NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 597 of 2014

The United India Insurance Company Limited, Through: Its Branch Manager, United India Insurance Company Limited, Shakti Nagar, I-215, J.M.I. Shakti Nagar, Sonbhadra (U.P.)

---- Appellant

Versus

1. Gokarna Prasad Dubey S/o Ram Dularey Dubey Aged About 44 Years R/o Village Bartikhurd, P.S. Chalagali, Distt. Balrampur Chhattisgarh
2. Harishchandra S/o Ram Dularey Dubey Aged About 35 Years R/o Village Bartikhurd, P.S. Chalagali, Tahsil Wadrafnagar, Distt. Balrampur Chhattisgarh

–--Respondents

For Appellant	:	Ms. Chitra Shrivastava, Advocate
For Respondents	:	Mr. Vivek Bhakta, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05/12/2017

1. Present is an appeal by the Insurance Company challenging the award dated 10.01.2014, passed by the Additional Motor Accident Claims Tribunal Pratappur, District Surajpur, Chhattisgarh, in Claim Case No. 97/2012. Vide the said impugned award, the Tribunal in an injury case has awarded a compensation of Rs.71,600/-.

2. The challenge is that the deceased in the instant case was not the actual Owner of the motorcycle involved in the accident but had borrowed the vehicle from the actual owner and the injured himself was driving the motorcycle, when the accident occurred.

3. According to the counsel for the Insurance Company, since the owner would not fall within the definition of third party and that the policy taken being an act only policy, the Insurance Company has been erroneously fastened with the liability.

4. However, perusal of record would show that the witness of the Insurance Company Vijay Kumar Lakra (NAW.-1) himself has very categorically admitted in his evidence that the vehicle during the relevant period was dully insured and that an extra premium was also obtained by the Insurance Company covering the risk of the owner and the driver.

5. The fact that the Insurance Company had received an extra premium covering the risk of the driver and the owner, the injured in the instant case since he had borrowed the vehicle from the owner, he would step into the shoes of the owner, hence the Insurance Company would not escape its liability on payment of compensation. The maximum liability which would be upon the Insurance Company is that of Rs.1,00,000/-. However, the amount awarded in the instant case is only that of Rs.71,600/- i.e. within the range which the Insurance Company has indemnified the owner with the extra premium that was paid.

6. In view of the aforesaid evidence, which has been made by the Insurance Company, this Court does not find any strong case made out by the appellant calling for any interference with the impugned award.

7. The appeal thus fails and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

Ved