NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 1004 of 2012

Shivendra Gupta S/o Yasodanand Ram, aged about 24 years, R/o Lattipara Kanker, PS Kanker, District Kanker (CG).

---- Appellant

Versus

1. Smt. Kamala Gupta S/o Y.N. Gupta Aged About 40 Years Lattipara, Kanker, P.S. Kanker, Distt. Kanker C.G.
2. The Oriental Insurance Co. Ltd. Opposite Adarsh Bal Mandir, Main Road, Dhamtari, P.S. Dhamtari, Distt. Dhamtari C.G. .

---- Respondents

For Appellant	:	Shri PK Tulsyan, Advocate.
For Respondent No.2	:	Shri HP Agrawal, 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 claimant against the award dated 01.05.2012 passed by the Motor Accident Claims Tribunal, Kanker (in short, the Tribunal) in Claim Case No.143/2011. Vide the impugned award, the Tribunal has rejected the claim application of the claimant on the ground that the claimant himself was responsible for the accident and that he was not the owner of the vehicle and as such claim application under Section 163-A of the MV Act is not maintainable.
2. A perusal of records, more particularly the policy which has been issued by the respondent-insurance company would show that the insurance company, apart from accepting premium for the basic coverage, has also received an extra premium covering personal

accident for the owner-cum-driver of Rs.100/-. In addition, premium un-named for Rs.350/-was also collected. So also premium for employees also were collected for an amount of Rs.25/-. What also is relevant is the policy issued, which was a package policy for a private Car.

3. From the pleadings which have come on record, undisputedly the claimant in the instant case was the Son of the registered owner of the offending vehicle. Under the given circumstances, applying the principle which has been laid by the Supreme Court in case of Ningamma and Another Vs. United India Insurance Co.Ltd. 2009 (13) SCC 710, the claimant for all practical purposes have to be construed to have stepped into the shoes of the owner. Further, if extra premium has been charged by the insurance company for covering the risk of owner, the insurance company would be liable to indemnify the owner to the extent of limit of the extra premium accepted by the insurance company.

4. Following the ratio laid down in case of Ningamma (Supra), the Supreme Court in case New India Assurance Co.Ltd. Vs. Sadanand Mukhi and Ors. 2009 (2) SCC 417 has also held in a categoric term that if additional risk is sought to be covered, additional premium has to be paid and that in case of extra premium having been charged by the insurance company, the insurer would be liable to cover the risk of not only a third party, but also of others who would come within the purview thereof.

5. Given the aforesaid facts and circumstances of the case, this court is

of the opinion that the findings of the Tribunal is not sustainable. The impugned award dated 01.05.2012 thus deserves to be and is accordingly set aside. However taking into consideration the facts that the claimant in the instant case have not adduced sufficient evidence to substantiate treatment and the disability part, this court is of the opinion that relying upon the decision of Supreme Court in case of Raj Kumar Vs. Ajay Kumar & Anr. 2011 (1) SCC 343, it is a fit case where the matter deserve to be and is accordingly remitted back to the concerned Tribunal for a fresh adjudication of the case.

6. Needless to mention that the claimant shall be at liberty to adduce appropriate evidence to substantiate the treatment and disability part which has been sustained and thereafter the Tribunal would pass fresh order in accordance with law .
7. Since the parties are present before the court, they are directed to remain present before the concerned Tribunal on 21.03.2018.
8. Registry is directed to sent back the records of the case forthwith so that it may reach the concerned Tribunal by 21.03.2018 positively.
9. The appeal thus stands partly allowed and disposed of.

Sd/-

(P.Sam Koshy)
Judge

inder