single Bench

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

APPELLANT
(NON- APPLICANT
NO.1)

: United India Insurance Company
Limited, Through its Divisional
Manager, Divisional-Office,
Rajendra Nagar Chowk, Bilaspur,
Distt.-Bilaspur (C.G.)

VERSUS

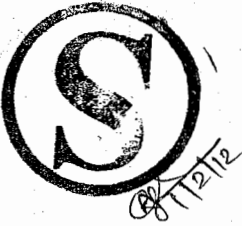
RESPONDENTS
(APPLICANT NO.1)

1. Sharmila Joshi Wd/O- Late
Sudhakar Joshi, aged about 53
years,

(APPLICANT NO. 2)

2. Sunil Joshi, S/O-Late Sudhakar
Joshi, aged about-34 years,
Both are R/O-"Shradha Bhawan"
Kadambari Nagar, P.S. - Mohan
Nagar, Durg, Tah. & Ditt.
Durg(C.G.).

3412/11
PR No.
Presented by Shri. 2ashish
Dated. 09-11-11



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HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. (C). 1165 of 2011

APPELLANT : United India Insurance Company
Limited

Versus

RESPONDENTS : Sharmila Joshi & another

APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLES ACT

SB: Hon'ble Shri Justice N. K. Agarwal.

Present : Shri Dashrath Gupta, Advocate for the appellant.
Shri Jitendra Gupta, Advocate for the respondents.

ORAL ORDER
(Passed on 31.01.2012)

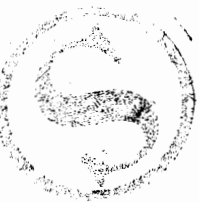
1. The instant appeal has been preferred by the appellant/insurance company against the order dated 05.08.2011, passed by the IIIrd Additional Motor Accident Claims Tribunal, Durg (for short 'the Tribunal') in claim case No. 176/2011, awarding compensation of Rs. 2,38,200/- in favour of the claimants and as against the appellant/insurance company.
2. As against compensation of Rs. 8,29,400/- claimed by unfortunate widow and major son of deceased Sudhakar Joshi i.e. owner-cum-driver of motorcycle bearing registration No. CG-07-LB-4532 by filing application under Section 163-A of the Motor Vehicles Act, 1988 (for short 'MV Act') for his death, the Tribunal awarded a total sum of Rs. 2,38,200/- along with interest @ 7.5 percent per annum from the date of application till its actual payment.



3. The Tribunal, on a close scrutiny of evidence led, material placed and submissions made by the parties, held : Sudhakar Joshi died on account of injuries sustained by him in the accident involving the motorcycle bearing registration No. CG-07-LB-4532 being driven by him; appellant/insurance company liable for payment of compensation to the claimants, assessed and awarded aforesaid sum in favour of the claimants and as against the appellant/insurance company.
4. Shri Dashrath Gupta, learned counsel appearing for the appellant would contend that the claim has been preferred by the legal representatives of the deceased under Section 163-A of the Act. The deceased himself was driving the motorcycle, therefore, the deceased, not being a third party, the claim petition itself was not maintainable in the eye of law. However, as the insurance company has undertaken the risk of owner-cum-driver to the extent of Rs. 1,00,000/- by taking extra premium of Rs. 50/- and by entering into special contract therefor, therefore, at the most, the appellant/insurance company is liable for payment of compensation only to the extent of Rs. 1,00,000/- but the Tribunal has erred in awarding Rs. 2,38,200/- as compensation against the appellant.
5. On the other hand, Shri Jitendra Gupta, learned counsel appearing for the respondents supported the award and would submit in the facts and circumstances of the case, the Tribunal has rightly awarded aforesaid sum as compensation in favour of claimants which does not call for any interference.



6. I have heard the learned counsel appearing for the parties and also perused the records of the Tribunal.
7. Admittedly, the deceased was owner of the motorcycle involved in the accident. The claim preferred before the Tribunal was under Section 163-A of the MV Act.
8. Chapter XI of the Motor Vehicles Act, 1988 deals with the motor vehicle against third party risks. By Section 146 of the Act, it was made necessary for the user of a motor vehicle in public place to have a policy of insurance against third party risks. Section 147 describes the requirements of policies and limits of liability of such statutory policies. Section 149 mandates the insurers to satisfy judgment and awards against persons insured in respect of third party risks. Section 163-A provides special provision as to payment of compensation on structured formula basis. Section 165 empowers the State Government to constitute one or more Motor Accident Claims Tribunals to adjudicate upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of the motor vehicles or damages to any property of a third party so arising or both. A brief analysis of the above provisions would reveal that the claims Tribunals have been constituted for the purpose of adjudicating upon the claims for compensation in respect of accident involving the death of or bodily injury to a third party arising out of the use of the motor vehicle.



9. Hon'ble the Supreme Court in case of ***Oriental Insurance Company Ltd. vs. Rajni Devi***; reported in (2008) 5 SCC 736 has held that Section 163-A of the Motor Vehicles Act 1988 cannot be said to have any application in regard to an accident wherein the owner of the motor vehicle himself is involved. It was further held that the liability under Section 163-A of the Act is only on the owner of the vehicle since a person cannot be both, a claimant as also a recipient, the heirs of the deceased could not have maintained a claim in terms of Section 163-A of the Act.
10. Undisputedly, the deceased was the owner of the motorcycle in question and himself was driving the motorcycle. At this stage, I have perused the policy of insurance filed by the appellant/Insurance Company. Under the policy, the appellant had undertaken the risk of owner-driver of the vehicle to the extent of Rs.1,00,000/- by taking a premium of Rs.50/- therefor. Therefore, on the face, the Tribunal was not right in awarding Rs. 2,38,200/- to the claimants treating deceased as third party.
11. Although Section 147 of the Act does not require an Insurance Company to assume risk for the death of or bodily injury to the owner of the vehicle but the appellant/Insurance Company has assumed the risk of owner by entering into the special contract with the owner of the vehicle by charging additional premium of Rs.50/- therefor and, therefore, the appellant/Insurance Company certainly owe a liability towards legal representatives

of the deceased owner to the extent of Rs.1,00,000/-. I held accordingly.

12. For the foregoing, the appeal is allowed in part. The award is modified to the extent that the appellant/Insurance Company is liable for payment of compensation to the claimants only to the extent of Rs.1,00,000/- and not the amount as awarded by the Tribunal. The above amount of compensation shall carry interest @ 7.5% per annum from the date of application. Rest of the conditions mentioned in the award shall remain intact.
13. The appellant/Insurance Company is granted three months' time for payment of above compensation to the claimants after adjusting the amount, if any, already deposited by the appellant/insurance company.

Sd/-
N.K. Agarwal
Judge

Sahu