



along with interest at the rate of 10% per annum.

6. On the plea of negligence and liability, the Insurance Company resisted the claim of the legal heirs stating that the deceased himself was responsible for the accident and there could be no claim as against the Insurance Company since the accident occurred solely due to rash and negligent driving of the deceased.

7. Learned counsel for the appellant-Insurance Company relies on the decisions of the Supreme Court in case titled ***Oriental Insurance Company Ltd. v. Jhuma Saha and others***, reported as 2007 (9) SCC 263 and in case titled ***Dhanraj v. New India Assurance Co. Ltd.***, reported as 2004 (8) SCC 553, which have been followed in number of cases by different High Courts. Relevant Paras 11 and 12 of the judgment in case of ***Jhuma Saha and others (supra)*** are reproduced hereunder:-

“11. Liability of the insurer-Company is to the extent of indemnification of the insured against the respondent or a injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of Motor Vehicle Act, the question of the insurer being liable to indemnify insured, therefore, does not arise.”

12. In ***Dhanraj v. New India Assurance Co. Ltd. and another, 2004 (4) RCR (Civil) 786 (SC):2004 (8) SCC 553***, it is stated as follows:

“8. thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative ) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an Insurance Company to assume risk for death or bodily injury to the owner of the vehicle.

10. In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs. 4,989/- paid under heading “Own damage” is for covering liability towards personal injury. Under the heading “Own damage”, the words “premium on vehicle and non-electrical accessories” appear. It is thus clear

that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case, there is no such insurance.”

8. In these two cases, law has been clearly settled that in a case of death or bodily injury to a person including the owner arising out of use of vehicle is maintainable only if such death or bodily injury is caused due to a third party. The claim in respect of a person who was responsible for the accident on account of his rash or negligent act is not covered by the provisions of the Motor Vehicle Act, in terms of the provisions of Section 147 of the Motor Vehicle Act.

9. A Division Bench of Kerala High Court in case titled ***Khadeeja and ors. V. Rushdi and anr.***, reported as 2016 (3) KLT 400, has followed the same principle. Para 13 of the said judgment reads as follows:

“13. In the instant case, the accident occurred as the deceased lost control of the motor cycle when a dog jumped in front of it and the pleading and materials on record make it explicitly clear that, the accident is a self made one, occurred solely due to the rash and negligent riding of the motor cycle by the deceased himself, who stepped into the shoes of the owner of that vehicle. In that view of the matter, the appellants herein cannot maintain a claim before the Tribunal under Section 166 of the Act, since a claim under that Section is based on fault liability principle.”

10. Similar view was taken by this Court in case titled ***United India Insurance Co. Limited v. Bhupinder Singh and others***, reported as 1996 AIR (J&K) 21.

11. Accordingly, the finding of the Tribunal is contrary to the evidence which reveals that the death was due to the fault of owner driver himself. Therefore,

the claim of the legal heirs has no legal basis.

12. Accordingly, the appeal is allowed and the award stands set aside. The amount deposited may be withdrawn by the Appellant-Insurance Company.

**(Ramalingam Sudhakar)**  
**Judge**

**Jammu**  
**31.01.2017 :**

Tilak, Secy.



This document was created with Win2PDF available at <http://www.win2pdf.com>.  
The unregistered version of Win2PDF is for evaluation or non-commercial use only.  
This page will not be added after purchasing Win2PDF.