NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 834 of 2011

Oriental Insurance Co. Ltd. through Branch Manager, Oriental Insurance Co. Ltd. Bilaspur, Branch Korba (CG).

---- Appellant

Versus

1. Smt. Gulab Bai, W/o Santosh Kumar Soni, aged about 50 years R/o Saraipali, Faraswani, Chowki, Urga, Tahsil Kartala, Distt. Korba (CG).
2. Santosh Kumar Soni, S/o Roop Narayan Soni, aged about 57 years, R/o Saraipali, Faraswani, Chowki, Urga, Tahsil Kartala, Distt. Korba (CG).

---- Respondents

For Appellant	:	Shri AK Athale, Advocate.
For Claimant	:	Shri Mukesh Sharma, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

19.01.2018

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the insurance company assailing the award dated 05.05.2010 passed by the 2nd Additional Motor Accident Claims Tribunal (FTC) Korba (in short, the Tribunal) in Claim Case No.05 of 2008. Vide the said impugned award, the Tribunal has awarded a compensation of Rs.2,53,900/- with interest @ 7 percent per annum from the date of application.
2. It is a case where deceased Jai Prakash while travelling on his motorcycle belonging to his father i.e. CG-1-BA-5873 was hit by unknown Highwa Truck on account of which the deceased is said to have died on spot. The legal representative of the deceased filed a claim application under Section 166 of the MV Act which was allowed by the Tribunal and an amount of Rs.2,53,900/- was awarded to the

claimant.

3. Learned counsel for the appellant submits that it is a hit and run case where the whereabouts of the opposite vehicle is not known at all and that the insurance company could not have been saddled for the accident and death of deceased who was travelling on motorcycle insured by the present appellant-insurance company and thus prayed for exoneration of the insurance company. It was further contended that it is a case where the deceased himself was riding the motorcycle and that he was not the owner of the vehicle and therefore he would not fall under the ambit of personal accident coverage and as such the insurance company should have been absolved of its liability.

4. This contention of the insurance company may not be acceptable for the reason that indisputably the deceased was the son of the original owner and that for all practical purposes the son would step into the shoes of the father and that he would hence fall within the ambit of owner and therefore he would be entitled for coverage under the personal accident risk for which an extra premium was also paid by the owner.

5. A perusal of policy available on record would show that extra premium was charged by the insurance company from the owner covering the risk of personal accident up to Rs.1,00,000/-. Thus, the claimant in the instant case would be entitled for compensation of Rs.1,00,000/- under the personal accident coverage to be paid by the insurance company. So far as the remaining amount is concerned,

the award stands set aside. The claimant shall not be entitled for anything beyond Rs.1,00,000/-. If the entire awarded amount is already deposited by the insurance company, it is directed that the claimant be paid an amount of Rs.1,00,000/-with interest accrued thereon that and the remaining part of award be refunded back to the insurance company.

6. The appeal thus allowed in part.

Sd/-

(P.Sam Koshy)
Judge

inder