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HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 275 of 2012

ICICI Lombard General Insurance Co. Ltd. registered office, ICICI Bank Towers, Bandra-Kurla Complex, Mumbai through its legal Manger, ICICI Lombard General Insurance Co. ground floor, Vanijya Bhawan, Devendra Nagar, Raipur (CG).

---- Appellant

Versus

1. Smt. Kumari Bai Verma Wd/o Late Shiv Kumar Verma, R/o Near Shiv Mandir, Adarsh Nagar, Mowa, Thana Mowa Pandri, Dist. Raipur C.G.
2. Dikendra Kumar Verma S/o Late Shiv Kumar Verma, R/o Near Shiv Mandir, Adarsh Nagar, Mowa, Tha Mowa Pandri, Dist. Raipur C.G.

---- Respondents

For Appellant	:	Shri Sourabh Sharma, Advocate.
For Respondent No.1	:	Ms. Aparna Singh, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

22.02.2018

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the insurance company against the award dated 14.12.2011 passed by the 4th Additional Motor Accident Claims Tribunal, Raipur (in short, the Tribunal) in Claim Case No.27/2011. Vide the impugned award, the Tribunal on an application under Section 163-A of the MV Act has awarded compensation of Rs.2,31,000/- along with interest @ 7.5 percent per annum from the date of application.
2. Learned counsel for the appellant submits that it is a case where the deceased himself was driving the motorcycle and that he was not the actual owner of the motorcycle. That, no other vehicle was involved in

the accident. Since the claim application was filed under Section 163-A of the MV Act and that the driver was not covered under the policy, the insurance company should not have been fastened for payment of compensation.

3. However a perusal of records would show that the deceased in the instant case was the son of registered owner i.e. respondent No.2. The policy would also show that an extra premium of Rs.50/- was paid for covering the risk of owner-cum-driver.

4. The facts that there was an extra premium paid covering the risk of driver and owner irrespective whether it was owner or the driver, the liability of the insurance company up to Rs.2,00,000/- cannot be absolved. Now, whether the deceased in the instant case would be the owner or not stands settled by the decision of the Supreme Court in case of Ningamma & Another Vs. United India United India Insurance Co. Ltd. 2009(13) SCC 710, wherein the deceased being brother of the registered owner and the claimant being the mother of the deceased would step into the shoes of the owner and he also would be equally protected under the policy issued.

5. Normally, when extra premium is taken covering the risk of the owner, the liability is to the extent of Rs.2,00,000/-. In the instant case the total compensation awarded is Rs.2,31,000/- i.e. difference amount is only Rs.31,000/- from the limit of Rs.2,00,000/-. Under such circumstances, this court is of the opinion that the insurance company shall be liable to pay an amount of Rs.2,00,000/- only. Thus, the claimants would be entitled for compensation of

Rs.2,00,000/- instead of Rs.2,31,000/-.

6. The appeal thus stands partly allowed to the extent of the award being modified as stated in the preceding paragraph.

Sd/-

(P.Sam Koshy)
Judge

inder