

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 176 of 2014**

- The Oriental Insurance Co. Ltd. Branch Office, Kamthi Line, Rajnandgaon, Tah. And Distt. Rajnandgaon C.G.,

**---- Appellant/insurance company**

**Versus**

1. Smt. Radha Bai W/o Late Krishna Verma Aged About 34 Years
2. Rahul S/o Late Krishna Verma Aged About 17 Years
3. Lucky S/o Late Krishna Verma Aged About 15 Years
4. Vikas S/o Late Krishna Verma Aged About 13 Years

All R/o Ward No.3, Chikhli, Rajnandgaon, Tahsil and Distt. Rajnandgaon (CG)

5. Ishwari S/o Nandlal Verma Aged About 27 Years R/o Near Ravi Kirana Stores, Ward No. 03, Shanti Nagar, Rajnandgaon C.G.

**---- Respondents**

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|---------------------------|---|-------------------------------|
| For Appellant             | : | Shri Arvind Shrivastava, Adv. |
| For Respondent Nos 1 to 4 | : | Shri Roop Naik, Adv.          |
| For Respondent No.5       | : | None.                         |

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**Hon'ble Shri Gautam Chourdiya, J**

**Judgment On Board**

**17/01/2019**

This appeal is by the insurance company under Section 173 of the Motor Vehicles Act, 1988 against the award 13.11.2013 passed by II Additional Motor Accident Claims Tribunal, Rajnandgaon in Claim Case No.150/2012 awarding total compensation of Rs.3.94 lacs with interest @ 6% per annum from the date of application till realization, fastening liability on non-applicant No.2/insurance company jointly and severely along with non-applicant No.1/owner.

02. As per claim petition, on 5.2.2012 at around 21:30 hours while

Krishna Kumar Verma was going on motorcycle Hero Honda bearing No. CG 08 N/5532, his vehicle was dashed by unknown truck which was being driven in a rash and negligent manner. As a result thereof, Krishna Kumar suffered grievous injuries and succumbed to the same.

03. On claim petition being filed by the claimants, wife and children of the deceased, under Section 163A of the Motor Vehicles Act, 1988 the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

04. Learned counsel for the appellant/insurance company submits that the Tribunal has wrongly fastened liability on the insurance company as the deceased had stepped into the shoes of the owner and on that ground itself, the claim petition was not maintainable. He further submits that the compensation awarded by the Tribunal is also on the higher side as it was determined without there being any evidence and therefore, the same is liable to be reduced suitably.

05. On the other hand, learned counsel for the respondents/claimants supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation fastening liability on the insurance company of satisfying the same, which needs no interference by this Court. He placed reliance on the decision of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Sinitha and others, 2012 (1) ACCD 1 (SC)***.

06. Heard learned counsel for the parties and perused the material available on record.

07. As regards the liability, the insurance company has not adduced any evidence regarding relationship of the deceased with the non-applicant No.1/owner, employment of the deceased under the owner or any kind of relationship of the deceased with the owner. NAW-1 Chetan Prasad Soni has only stated that insurance company is not liable because as per insurance policy of Ex.D/1 which is a package policy, premium was taken only for driver and owner and the maximum liability for their risk was confined to Rs. 1 lac. Nothing has been stated by this

witness regarding relationship of the deceased with the owner of the vehicle. According to AW-1 Radhabai, in para-6 she has specifically admitted that the deceased was not related to owner of the vehicle, there was no friendship or any relation with him, they have never visited his house and that deceased Krishna Kumar never borrowed the vehicle from him. She has categorically denied all the adverse suggestion put to her on behalf of NA-2 regarding relationship of the deceased with the owner.

08. In the matter of *Sinitha* (supra), while dealing with identical issue, the Hon'ble Apex Court observed as under:

*“19. To substantiate his second contention, it would be essential for the petitioner to establish, that Shijo having occupied the shoes of the owner, cannot be treated as the third party. Only factual details brought on record through reliable evidence, can discharge the aforesaid onus. During the course of hearing, despite our queries, learned counsel for the petitioner could not point out the relationship between Shijo and the owner of the motorcycle involved in the accident. Shijo is not shown to be the employee of the owner. He was not even shown as the representative of the owner. In order to establish the relationship between the Shijo and the owner, the petitioner-Insurance Company could have easily produced either the owner himself as a witness, or even the claimants themselves as witnesses. These, or other witnesses, who could have brought out the relationship between the owner and Shijo, were not produced by the petitioner herein, before the Tribunal. The petitioner has, therefore, not discharged the onus which rested on its shoulders. Since the relationship between the Shijo and the owner has not been established, nor the capacity in which he was riding the vehicle has been brought out, it is not possible for us to conclude, that Shijo while riding the motorcycle on the fateful day, was an agent, employee or representative of the owner. It was open to the petitioner to defeat the claim for compensation raised by the respondents by establishing,*

*that the rider Shijo represented the owner, and as such, was not a third party, in terms of the judgment rendered by this Court in Oriental Insurance Company Limited case (supra). The petitioner failed to discharge the said onus. In view of the above, it is not possible for us to accede to the second contention advanced at the hands of the learned counsel for the petitioner.”*

09. Thus, keeping in view the decision of the Hon'ble Supreme Court in *Sinitha* (supra) and considering the evidence of AW-1 Radhabai and the fact that no evidence has been adduced by the insurance company on the point of relationship of the deceased with the owner of the vehicle, it cannot be said that as the deceased had stepped into the shoes of the owner, the insurance company is not liable to pay compensation to the claimant or the petition filed under Section 163A of the Motor Vehicle Act was not maintainable.

10. As regards quantum of compensation, from perusal of pleadings of the respective parties, the evidence available on record and the manner in which the Tribunal has computed the compensation considering the notional income of the deceased, his age and the dependency, this Court is of the opinion that the amount awarded by the Tribunal of Rs.3.94 lacs as compensation to the claimants cannot be said to be exorbitant or on the higher side.

11. In the result, the appeal filed by the insurance company being without any substance is hereby dismissed as such.

**Sd/**

**(Gautam Chourdiya)**

**Judge**