(2018) 08 CHH CK 0031

In the Chhattisgarh High Court

Case No : Civil Miscellaneous Appeal No. 64 of 2013

United India Insurance Co. Ltd. APPELLANT

Vs

Smt. Shantibai RESPONDENT

Date of Decision : 20-08-2018

Acts Referred:

Citation : (2018) 08 CHH CK 0031

Hon'ble Judges : SHARAD KUMAR GUPTA, J

Bench : Single Bench

Advocate : Dashrath Gupta, Pawan Kesharwani

Final Decision : Dismissed

Judgement

1. In this MAC, the challenge levied is to the award dated 11-10-2012 passed by the Motor Accident Claims Tribunal, Korea (Baikunthpur) in Motor

Accident Claims Case No. 14/2011 whereby and whereunder the appellant has also been held liable along with respondents No. 6 and 7 jointly and

severally to pay the compensation Rs. 2,74,600/- to respondents No. 1 to 5/ claimants and also pay interest from the date of registration of the claim

case till its realization.

2. This is admitted by respondents No. 5 and 6 that Bhorelal has died. This is also admitted by respondent No. 5 that he and deceased Bhorelal were

going on his scooter. Deceased Bhorelal was a pillion rider. The scooter met with an accident. On 9-10-2010 Bhorelal died due to injuries sustained by

him. This is also admitted by respondent No. 6 that prior to the accident he had sold the offending vehicle Bajaj Chetak scooter bearing No. MP 27 D

2363 to respondent No. 5. This is also admitted by the appellant that the offending vehicle was insured by it on 17-10-1997, at the time of the accident the offending vehicle was insured.

3. In brief the case of the respondents No. 1 to 5 is that respondent No. 6 had a valid and effective driving licence. At the time of accident, the

respondent No. 5 was driving the offending vehicle rashly and negligently. Thus, the appellant, respondents No. 6 and 7 are liable to pay the

compensation to them.

4. In brief, case of the respondent No. 6 is that he was driving the offending vehicle carefully. He is not liable to pay any compensation.

5. In brief the case of the respondent No. 7 is that he had already sold the offending vehicle to respondent No. 6 thus he is not liable to pay any

compensation.

6. In brief, case of the appellant is that at the time of the accident the respondent No. 6 did not have valid and effective driving licence. The intimation

of the transfer of the offending vehicle was not given by respondent No. 7. Thus, insurance company is also not liable to pay the compensation.

7. After the conclusion of the trial, said Claims Tribunal passed the aforesaid award. Being aggrieved the appellant has preferred this appeal.

8. Counsel for the appellant vehemently argued that the risk of pillion rider was not covered under the insurance policy of the offending vehicle. Thus,

the appellant cannot be held liable to pay any compensation along with respondents No. 6 and 7 jointly and severally to the respondents No. 1 to 5. He

placed reliance on a decision of Hon'ble Supreme Court in the matter of the General Manager, United Insurance Co. Ltd. -v- M. Laxmi and others

passed in Civil Appeal No. 6659/2008 dated 14-11-2008.

9. Counsel for the respondents No. 1 to 5 argued that the offending vehicle was insured with the appellant, thus the appellant is liable to pay the

compensation.

10. None for respondents No. 6 and 7.

11. Points for determination:-

There are following points for determination in the case :-

(i) Whether the risk of pillion rider was not covered under the insurance policy of the offending vehicle, and therefore, the appellant cannot be held

liable to pay any compensation along with respondents No. 6 and 7 jointly and severally due to death of Bhorelal ?

(ii) Relief and cost.

Point for determination No. 1 : findings with reasons:-

12. I have perused the record with utmost care and caution. The W.S. of the appellant reveals that the appellant had not pleaded in his W.S. that the insurance policy of the offending vehicle does not cover the risk of pillion rider of the offending vehicle i.e. deceased Bhorelal. Therefore, the Claims Tribunal had not framed the issue regarding this matter. Because no issue was framed regarding this matter, thus the parties had not led any evidence in this regard. The appellant had raised aforesaid ground in appeal which he could have raised in his W.S. before the Claims Tribunal. In these circumstances, this Court finds that the appellant cannot raise this ground at the appellate stage that risk of the pillion rider was not covered under the insurance policy of the offending vehicle. Therefore, the contention of the insurance company that the insuranceÂ company cannot be held liable to pay any compensation along with respondents No. 6 and 7 jointly and severally has no force. Thus, at this appellate stage the appellant does not get any help from the aforesaid case law of the General Manager (supra).

Point for determination No. 2 : findings with reasons :-

13. After the complete and full appreciation of the evidence discussed herebefore, this Court finds that appellant has failed to establish his appeal. The instant appeal is devoid of merits and deserves to be and is hereby dismissed.

14. Appellant shall bear its own costs as well as costs of respondents.