
(2011) 03 CHH CK 0034
In the Chhattisgarh High Court
Case No : M.A. No. 633 of 2003

New India Assurance Co. Ltd.

APPELLANT

Vs

Nirmala Bai Shatrughan Sahu and others

RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2012) ACJ 1833

Hon'ble Judges : Rajeshwar Lal Jhanwar, J

Bench : Division Bench

Advocate : Shree Kumar Agrawal and Mr. Pankaj Agrawal, for the Appellant;

Final Decision : Allowed

Judgement

R.L. Jhanwar, J.—This is an appeal by New India Assurance Co. Ltd. against the order dated 6.5.2003 passed by Sixth Additional Motor Accidents Claims Tribunal, Raipur in Claim Case No. 7 of 2001 awarding total compensation of Rs. 1,83,000 in a death case. As against the compensation of Rs. 8,70,000 claimed by the appellants by filing a claim petition u/s 163A of the Motor Vehicles Act for the death of Shatrughan in the motor accident which occurred on 14.5.2000, the Tribunal, on close scrutiny of the evidence led before it, material placed and the submission made by respective parties, held that death of Shatrughan took place in the motor accident and as the TVS motor cycle bearing No. MP 23-N 6626 (for short "the TVS") was insured with the insurance company, therefore, the insurance company was liable to pay the compensation and awarded compensation of Rs. 1,83,000 for the death of Shatrughan in the motor accident. The Tribunal further directed to pay interest at 9 per cent per annum from the date of filing of claim petition till realization of actual amount.

2. Aggrieved by the impugned award passed by the Tribunal, the insurer preferred this appeal.

3. Mr. Shree Kumar Agrawal, learned senior counsel with Mr. Pankaj Agrawal,

vehemently argued that deceased Shatrughan Sahu was owner of the TVS and on the date of accident he himself was driving the TVS and met with accident, therefore, the deceased did not come under the purview of third party but came under the category of first party. He further argued that the appellant insurer did not cover the risk of the deceased and, therefore, the appellants are not entitled to receive any compensation. While drawing attention to the insurance policy, Exh. D1, he pointed out that under the heading "total own damages", a sum of Rs. 293 was charged as premium. He further pointed out that "own damage" is meant for vehicle damage and not towards injury to the person of the owner. It was further argued that the learned Tribunal has wrongly interpreted the same. On these premises, he urged that the impugned award may be set aside.

4. In order to counter the arguments, no one appeared on behalf of the respondents although they are served. The case was listed on several occasions and on every occasion, the respondents remained absent. Therefore, the case was heard finally.

5. In order to appreciate the arguments, I have perused the record and impugned order. It is trite law that if a person was insured, then he falls under the category of first party, thereafter insurer comes under the category of second party whereas the third party comes under the risk coverage. In this case, it has not been shown that the policy of insurance covered any risk for the injury to the owner himself. I am unable to accept the finding of the Tribunal that for own damages, Rs. 216 was charged towards premium, therefore, the insurer was liable to pay compensation. The liability u/s 163A of the Motor Vehicles Act is on the owner of the vehicle as a person cannot be both a claimant as also a recipient. A bare perusal of policy of insurance, Exh. D1, has clearly revealed that there was no premium for personal accident but for own damages, premium was charged to the tune of Rs. 216. It is thus clear that this premium is for damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case, there is no such insurance covering the risk of owner under personal accident. Where the claim relates to own damages, the Tribunal cannot interpret the own damages covering the risk of the owner of the vehicle. In the matter of Dhanraj Vs. New India Assurance Co. Ltd. and Another, , the Supreme Court stated as follows:

(10) In this case, it has not been shown that the policy covered any risk for the injury to the owner himself. We are unable to accept the contention that the premium of Rs. 4,989 paid under the heading "own damage" is for covering liability towards personal injury. Under the heading "own damage", the words "premium on vehicle and non-electrical accessories" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case, there is no such insurance.

6. In the light of above decision of the Supreme Court, it is held that since in the

insurance policy, Exh. D1, there was no premium for covering the risk of personal accident of the owner, the appellants, being the legal heirs of Shatrughan, are not entitled to receive any compensation from the appellant insurer. For the foregoing reasons, the appeal is allowed. The impugned order dated 6.5.2003 is set aside. The appellant insurer is exonerated from its liability to pay compensation. No order as to costs.

Appeal allowed.