(2011) 10 CHH CK 0008

In the Chhattisgarh High Court

Case No : Misc. Appeal (C) No. 1064 of 2007

Bindulal Kalar and Others APPELLANT

Vs

William Dhritlahare and Another RESPONDENT

Date of Decision : 13-10-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 1 MPHT 1

Hon'ble Judges : Rajeev Gupta, C.J;Nawal Kishore Agarwal, J

Bench : Full Bench

Final Decision : Allowed

Judgement

N.K. Agarwal, J.—This is claimants'' appeal seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Korba (for short ''the Tribunal'') in Claim Case No. 37/2004, vide award dated 31st July, 2007.

2. As against compensation of Rs. 22,14,000/- claimed by the unfortunate parents and minor brother of the deceased-Deepaklal by filing claim application u/s 166 of the Motor Vehicles Act, 1988 for his death in the motor accident on 18-3-2004, the Tribunal has awarded a total sum of Rs. 2,40,000/- along with interest @ 6% per annum from the date of application till its actual payment.

3. The Tribunal, on a close scrutiny of the evidence led, held: the accident had occurred due to rash and negligent driving of driver of Hero Honda Motorcycle bearing registration No. C.G. 12-B/6995; deceased-Deepaklal sitting as pillion rider on the motor cycle; died on account of injuries sustained by him in the said accident; respondent No. 2/United India Insurance Company Limited not liable for payment of compensation as the risk of deceased-Deepaklal, sitting as pillion rider on the motorcycle, was not covered under the policy; assessed and awarded Rs. 2,40,000/- as compensation for the death of Deepaklal in the motor accident along with interest @ 6% per annum from the date of application till its actual payment, holding respondent No. 1 liable for payment of compensation.

4. Shri Somnath Verma, learned Counsel appearing for the appellant would not dispute the amount of compensation awarded by the Tribunal but by drawing attention of this Court towards the policy of insurance, which is a package policy, he vehemently argued that the Tribunal has erred in exonerating respondent No. 2/United India Insurance Company Limited from its liability to pay compensation.

5. On the other hand, Shri Shree Kumar Agrawal, learned Senior Counsel with Shri Anand Gupta, appearing for respondent No. 2 supported the award and submitted : the Tribunal has rightly exonerated the Insurance Company from its liability to pay compensation; the above finding does not call for any interference.

6. We have heard learned Counsel for the parties and have perused the record of the Tribunal including the award impugned.

7. Indisputably, deceased-Deepaklal was sitting on the motor cycle as pillion rider; policy of insurance (Exh. D-1) is a package policy.

8. Circular dated 16th November, 2009 issued by the Insurance Regulatory and Development Authority reads as under:-

To

CEOs of all General Insurance Companies

Re : Liabilities of Insurance Companies in respect of occupant of a private car and pillion rider in a two-wheeler under standard Motor Package Policy (also called Comprehensive Policy).

Insurer''s attention is drawn to wordings of Section II (1) (i) of Standard Motor Package Policy (also called Comprehensive Policy) for private car and two wheelers under the (erstwhile) India Motor Tariff for convenience the relevant provisions are reproduced hereunder:-

"Section II. Liability to Third Parties.-

(1) Subject to the limits of liability as laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to pay in respect of-

(i) death or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of employment of such person by the insured."

It is further brought to the attention of insurers that the above provisions are in line with the following circulars earlier issued by the Traffic Advisory Committee on the subject:-

(i) Circular M.V. No. 1 of 1978, dated 18th March, 1978 (regarding occupants carried in Private Car) effective from 25th March, 1977.

(ii) MOT/GEN/10, dated 2nd June, 1986 (regarding pillion riders in a two wheeler) effective from the date of the circular.

The above circulars make it clear that the insured''s liability in respect of occupant(s) carried in a private car and pillion rider carried on two wheeler is covered under the Standard Motor Package Policy. A copy of each of the above circulars is enclosed for ready reference.

The authority vide Circular No. 066/IRDA/F & U/Mar-08, dated March 26, 2008 issued under File & Use Guidelines has reiterated that pending further orders the insures shall not vary the coverage, terms and conditions wordings, warranties, clauses and endorsements in respect of covers that were under the erstwhile tariffs. Further, the authority, vide Circular No. 019/IRDA/NL/F & U/Oct-08, dated November 6, 2008 has mandated that insurers are not permitted to abridge the scope of standards covers available under the erstwhile tariffs beyond the options permitted in the erstwhile tariffs.

All General Insurers are advised to adhere to the aforementioned circulars and any non-compliance of the same would be viewed seriously by the authority.

This is issued with the approval of Competent Authority.

Sd/- Executive Director.

9. The above circular makes it clear that insured''s liability in respect of pillion rider, carried on two wheeler, is covered under the Standard Motor Package Policy. Therefore, in our considered opinion, the Tribunal went wrong in holding the Insurance Company not liable for payment of compensation for the death of Deepaklal, i.e., pillion rider, carried on two wheeler in question.

10. For the foregoing, the appeal is allowed in part. The respondent No. 2/ United India Insurance Company Limited is also held responsible for payment of compensation to the claimants jointly and severally with respondent No. 1. The award is modified to the above extent. Rest of the contents of the award shall remain intact.

11. The respondent No. 2/United India Insurance Company Limited is granted three months time from today for depositing the amount of compensation before the concerned Tribunal.

12. No order as to costs.

