



CGHC010133772022



2026:CGHC:44125

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 577 of 2022

- 1 - Smt. Demin Bai Dhankar W/o Late Shri Dinesh Kumar Dhankar Aged About 23 Years R/o Village And Post Darbar Mokhli, Police Station- Ranitarai, Tahsil - Patan,, District : Durg, Chhattisgarh
- 2 - Minor Navya Dhankar, D/o Late Shri Dinesh Kumar Dhankar Aged About 1 Years Minor On Behalf Of Through Her Legal Guardian Mother Smt. Demin Bai Dhankar D/o Late Shri Dinesh Kumar Dhankar Appellant No.1 R/o Village And Post Darbar Mokhli, Police Station- Ranitarai, Tahsil - Patan,, District : Durg, Chhattisgarh
- 3 - Smt. Kalindri Bai Dhankar, W/o Shri Guhatram Dhankar Aged About 50 Years R/o Village And Post Darbar Mokhli, Police Station- Ranitarai, Tahsil - Patan,, District : Durg, Chhattisgarh
- 4 - Guhatram Dhankar S/o Taturam Dhankar Aged About 53 Years R/o Village And Post Darbar Mokhli, Police Station- Ranitarai, Tahsil - Patan,, District : Durg, Chhattisgarh

... Applicants(s)

versus

- 1 - Molai Prajapati S/o Late Shri Chhotelal Prajapati Aged About 48 Years R/o Village And Post Darbar Mokhli, Police Station- Ranitarai, Tahsil - Patan,, District : Durg, Chhattisgarh
- 2 - The Magma General Insurance Company Limited, Through Branch Manager, Branch Office, Address - Dainik Bhaskar Complex, Fifth Floor, Rajbandha Maidan, Raipur, Tahsil Raipur, District : Raipur, Chhattisgarh

... Respondent(s)

For Petitioner(s)	:	Mr. Shivendu Pandya, Advocate
For Respondent No.1	:	None appeared though notices have been served
For Respondent No. 2	:	Mr. Sangeet Kumar Kushwaha, Advocate

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({Hon'ble Shri Justice Sachin Singh Rajput})

Order on Board

12.10.2026

- 1) This is an appeal under Section 30 of the Employees Compensation Act, 1923 (for short "act of 1923") by the appellant/claimant assailing the validity correctness and judicial propriety of judgment dated 11.01.2022 in Case No.33/E.C.Act/2017/fatal passed by the Commissioner for employees Compensation Act, Labour Court, C.G. (for short "learned commissioner")
- 2) By the impugned judgment, the learned Commissioner has awarded compensation of Rs.8,73,880/- in favour of the appellant/claimant against the respondent No.1 exonerating the insurance company to the respondent No2.
- 3) The facts necessary for the disposal of this appeal are that the deceased, namely, Dinesh Kumar Dhankar, was travelling in the offending vehicle, i.e., a tractor bearing registration No. CG/07/NA/7647 along with a trolley bearing registration No. CG/07/NA/7648, owned and driven by respondent No. 1 and insured with respondent No. 2. The said vehicle was being driven rashly and negligently, resulting in an accident in which the deceased, Dinesh Kumar Dhankar, lost his life. The accident was reported to the police station. Thereafter, the appellant/claimant filed an application under Section 22 of the Employees' Compensation Act, 1923, seeking compensation. It was pleaded that the deceased was working under the instructions of respondent No. 1 at the time of the accident and that, since the offending vehicle was insured with

respondent No. 2, both respondents were liable to pay compensation to the appellant/claimant.

- 4) The written statement was filed by the respondent No.2 whereas respondent No.1. remained ex-parte, Denying the averments made in the application, it was pleaded by respondent No.2 that there is a violation of terms and conditions of the insurance policy, there is not sitting capacity in the tractor, the deceased was sitting bonut of the offending vehicle and was an unauthorized passenger therefore, the insurance company is not liable to pay compensation.
- 5) The learned commissioner framed 8 issues and respective parties led their evidence to prove respective pleadings. The learned Commissioner awarded above stated compensation holding that as there was no sitting capacity in the offending vehicle and there is a violation of the terms and conditions of the insurance policy awarded the compensation against the respondent No.1. Thus this appeal.
- 6) Learned counsel for the appellant/claimant submits that the finding recorded by the learned Commissioner with regard to exoneration of the insurance company is bad in law. In the insurance policy the sitting capacity is mentioned as two, thus, the insurance company could not escape its liability and thus substantial question of law is involved, and the appeal deserves to be admitted.
- 7) Learned counsel for the respondent No.2 submits that the said mentioning was by mistake which has been clarified by the respondent no.2 by cogent and prudent evidence. Admittedly there is no sitting capacity in the offending vehicle and the deceased was the gratuitous

passenger and the respondent No.2 was not required to assume the risk of gratuitous passenger as held by the Supreme Court in the case of **Oriental Insurance Company Limited v. Brij Mohan and others** reported in **(2007) 7 SCC 56**.

- 8) Heard learned counsel for the parties and perused the material available on record.
- 9) Section 30 provides that the appeal has to be admitted if there is a substantial question of law involved. The only ground which has been raised by the Mr. Pandya, learned counsel for the appellant/claimant is that exoneration of the insurance company is bad in law. The learned Commissioner on assessment of evidence available on record gave a categorical finding that the deceased was sitting in the bonnet of the offending vehicle and by cogent and prudent it has been proved that the respondent no.1 has violated the terms and conditions of the insurance policy. The mentioning of two sitting capacity in insurance policy has also be duly considered and discussed by the learned Commissioner, upon which, the insurance company/respondent No.2 was exonerated. In view of this Court, the finding so recorded by the learned claims tribunal is based upon proper appreciation of evidence. This Court does not find any substantial question of law involved in this appeal and the appeal is liable to be and is hereby **dismissed**. No cost.

Sd/-

(Sachin Singh Rajput)

JUDGE