

HIGH COURT OF CHHATTISGARH AT BILASPURMAC No. 784 of 2012

IFFCO Tokio General Insurance Company Limited, 3rd Floor, Shop No. 345-347 Ganga Shopping, G.E.Road, Raipur, Tehsil and District Raipur (C.G.).

---Appellant

Versus

1. Heeraman S/o Late Shri Keshav Ram Satnami, aged about 52 years.
2. Savitri Bai W/o Shri Heeraman Satnami, aged about 47 years.
3. Yogeshwar S/o Shri Heeraman Satnami, aged about 18 years.
4. Kumari Kiran D/o Shri Heeraman Satnami, aged about 16 years.

Respondent No.4 being a minor is represented through her Mother i.e. respondent No.2 Savitri Bai.

All are R/o Satnami Para, Purani Basti, In-front of Ghasidas Stambha, Banjari Mata, Ward No.5, Bhanpuri, Thana Khagatrai, District Raipur (C.G.) (Claimants).

5. Gajendra Kumar Ratre S/o Shri Kartik Ram, R/o Village Kodapara (Abhsena), Thana Palari, District Raipur (C.G.) (Owner).

---Respondents

For appellant/Insurance Company	:	Shri Amrito Das, Advocate.
For respondents No. 1 & 2	:	Shri Amiyakant Tiwari, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

13/02/2018

1. Present is an appeal filed by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 04/04/2012 passed by the learned First Additional Motor Accident Claims Tribunal, Raipur (C.G.) in Motor Accident Claim Case No. 102/2010.

2. Vide the impugned award, the Tribunal in a death case under Section 163-A of the Motor Vehicles Act has awarded a compensation of Rs.2,00,000/- with interest @ 6% per annum from the date of application.

3. The ground of challenge by the Insurance Company is that, the deceased in the instant case was himself driving the vehicle at the time of accident and therefore the claim application would not be maintainable since, he had himself borrowed the vehicle from the owner i.e. respondent No.5. He further submits that, even if it is presumed that the deceased would step into the shoes of the owner even then, the claim application would not be maintainable under Section 163-A. The only remedy available to the claimant was of preferring an appropriate claim application under the provision of Consumer Protection Act.

4. This Court does not find any sufficient force in the said argument raised by the counsel for the appellant for the simple reason that, perusal of policy would show that, the Insurance Company had charged an extra premium covering the risk of the owner-cum-driver of the Motorcycle. The claimant since he steps into the shoes of the owner and by virtue of the policy covering the risk of the owner also has a right of availing the remedy under the provision of Motor Vehicles Act for the death of the deceased which arose from the use of the Motorcycle owned by the respondent No.5 and insured by the present appellant.

5. Further from perusal of record it reflect that, the risk which was covered by the Insurance Company was to the extent of liability of Rs.1,00,000/-. In the instant case, the total compensation awarded is that of Rs.2,00,000/-.

6. Considering the fact that, the risk covered by the Insurance Company was to the extent of Rs.1,00,000/-, this Court modifies the impugned award to the extent that the present appellant shall be entitled for compensation of only an amount of Rs.1,00,000/- instead of Rs.2,00,000/- as awarded by the Tribunal. Since the deceased has stepped into the shoes of the owner, the claimant would be entitled for only compensation to the extent of the risk covered of Rs.1,00,000/- and not beyond that.

7. The appeal thus stands allowed in part and the impugned award stands modified to the extent that, the claimant shall be entitled for a total compensation of Rs.1,00,000/- with interest as awarded by the Tribunal.

Sd/-

(P. Sam Koshy)
JUDGE