

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 564 of 2014**

1. The United India Insurance Company Limited, through its Branch Manager, Branch Office, Bramha Road, Ambikapur, District-Sarguja.

**---- Appellant****Versus**

1. Chhanduram S/o Late amarsai, aged about 55 years.
2. Foolmatiya, W/o Chhanduram, aged about 50 years,  
Both R/o Village Tilsivapara, Bhatgaon, Post and P.S. Bhatgaon, Tehsil Bhaiyathan, District- Surajpur (C.G.).
3. Krishnakumar, S/o Chhanduram, aged about 25 years, R/o Village Tilsivapara, Bhatgaon, Post and P.S. Bhatgaon, Tehsil Bhaiyathan, District- Surajpur (C.G.).

**---- Respondents**


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| For Appellant   | : Ms. Chitra Shrivastava, Advocate. |
| For Respondents | :.Shri A. L. Singroul, Advocate.    |

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**Hon'ble Shri Gautam Chourdiya, J****Judgment On Board****30.01. 2019**

This appeal is by the insurance company under Section 173 of the Motor Vehicles Act, 1988 against the award 14.03.2014 passed by 2<sup>nd</sup> Additional Motor Accident Claims Tribunal, Surajpur, District-Surajpur in Claim Case No.314/2011 awarding total compensation of Rs. 1,00000/- with interest @ 9% per annum from the date of application till realization, fastening liability on the non-applicant/insurance company.

02. As per claim petition, on 05.12.2010 while Shivkumar was driving motorcycle bearing registration No. CG15-CF/8692, near Mission School Bundiya Road village Bhatgaon to protect the bicycle rider accident occurred as a result of which he suffered grievous injuries and during treatment at Ramkrishna Hospital, Raipur died on 10.12.2010. The vehicle is owned by the Non-applicant No. 2 and insured with non-applicant No. 1/ insurance company.

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

04. Learned counsel for the appellant/insurance company submits that at the time of accident, the offending vehicle (motorcycle) only upon the instruction of his brother (owner of the offending vehicle) was ridden by deceased. As per Insurance policy, the limited liability of Rs. 1 lacs as compensation would be against the death of owner-driver as against the premium of Rs.50/- taken by the insurance company towards PA coverage, but deceased who is brother of the owner of the offending vehicle would thus not come within the purview of the 'third party' therefore it is prayed to exonerate the insurance Company from its liability to pay the compensation to the claimants.

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 which needs no interference by this Court.

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

by learned counsel for the parties.

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

08. It is not disputed that the deceased died due to motorcycle accident. It is also not disputed that the vehicle was owned by non-applicant No. 2. In this case the Insurance policy is a package policy and as per policy, the limited liability of Rs. 1,00,000/- as compensation would be against the death of owner-driver as against the premium of Rs.50/- taken by the insurance company towards PA coverage, Therefore, considering the terms and conditions of the insurance policy and the decisions of the Hon'ble Supreme Court in **Ningamma vs. United India Insurance Co. Ltd. AIR 2009 (SC) 3056** and **Oriental Insurance company Limited Vs. Rajni Devi and others (2008) 5 SCC 736**, this Court is of the opinion that the Tribunal was justified in fastening liability of paying compensation amount of Rs.1,00,000/- on the insurance company and it is liable to pay to the claimants as compensation against the death of the deceased.

09. In the result, the appeal being without any substance is liable to be dismissed, accordingly, dismissed.

Sd/-

**(Gautam Chourdiya)**  
**Judge**