

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No.295 of 2009**

Shankar Lal S/o Payari Lal, aged about 48 years, Vehicle Owner, R/o Bhatapara, Charoda, Near Saraswati Shishu Mandir, District Durg (C.G.).

---Appellant

Versus

1. Smt.Nanki Bai W/o Prem Lal Jaiswal, aged about 48 years.
2. Prem Lal Jaiswal S/o Late Sonau, aged about 49 years.
3. G.P.Jaiswal S/o Prem Lal, aged about 28 years.

All are R/o village – R/o Bhatapara, Charoda, Near Waraswati Shishu Mandir, District Durg (C.G.).

4. The National Insurance Company Limited, through Branch Manager, Aakahs Ganga Parisar, Supela, District Durg (C.G.).

---Respondents

For appellant	:	Shri Manoj Kumar Sinha, Advocate.
For resp.No.1, 2 & 3	:	Shri Shivendu Pandya, Advocate.
For resp.No.4	:	Shri Dashrath Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

13/11/2017

1. Present is an appeal by the claimant under Section 173 of the Motor Vehicles Act, 1988 assailing the award dated 28/11/2008 passed by the learned 2nd Additional Motor Accident Claims Tribunal, Durg (C.G.) in Motor Accident Claim Case No.65/2007.

2. While passing the said impugned award, the Tribunal has exonerated the Insurance Company and have fastened the liability of payment of compensation upon the appellant/owner to the extent of Rs.2,01,500/- with interest @ 6% per annum from the date of application.

3. The counsel for the appellant submits, that since, it is a case under Section 163-A of the Motor Vehicles Act, the claim application itself was not maintainable. According to him, since the deceased in the instant case was driving the Motorcycle belonging to the present appellant at the time of the accident, he shall not fall within the ambit of third party and therefore, the claim application for the self driven vehicle was not maintainable under Section 163-A of the Motor Vehicles Act. He further submits, that in any case, the appellant herein i.e. the owner of the Motorcycle had got the vehicle insured by a package policy and that the premium was also paid covering the risk of the owner-cum-driver with liability being up to Rs.1,00,000/-. Therefore, even if the claim application of the claimant was maintainable under Section 163-A of the Motor Vehicles Act, the claimant under any circumstances would be entitled for the compensation of only Rs.1,00,000/- as per the policy taken by the appellant/owner and prayed for the appeal being allowed accordingly.

4. The counsel appearing for the respondent No.4/Insurance Company do not dispute the policy to have been issued and also covering the risk of owner-cum-driver to the extent of Rs.1,00,000/-. He only opposes the appeal of the claimant on the ground, that the deceased in the instant case was not an actual owner and therefore the Insurance Company has been rightly exonerated from its liability and prayed for rejection of the appeal.

5. It would be relevant at this juncture to refer to the decision of the Hon'ble Supreme Court in the case of ***Ningamma & Anr. Vs.***

***United India Insurance Company Limited* [{2009} 13 SCC 710]**

wherein the Supreme Court under similar circumstances has held, that once when a person borrows a vehicle from the owner, he would step into the shoes of the owner and for all practical purposes, he is to be treated as if he is the owner.

6. In the given circumstances this court has no hesitation in reaching to the conclusion, that the Insurance Company is bound to indemnifying the owner to the extent of Rs.1,00,000/- in accordance with the policy that has been issued. It is ordered accordingly, that the claimant shall be entitled for a compensation of only Rs.1,00,000/-. The said amount shall also carry interest at the same rate as has been awarded by the Tribunal.

7. It is made clear that the amount which has been paid by the present appellant to the extent of Rs.1,00,000/- shall be refunded by the Insurance Company and the balance of amount if any or the difference of amount with interest shall be deposited by the Insurance Company.

8. The appeal of the owner thus stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge