



CGHC010182002021

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

The date which the case is reserved for order	The date when Judgment is pronounced	The date when the Judgment is uploaded
25-09-2026	9-10-2026	12-10-2026

MAC No. 441 of 2021

Oriental Insurance Company Limited Through Branch Manager, Ambedkar Chowk (Manendragarh Road) Nagar Ambikapur District Surguja Chhattisgarh. (Insurer), District : Surguja (Ambikapur), Chhattisgarh

... Appellant

versus

- 1 - Nadhiya Kerketta S/o Dhansay Aged About 58 Years R/o Village Maini (Parsapani) Police Station Bagicha, District Jashpur Chhattisgarh.
- 2 - Bifni W/o Nadhiya Kerketta Aged About 56 Years R/o Village Maini (Parsapani) Police Station Bagicha, District Jashpur Chhattisgarh
- 3 - Radheram S/o Nadhiya Kerketta Aged About 34 Years (Dependant Deceased Lallu Kerketta) R/o Village Maini (Parsapani) Police Station Bagicha, District Jashpur Chhattisgarh. (Claimants)
- 4 - Surajpal S/o Laxman Ram Uraon Aged About 60 Years R/o Amgaon, Baikunthpur, Police Station Charcha, District Koriya Chhattisgarh. (Driver Of Vehicle)

5 - Ramratan Yadav S/o Dukhiram Yadav Aged About 46 Years R/o Village Chandrashekharapur, Post Batouli, Tahsil Lundra, District Surguja Chhattisgarh. (Owner Of Vehicle),

... Respondents

For appellant	:	Ms. Swati Agrawal, Adv. on behalf of Mr. Pankaj Agrawal, Adv.
For Respondents No. 1 to 3	:	Mr. Shyam Kumar, Adv. on behalf of Mr. Achyut Tiwari, Adv.
For Respondents No. 4 and 5	:	Mr. Akash Shrivastava, Adv.

(HON'BLE MR. SANTOSH SHARMA, J.)

CAV JUDGMENT

1. The appellant/Insurance Company has preferred this miscellaneous appeal against the award dated 22-3-2021 passed by the learned Motor Accident Claims Tribunal, Ambikapur, Distt. Surguja (hereinafter referred to as "the Tribunal") in Motor Accident Claim Case No. 221/2019.
2. Against the claim for compensation of Rs.65,84,000/- made by the claimants, who are the unfortunate parents and brother of deceased Lallu Kerketta, by filing an application under Sections 166 of the Motor Vehicles Act, 1988 (in short, "the Act") on account of his death in the motor accident that occurred on 12-11-2019, the Tribunal awarded a total sum of Rs. 7,84,000/- as compensation along with interest at the rate of 7% per annum from the date of filing of the claim petition till its actual payment. The appellant/insurance company, driver and owner have been held liable to pay compensation, however, the primarily responsibility of paying compensation has been fastened on the

appellant. Hence, this appeal.

3. Brief facts of the case are that respondents No. 1 to 3/claimants filed an application under Section 166 of the Act, stating therein that on 12-11-2019, deceased Lallu Kerketta and Munna Toppo were proceeding on their respective motorcycles towards Paraspani. On the way, the motorcycle of the deceased ran out of petrol, and therefore, the deceased Lallu Kerketta was proceeding slowly by towing his motorcycle with the motorcycle of Munna Toppo. When they reached near Gayatri Mandir, in front of the Bagicha Road Electricity Office, the driver of a Hyva bearing registration No. CG 15 AC 3941 (for brevity, 'the offending vehicle'), loaded with gravel, while driving the same at a high speed and in a rash and negligent manner, hit the motorcycle of deceased Lallu Kerketta. As a result, the offending vehicle ran over the deceased, causing him to die on the spot. The accident was immediately reported by Munna Toppo at Police Station Batauli on 12-11-2019, based on which, Police registered Crime No. 101/2019.
4. The Tribunal, upon close scrutiny of the evidence adduced by the parties, held that the deceased died as a result of the injuries sustained by him in the accident caused by the rash and negligent driving of the driver of the offending vehicle. The Tribunal further held that the offending vehicle was not being plied in violation of the terms and conditions of the insurance policy and accordingly awarded compensation as mentioned above.
5. Learned counsel for the appellant/Insurance Company submits that the learned Tribunal has erred in rejecting the plea of the appellant that the offending vehicle was being driven in violation of the terms and

conditions of the insurance policy, particularly when neither the claimants nor respondents No. 4 and 5 produced any permit in respect of the offending vehicle. It is further submitted that, in the absence of proof of a valid permit for the offending vehicle before the Tribunal, no liability could have been fastened upon the appellant. Therefore, it is prayed that the appeal be allowed and the appellant/Insurance Company be exonerated from liability to pay the compensation.

