

**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA**

**FAO No. 144 of 2018.**

**Reserved on : 19<sup>th</sup> March, 2019.**

**Decided on : 29<sup>th</sup> March, 2019.**

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Oriental Insurance Company Ltd.

**.....Appellant.**

Versus

Smt. Ram Kali and others

**....Respondents.**

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***Coram:***

***The Hon'ble Mr. Justice Sureshwar Thakur, Judge.***

*Whether approved for reporting?<sup>1</sup> Yes.*

**For the Appellant:** Mr Ashwani K. Sharma, Senior Advocate with Mr. Ishan Sharma, Advocate.

**For Respondents No. 1 to 5:** Mr. Pevinder Kumar, Advocate.  
**Respondents No.6(a) and 6(b)** ex-parte.

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**Sureshwar Thakur, Judge.**

The Insurer of the offending vehicle, has, instituted the instant appeal before this Court, wherethrough, it, casts, a, challenge, upon, the award pronounced by the learned Motor Accident Claims Tribunal-II, Kullu, upon, Claim Petition No. 47 of 2015, (i) whereunder, compensation amount comprised, in, a sum

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<sup>1</sup> Whether reporters of the local papers may be allowed to see the judgment?

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of Rs.17,78, 000/-- alongwith interest accrued thereon, at the rate of 9% per annum, and, commencing from, the date of petition till realization thereof, stood, assessed, vis-a-vis, the claimants, and, the apposite indemnificatory liability thereof, was, fastened upon the insurer/appellant herein.

2. Uncontrovertedly, the owner of the offending vehicle, hence, died in the relevant mishap. The learned counsel appearing for the insurer/appellant herein, has, contended by placing reliance, upon, a verdict of the Hon'ble Apex Court, rendered in a case titled as ***Oriental Insurance Company Limited vs. Rajni Devi and others***, reported in ***(2008)5 SCC 736***, the relevant paragraph No.7 whereof stand extracted hereinafter:-

“7. It is now a well settled principle of law that in a case where third party is involved, the liability of the insurance company would be unlimited. Where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance

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being governed by the contract qua contract, the claim of the insurance company would depend upon the terms thereof. The Tribunal, in our opinion, therefore, was not correct in taking the view that while determining the amount of compensation, the only factor which would be relevant would be merely the use of the motor vehicle.”

(i) qua, upon, the relevant contract of insurance, limiting the insurer's liability, vis-a-vis, the owner of the offending vehicle concerned, only in a sum of Rs.2 lacs, (ii) thereupon, the indemnificatory liability, qua, compensation amount, as, assessed by the learned tribunal, vis-a-vis, the claimants, being beyond the limit, prescribed under the terms, and, conditions, of, the contract of insurance, hence, the compensation amount in excess thereof, not being enjoined to be indemnified by the insurer. The afore argument, is, well merited, it being anvilled, upon, the afore applicable hereat verdict, as, rendered by the Hon'ble Apex Court in Rajni Devi's case (supra), (iii) and, also, upon, in consonance

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therewith rather material existing on record(s) of the case. Consequently, the appeal is partly allowed, and, the indemnificatory liability of the insurer, vis-a-vis, the compensation amount, as, assessed, is, limited only to the extent of Rs.2,00,000/- (Rs. Two Lakhs only), along with interest at the 9% per annum, commencing, from the date of petition, till realization thereof.

3. Be that as it may, since the deceased owner of the offending vehicle, met his end, in the ill-fated mishap, hence, involving the offending vehicle, (i) and, though no breach of the terms, and, conditions, of the relevant contract of insurance rather evidently emerges, (ii) hence, the liabilities, vis-a-vis, the outstanding amount of compensation, cannot be, even on the principle of pay, and, recover, hence, saddled upon the insurer, as any concomitant thereof recoveries, qua, the compensation amount, being hence ordered, to be realized from the estate of the predecessor-in-interest, of, the claimant,

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and, now on his demise, it, falling into the hands of his successors-in-interest/the claimants hereat, would sequel, the ill-consequence, of, frustrating, the assessment of compensation amount qua them.

4. For the foregoing reasons, the instant petition is allowed, and, the award impugned before this Court, is, modified in the aforesaid manner. Consequently, in terms of the contract of insurance, the liability of the insurance company, is, confined to Rs.2,00,000/- (Rs. Two lakhs only), along with interest at the rate of 9 % per annum, commencing, from the date of petition, till, realization thereof. All pending applications also stand disposed of. Records be sent back forthwith.

**29<sup>th</sup> March, 2019**  
**(jai)**

**(Sureshwar Thakur)**  
**Judge.**