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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal No. 444 of 2004

United India Insurance Company Limited, Branch Office, Kamathiline, Rajnandgaon.

Through its Divisional Manager, Divisional Office, 1st Floor, Krishana Complex, Kuchury Chowk, Raipur, Chhattisgarh

---- Appellants

Versus

1. Kachari Bai W/o Balram, aged about 47 years Resident of Village Hajjtola, PS Ambagarh Chowki, District Rajnandgaon, Chhattisgarh
2. Kartik Ram Paikara S/o Somnath Paikara, aged about 54 years, Higher Secondary School, Chilhati, PS Ambagarh Chowki, District Rajnandgaon, Chhattisgarh.
3. Ramesh Bais S/o Bal Krishna Bais, aged about 47 years, Teacher, Multipurpose Higher Secondary School, Chilhati, PS Ambagarh Chowki, District Rajnandgaon, Chhattisgarh.
4. Ankalu Chourey (Dead, Through LRs)

   4.A Smt. Anar Bai Wd/o Late Ankalu Chourey.

   4.B Rain Singh S/o Late Ankalu Chourey.

   4.C Raju Chourey S/o Late Ankalu Chourey.

   4.D Rajesh Chourey S/o Late Ankalu Chourey.

   All are Resident of village Chilhati, PS Ambagarh Chowki, District Rajnandgaon, Chhattisgarh.
5. Government of Chhattisgarh, Through Collector, Rajnandgaon, Chhattisgarh.

---- Respondents

Miscellaneous Appeal No. 561 of 2004

Kachari Bai W/o Balram, aged about 47 years, wife of Balram Sahare, Resident of Village Hajjtola, PS and Tahsil Ambagarh Chowki, District Rajnandgaon, Chhattisgarh

---- Appellant

Versus

1. Kartik Ram Paikara S/o Somnath Paikara, aged about 54 years, Teacher Government Multipurpose High Secondary School, Chilhati, PS and Tahsil Ambagarh Chowki, District Rajnandgaon, Chhattisgarh.
2. Ramesh Bais S/o Shri Lalkrishna Bais, aged about 47 years, Teacher, Government Multipurpose High Secondary School, Chilhati, PS and Tahsil Ambagarh Chowki, District Rajnandgaon, Chhattisgarh.
3. Ankalu Chourey (Dead, Through LRs)

   3.A Smt. Anar Bai Wd/o Late Ankalu Chourey.

   3.B Rain Singh S/o Late Ankalu Chourey.

   3.C Raju Chourey S/o Late Ankalu Chourey.

   3.D Rajesh Chourey S/o Late Ankalu Chourey.

   All are Resident of village Chilhati, PS Ambagarh Chowki, District Rajnandgaon, Chhattisgarh.
4. State of Chhattisgarh, Through Collector, Rajnandgaon, Chhattisgarh
5. The Manager United India Insurance Company Limited, Branch Office, Kamathiline, Rajnandgaon Chhattisgarh.

---- Respondents

For Appellant/Insurance Company	: Shri Dashrath Gupta, Advocate.
For Respondent No.2	: Shri Avinash K. Mishra, Advocate.
For Respondents No.3 & 4	: Shri Aditya Tiwari, Advocate.
For Respondent No. 5	: Shri Aditya Bhardwaj, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice

Judgment on Board

24/06/2016

1. These two appeals arise out of a common award and thus, they are being heard and decided together by this common judgment.

2. Briefly stated facts of the case are that the on 8.10.1997 a trolley bearing registration No. MP-23/B/5493 owned by Respondent No.5-Ankalu Chourey was being used for filling and removal of soil to level the playing field. The case of the

claimants was that the Principal and Teachers of the school had requested the owner to lend the trolley which was being used of the purpose of removal of soil from one place to other. In fact, the claimants had first filed a civil suit in which owner and insurance company were made a party and also the Principal and Teachers of the school alleging that they were negligent. In the civil suit, the insurance company took a stand that the civil Court had no jurisdiction to decide the matter and the remedy available to the claimants was to file a claim petition under the Motor Vehicles Act, 1988 (hereinafter called as 'the Act').

3. On the objection raised by the insurance company, the civil suit was rejected and returned to the claimants. Thereafter, the claimants filed a claim petition under Section 166 of the Act. In the claim petition, the insurance company again took objection on the ground of jurisdiction and in fact in this appeal also this is the main contention against the award passed by the Claims Tribunal. I am of the considered opinion that the insurance company which is a public undertaking cannot be allowed to blow hot and cold in the matter. When the parents of the deceased child filed a civil suit then the insurance company raised an objection that remedy lay before the Motor Accident Claims Tribunal. After dismissal of the civil suit, again objection of jurisdiction was raised in the petition filed under the Act. It is highly unethical on the part of the insurance company, to raise such objection. Without going to the merits of the plea raised by the insurance company, I hold that the insurance company is barred in view of previous conduct to raise such a plea. The facts as proved on record are that the children were moving loose soil ("muram") from one place to other. It is also not in dispute that the Trolley was not attached with a Tractor at that stage. The stand of the insurance company is that since the trolley was not attached with any tractor it would not be a motor vehicle. This question may be answered in some other proceeding but in this case, looking to the conduct of insurance company, I do not permit it to raise this objection and uphold the jurisdiction of the Claims Tribunal.

4. The Claims Tribunal has held in its order that it is a case of negligence on the part of no one and therefore, awarded Rs.50,000/- under Section 140 of the Act. This section took place in the year 1988. After the Act was amended in the year 1994, Section 163-A stands added which permits a final award to be made on no fault liability. It is true that normally claimants have to exercise their option whether of proceedings under Section 163-A or 166 of the Act but I am of the considered opinion in view of the peculiar facts and circumstances of the case, where the claimants belong to the poorest strata of society and had also earlier filed a civil suit the case should not be rejected on this ground.

5. In view of the above, I convert this petition from one under Section 166 of the Act to one under Section 163-A of the Act. In this behalf, it is submitted by the Learned Counsel for the claimants, such an application has already been filed. No doubt the insurance company has objected the same but I see no reason why the application under Section 166 of the Act should not be converted into one under Section 163-A of the Act.

6. The deceased was 18 years old. He was a student of 11th standard. He was however having no earning and his income as per provisions of Schedule-II be treated as Rs.15,000/- per annum and the relevant multiplier will be 16. The compensation works to Rs. 2,40,000/-. One-third has to be deducted in lieu of personal expenses and the compensation payable comes to Rs.1,60,000/-. In addition, Rs.2000/- towards funeral expenses and Rs.2500/- towards loss of estate has to be awarded. Therefore, the total compensation would be Rs.1,64,500/-. The enhanced amount would be Rs. 1,14,500/- The claimant shall also be entitled to get interest at the rate of 12% per annum from the date of filing of the claim petition till the payment deposited into the account. The insurance company would be entitled to adjust the amount which it has already paid to the claimants. The enhanced amount and interest be deposited before the Registry of this Court within a maximum period of three months from today. The said enhanced amount

shall be paid to the mother of the deceased-Kachari Bai only. The said amount be deposited to her bank account directly. Learned Counsel for the claimant are directed to file details of her bank account alongwith first page of her passbook. The account should be an individual account and not a joint account.

7. In view of above, the appeal filed by the claimant is allowed and the appeal filed by the Insurance Company is dismissed.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Anu