

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1160 of 2008**

1. The Oriental Insurance Company Limited, Divisional Office, Malviya Nagar, Durg (CG)

---- Appellant**Versus**

1. Sukhram Gond, S/o Shri Ram Singh Gond.
2. Smt. Kumaria Gond.
3. Kaushal Kumar.

Address-All resident of village Siloda, P.O.- Rasmada, Tah. Durg, Distt. Durg (CG)

4. Shri Gurumukh Das, PRO, M/s Komal Soap Factory Industrial Growth Centre, Borai, P.O. Rasmada, Distt. Durg (CG)
5. Smt. Shakuntala Parihar, Address-Shankar Nagar, Durg, Distt. Durg (CG)

---- Respondents

For Appellant:	Shri Sudhir Agrawal, Advocate
For Respondents No.1 to 3:	Shri Amiyakant Tiwari, Advocate
For Respondent No.4 & 5:	None.

Hon'ble Shri Justice Pritinker Diwaker**Judgement****05/08/2016**

1. This appeal filed by the Insurance Company arises out of the award dated 5.9.2007 passed by the Commissioner, Workmen's Compensation, Durg (henceforth 'the Commissioner') in Case No.18/W.C. Act Fatal /2005 whereby in a death case compensation of Rs.2,66,163/- has been awarded to the claimants/respondents No.1 to 3 herein.
2. Facts of the case, in brief, are that on 25.9.2004 deceased Rohit Kumar, employee of respondent No.5, who is the owner of offending vehicle, was

going in the vehicle Matador bearing registration number CG10-A-2827 to Komal Soap Factor for unloading the oil loaded in it. On the way, the tyre of said vehicle got burst as a result of which the vehicle overturned resulting in sufferance of injuries by said Rohit Kumar which led to his instantaneous death. A claim under Section 22 of the Workmen Compensation Act, 1923 (for short 'the Act, 1923') was filed by the claimants/respondents No.1 to 3 herein before the Commissioner seeking compensation to the tune of Rs.2,67,391/-. Appellant-Insurance Company filed its written statement and stated that for want of verification, the insurance policy is denied. It has also been mentioned that on account of violation of terms and conditions of the insurance policy, the insurance company is not liable to make payment of any compensation. However, Sukhdev Singh, Development Officer of appellant-Insurance Company, has admitted in his statement that vehicle in question was duly insured in the name of respondent No.5.

3. Respondent No.5 filed her written statement admitting that the deceased was her employee. Respondent No.4 also filed written statement denying the fact that the deceased was working in his soap factory. By the impugned award, the Commissioner has awarded compensation of Rs.2,67,391/- to the claimant / respondents No.1 to 3 herein and saddled the appellant herein with the responsibility of satisfying the impugned award. It is this award which has been challenged by the Insurance Company in this appeal.
4. This appeal was admitted by this Court for consideration on following substantial questions of law:-

“1. Whether the claim filed by the claimant is maintainable?

2. Whether the award passed by the Commissioner for Workmen's Compensation, Labour Court, Durg was valid and liability fastened on the Insurance Company was justified?"
5. Counsel for the appellant submits that claim petition filed by the claimants before the Commissioner itself was not maintainable. He further submits that as the deceased was employee of respondent No.5, therefore, no liability could not be fastened on the appellant Insurance Company.
6. Supporting the impugned judgment it has been argued on behalf of the claimants that under Section 167 of the Motor Vehicles Act, 1988 the option is available to the claimants to seek compensation either under the Act, 1923 or under the Act, 1988. The claimants/respondents No.1 to 3 herein have opted to claim compensation under the Workmen's Compensation Act, 1923, which was not objected by the appellant Insurance Company before the Commissioner and therefore the insurance company is estopped from raising such objection at the appellate stage. He further submits that the appellant had contested the case only on the question of liability, whereas a categorical finding has been recorded by the Commissioner that vehicle was duly insured with the appellant and there was no breach of any terms and conditions of the insurance policy. He further submits that in facts and circumstances the questions of law as framed do not arise at all and the appeal is liable to be dismissed.
7. Heard counsel for the parties and perused the material available on record.
8. In the present case, son of respondent Nos.1 & 2 and brother of respondent No.3 died in the road accident occurred on 25.9.2004. At that time, he was in the employment of respondent No.5 working as Coolie in

the offending vehicle Matador owned by respondent No.5 herein and insured with appellant-Insurance Company. The claimants had chosen the forum under the Act, 1923 for the purpose of obtaining compensation. The appellant-insurance company filed its written statement denying claim of the claimants only on the ground of breach of conditions of insurance policy. Respondent No.4 also filed his written statement denying the fact that the deceased was his employee, whereas respondent No.5 has admitted this fact. The Commissioner vide impugned award allowed the claim application, awarded compensation as claimed by the claimants and held the appellant Insurance Company liable to pay compensation, which has been challenged by the appellant-Insurance Company in this appeal mainly on the ground that the appeal itself was not maintainable before the Commissioner, Workmen's Compensation.

9. In order to appreciate the situation, it would be apposite to refer Section 167 of the Act, 1988 which reads as under:

"167. Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923 the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both".

10. From the above it is apparent that Section 167 begins with a non-obstante clause which indicates that a claim which arises under the Act, 1988 and also under the Act, 1923, can be espoused under either of the Acts. Meaning thereby, a person entitled to compensation under the Act, 1988 and also under the Act, 1923 may, without prejudice to the provisions of Chapter X, claim such compensation under either of the Acts. This clearly

presupposes that even despite absence of any provision in the Act, 1923 the liability of the insurer as provided in the Act, 1988 can equally be enforced under the Act, 1923. In this situation, it cannot be said that the claim petition filed by the claimants before the Commissioner, Workmen's Compensation was not maintainable. Furthermore, no objection was raised by the appellant Insurance Company in its written statement about the jurisdictional issue as raised for the first time in this appeal and as such the appellant is now estopped from raising such objection at this stage. This apart, nothing has been brought on record by the appellant establishing that there was no valid insurance policy at the time of accident or any of conditions of the insurance policy was observed in breach and therefore the Commissioner was right in holding the appellant Insurance Company liable for the payment of compensation to the claimants being the insurer of offending vehicle at the relevant time.

11. For the foregoing reasons, the substantive questions of law framed for decision of this appeal are answered in affirmative. The appeal being sans merit is liable to be dismissed and is hereby dismissed.

Sd/-

(Pritinker Diwaker)
Judge