

HIGH COURT OF CHHATTISGARH AT BILASPURMAC No. 328 of 2012

The New India Assurance Co.Ltd., Branch Baloda Bazar, District Raipur through Divisional Manager, The New India Assurance Co.Ltd. Shiv Talkies Road, Bilaspur (C.G.) (Insurer).

---Appellant

Versus

1. Sushant Gupta S/o Shri Ghanshyam, aged 25 years, near Mannoo Chowk, Tikrapara, Bilaspur (C.G.) (Driver-owner of Motorcycle CG-10-EC-2279).
2. Ramprasad S/o Nishad, aged about 23 years, R/o Village Akoli, P.O.Nandghat, Tahsil Nawagarh, District Durg (C.G.) (Owner of Motorcycle CG-04-DD-3459).
3. Smt.Lalita Wd/o Chaitram Nishad, aged 24 years.
4. Bindeshwari D/o Chaitram Nishad, aged 4 years.
5. Banwali S/o Chaitram Nishad, aged 1 year.
Respondents No. 4 & 5 are minor through Guardian mother Smt. Lalita Wd/o Chaitram.
6. Shyam Ratan S/o Bihari Nishad, aged 50 years.
7. Manglin W/o Shyam Ratan Nishad, aged 47 years.
Respondent No. 3 to 7 are R/o Village Akoli, P.O.Nandghat, Tahsil Nawagarh, District Durg (C.G.).

---Respondents

For appellant/	:	Shri Anand Kumar Gupta, Advocate.
Insurance Company		
For respondents No. 3 - 7	:	Shri P.P.Sahu, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

23/02/2018

1. Present is an appeal filed by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 14/12/2011 passed by

the learned Additional Motor Accident Claims Tribunal, Bemetara, District Durg (C.G.) (as it then was) in Motor Accident Claim Case No. 86/2011.

2. The facts of the case in brief is that, the deceased in the instant case Chaitram - the brother of the registered owner of the Motorcycle bearing registration No. CG-04-DD-3459 was driving the Motorcycle when he collided with another Motorcycle bearing registration No. CG-10-EC-2279. As a result of the said accident, the deceased succumbed to the injuries sustained later on. The legal representatives of the deceased filed the claim application against the owner's of the two Motorcycles and the Insurance Company of the Motorcycle which the deceased was driving.

3. The Tribunal after considering the evidence which have come on record has awarded a compensation of Rs.2,35,000/- with interest @ 6% per annum from the date of application and have fastened the liability of payment of compensation upon the present appellant/Insurance Company.

4. The solitary ground of challenge by the counsel for the Insurance Company is that, the deceased in the instant case was not the registered owner, nor was he the third party and therefore the Insurance Company would not be liable to indemnify the owner. He further submits that, the Insurance Company had though taken extra premium covering the risk of owner-cum-driver and since the deceased was not either the owner or the driver, the Insurance Company on that ground also would not be liable to pay any compensation and thus prayed for the appeal to be allowed and the impugned award to be set aside.

5. Perusal of record would reveal that, the Insurance Company infact had admitted the fact that, the vehicle involved in the accident which the deceased was driving was insured by the present appellant. The policy was a comprehensive policy. An extra premium covering the risk of owner-cum-driver was also obtained by the Insurance Company.
6. Another fact which is undisputed is that, the deceased in the instant case Chaitram was the real brother of the registered owner of the Motorcycle Ramprasad Nishad.
7. If we apply the principles of law laid down by the Hon'ble Supreme Court in the case of **Ningamma & Ors. v. United India Insurance Co.Ltd. [2009 13 SCC 732]**, the brother of the owner shall step into the shoes of the owner.
8. Since, the deceased in the instant case would step into the shoes of the owner and the Insurance Company having accepted an extra premium covering the risk of the owner, the legal representatives would be entitled for a compensation to the extent of risk covered by the Insurance Company.
9. In the instant case, the maximum limit of the risk covered by the Insurance Company is that of Rs.1,00,000/-.
10. Accordingly, the impugned award stands modified to the extent that, the claimants shall be entitled for an amount of only Rs.1,00,000/- and not the amount of Rs.2,35,000/- as awarded by the Tribunal. The said amount of Rs.1,00,000/- shall also carry interest at the same rate as has been awarded by the Tribunal.

11. The appeal stands allowed in part and disposed off.

Sd/-
(P. Sam Koshy)
JUDGE

Sumit