6. On the other hand, learned counsel for the respondents No. 1 to 3/claimant, while supporting the impugned award, submits that the award passed by the learned Tribunal is well-reasoned and does not call for any interference. Hence, it is prayed that the instant appeal be dismissed.
7. Learned counsel for the respondents No. 4 and 5 submits that, looking to the evidence available on record, they are not liable to pay any compensation.
8. I have heard learned counsel for the appellant and perused the impugned award as well as the record of the Tribunal.
9. From the evidence available on record, particularly the charge-sheet filed in the criminal case and the affidavit statement under Order XVIII Rule 4 of the CPC of AW-1 Nadhiya Kerketta, father of the deceased, and AW-2 Munna Toppo, who is an eye-witness to the incident, this Court is of the considered opinion that the Tribunal has rightly held that the deceased died as a result of the injuries sustained by him in the motor accident caused by the rash and negligent driving of the driver of the offending vehicle.
10. The next point that arises for consideration is whether the offending

vehicle was being plied in violation of the terms and conditions of the insurance policy ?

11. The appellant/Insurance Company examined NAW 1 Denis Ekka, Administrative Officer of the appellant/Insurance Company. He stated in paragraph 3 of his statement that, on the date of the accident, there was no permit in respect of the offending vehicle and that he had applied to the concerned RTO for issuance of a certificate in this regard. However, in his cross-examination, he admitted that the certificate, if any, issued by the RTO had not been brought on record. Even the receipt showing that such an application had been submitted to the RTO was not brought on record.
12. The onus to establish that the offending vehicle was being plied without the requisite permit was upon the Insurance Company. Learned Claims Tribunal also framed issue on above point on the basis of the pleading taken by the appellant in its written statement, which is as under :-

"2. क्या दुर्घटना के समय बीमा धारक द्वारा बीमा पॉलिसी की शर्तों का उल्लंघन करते हुए उक्त हाईवा वाहन का परिचालन कराया जा रहा था?"

13. Now, the only point of breach of policy is being analyzed. Hon'ble Supreme Court in the matter of **Lakhmi Chand v. Reliance General Insurance**, [(2016) 3 SCC 100] has observed as under :-

*"15. The judgment in **Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, [(2004) 3 SCC 297]** has been followed subsequently in **Oriental Insurance Co. Ltd. v. Meena Variyal [Oriental Insurance Co. Ltd. v. Meena***

Variyal, (2007) 5 SCC 428], wherein this Court held as under :

“16. The insurance company to avoid liability, must not only establish the available defence raised in the proceeding concerned but must also establish breach on the part of the owner of the vehicle for which the burden of proof would rest with the insurance company. Whether such a burden had been discharged, would depend upon the facts and circumstances of each case. Even when the insurer is able to prove breach on the part of the insured concerning a policy condition, the insurer would not be allowed to avoid its liability towards the insured unless the said breach of condition is so fundamental as to be found to have contributed to the cause of the accident.”

16. *It becomes very clear from a perusal of the abovementioned case law of this Court that the insurance company, in order to avoid liability must not only establish the defence claimed in the proceeding concerned, but also establish breach on the part of the owner/insured of the vehicle for which the burden of proof would rest with the insurance company.”*

- 14.** In the instant case, as, the breach of terms and conditions has been raised by the appellant, hence, in the light of above referred judgments,

burden of proof lies on it under Section 101 of the Evidence Act. In order to prove the fact of breach of policy, the appellant led only oral evidence of the witness Denis Ekka (NAW-1), who is the Administrative Officer of the appellant/Insurance company. He supported the contention of the Insurance company and stated that, there was no permit of offending vehicle at the time of accident, but he himself has admitted that no document in this regard had been filed. The driver and owner also stated orally that the permit of the offending vehicle was available, but they could not trace the same. Thus, except for the oral statement of the witness examined on behalf of the appellant, there is no material on record to establish that the offending vehicle was being plied without a valid permit or in violation of the terms and conditions of the insurance policy. Therefore, in view of the foregoing discussion, this Court is of the considered opinion that the learned Claims Tribunal has rightly held that it was not proved that the offending vehicle was being plied in violation of the terms and conditions of the insurance policy.

- 15.** In view of the above, in the opinion of this Court, the Tribunal has not committed any illegality in passing the impugned award and has rightly awarded above compensation in all the heads. Therefore, the appeal fails and is dismissed.

Sd/-

(Santosh Sharma)
Judge

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