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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 142 of 2014

- The United India Insurance Company Limited, Through- Its Branch Manager, United India Insurance Co. Ltd., Branch Raigarh, Shanti Palace, Second Floor, Chakradhar Nagar Chouk, Distt. Raigarh C.G.

---- Appellant

Versus

1. Jagdish Gupta S/o Narayan Prasad Gupta Aged About 26 Years R/o Guturma, P.S. And Tah. Sitapur, Distt. Surguja C.G.

2. Tulsi Gupta S/o Krishna Gupta Aged About 22 Years R/o Guturma, P.S. And Tah. Sitapur, Distt. Surguja C.G.

---- Respondents

For Appellant	:	Mr. HB Agrawal, Sr. Adv. With Mr. Pankaj Agrawal, Adv.
For Respondent No.1	:	None though served.
For Respondent No.2	:	Ms. Priyanka Mehta, Adv.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

21/02/2019

This appeal is by the insurance company under Section 173 of the Motor Vehicles Act, 1988 against the award 8.11.2013 passed by First Additional Motor Accident Claims Tribunal, Ambikapur, Sarguja, in Claim Case No.14/2013 awarding total compensation of Rs.1.95 lacs with interest @ 7.5% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severally.

02. As per averments in the claim petition, on the date of accident i.e. 28.2.2011 claimant Tulsi Gupta, owner of motorcycle bearing No.CG-15-CF-8703 was riding on the same as a pillion rider which was being ridden by non-applicant No.1 Jagdish Gupta. However, non-applicant No.1 by riding the said motorcycle in a rash and negligent manner,

dashed against a tree near bus stand, as a result of which claimant Tulsi Gupta suffered grievous injuries on various parts of his body.

03. On claim petition being filed by the claimant under Section 166 of the Motor Vehicles Act, 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 because the claimant is owner of the vehicle and as per insurance policy which is motorcycle/scooter package policy, it does not cover the risk of the owner of the vehicle since no premium was taken by the insurance company for the owner. Though the claimant/owner was a pillion rider, but it does not change the status of the claimant as owner.

05. On the other hand, learned counsel for the respondent/claimant supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly fastened liability on the insurance company and awarded compensation which needs no interference by this Court.

06. No counter appeal has been filed by the respondents as submitted by counsel for the parties.

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

08. As per insurance policy available on record, which has not been exhibited but the same has been admitted by both the parties herein, it is evident that it is a motorcycle/scooter package policy and the insurance company has taken total premium of Rs.1247/-. In the said policy, nowhere it has been mentioned that it covers the risk of owner of the motorcycle and no premium has been taken for the owner. Though there is no breach of policy on the part of the owner and he was sitting as a pillion rider, but considering the fact that the policy does not cover the risk of the owner and further being a pillion rider, the status of the owner does not change, the insurance company cannot

be saddled with the liability of paying compensation to the claimant, who is owner of the vehicle.

09. In the result, the appeal filed by the insurance company is allowed. The impugned award is hereby set aside. If any amount has been deposited by the appellant and the same has been paid to the claimant, the insurance company has right to recover the same from the claimant/owner in accordance with law.

Sd/

(Gautam Chourdiya)

Judge

Khan