

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 971 of 2007**

The Oriental Insurance Co. Ltd. Branch Nagpur-10, Ramdas Peth Vardha Road, Nagpur, Office Code - 162204

---- Appellant**Versus**

1. Dukalha Ram S/o Najaru Ram Sahu, age about 40 years, resident of Musavadih, Thana Saja, District Durg (CG)
2. Mahadeo Fulmaly (Bankar) S/o Govind Fulmaly, age about 32 years, resident of Nand Kumar Boudh of House No. 347, Vaishalinagar Kamal Chowk Nagpur, Thana Panchpawali, district Nagpur (M.P. 23 D.A. 6485 of driver)
3. Jaspal Singh Dhruv S/o Gurubakhsh Singh Dhruv, R/o Tatibandh, Raipur, Present address Ghotra Fast Carrier Tekanaka, Kamathi Road Nagpur (registered owner of vehicle No. 23 D.A./6485)

---- Respondents**Misc. Appeal (C) No. 194 of 2007**

The Oriental Insurance Co. Ltd. Branch Nagpur-10, Ramdas Peth Vardha Road, Nagpur

---- Appellant**Versus**

1. Sameram S/o Najru Ram Sahu, age about 40 years, resident of Mushavdih, Thana & Tahsil Saja, District Durg (CG)
2. Mahadev Fulmali (Bankar) S/o Govind Fulmali, age about 32 years, R/o House of Nandkumar Buadh, House No. 347, Vaishalinagar, Kamal Chowk Nagpur, Thana Panchpawali, Tahsil & District Nagpur (Maharastra)
3. Jaspal Singh Dhut S/o Gurubakhsh Singh Dhut, R/o G.E. Road Tatibandh, Raipur, Tahsil & District Raipur (CG) Present address Ghotra Fast Carrier Tekanama, Kamathi Road Nagpur, Tah. & District Nagpur (Maharastra)

---- Respondents

For Appellant	:	Shri Sudhir Agrawal, Advocate
For Respondent no.3	:	Smt. Smita Jha, Advocate

Misc. Appeal (C) No. 516 of 2006

1. Smt. Kusum Wd/o late Krishna Sahu, aged about 24 years,
2. Umesh S/o Late Krishna Sahu, aged about 4 years,

3. Ku. Bhuneshwari D/o. Late Krishna Sahu, aged about 1 year
Appellant Nos. 2 & 3 are minors, through natural guardian Mother Smt. Kusum Sahu,
4. Smt. Godavari Wd/o Late Krishna Sahu, aged about 28 years,
5. Ku. Uttara D/o Late Krishna Sahu, aged about 12 years,
Appellant No. 5 is minor through natural guardian mother Smt. Godavari,
6. Nankuram S/o Baliyar Sahu, aged about 56 years,
7. Smt. Badra Bai W/o Nankuram Sahu, aged about 50 years,
All R/o Village - Visatola, P.S. Sahaspur Lohara, District - Kawardha (C.G.)

---- Appellants

VERSUS

1. Mahadev Fulmali (Bankar) S/o Govind Fulmali, aged about 32 years, Occupation - Driver, R/o House of Nand Kumar Baudh, House No. 347, Vaishali Nagar, Kamla Chowk Nagpur, P.S. Panchpawali, Tahsil and District-Nagpur (Maharastra) (Driver)
2. Jaspal Singh Dhoot, S/o Gurbakhs Singh Dhoot, R/o G.E. Road, Tatibandh, Raipur, Tahsil and District-Raipur (C.G.), at present resident of Dhotra Fast Courier, Tekanaka Kamthi Road, Nagpur, Tahsil and District-Nagpur (Maharastra) (Owner)
3. The Oriental Insurance Company Limited, Branch: Nagpur, 10 Ramdas Peth, Verdha Road Nagpur (Maharastra) (Insurer)

---- Respondents

Misc. Appeal (C) No. 517 of 2006

1. Smt. Malti Sahu Wd/o Late Aghnu Sahu, aged about 23 years,
2. Pappu S/o Late Aghnu Sahu, aged about 5 years, minor through natural guardian mother Smt. Malti Wd/o Late Aghnu Sahu,
3. Thakur Ram S/o Late Jhallu Sahu, aged about 58 years,
4. Smt. Kachara Bai W/o Thakur Ram Sahu, aged about 50 years,
All R/o Village Tikaripara, P.S. Gandai, District-Durg (C.G.)

---- Appellants

VERSUS

1. Mahadev Fulmali (Bankar) S/o Govind Fulmali, aged about 32 years, Occupation - Driver, R/o House of Nand Kumar Baudh, House No. 347, Vaishali Nagar, Kamla Chowk Nagpur, P.S. Panchpawali, Tahsil and District-Nagpur (Maharastra) (Driver)
2. Jaspal Singh Dhoot, S/o Gurbakhs Singh Dhoot, R/o G.E. Road, Tatibandh, Raipur, Tahsil and District-Raipur (C.G.) at present resident of Dhotra Fast Courier, Tekanaka Kamthi Road, Nagpur, Tahsil and District-Nagpur (Maharastra) (Owner)
3. The Oriental Insurance Company Limited, Branch: Nagpur, 10 Ramdas Peth, Verdha Road Nagpur (Maharastra) (Insurer)

---- Respondents

Misc. Appeal (C) No. 518 of 2006

1. Sameram S/o Najar Sahu, aged about 40 years,
 2. Smt. Rewati Bai W/o Sameram Sahu, aged about 38 years,
 3. Najar Ram S/o Late Tijau Sahu, aged about 60 years,
 4. Fekan Bai, W/o Najar Ram Sahu, aged about 58 years.
- All R/o Village Muswadih, P.S. & Tahsil Saja, District-Durg (C.G.)

---- Appellants

VERSUS

1. Mahadev Fulmali (Bankar) S/o Govind Fulmali, aged about 32 years, Occupation -Driver, R/o House of Nand Kumar Baudh, House No. 347, Vaishali Nagar, Kamla Chowk Nagpur, P.S. Panchpawali, Tahsil and District-Nagpur (Maharashtra) (Driver)
2. Jaspal Singh Dhoot, S/o Gurbakhs Singh Dhoot, R/o G.E. Road, Tatibandh, Raipur, Tahsil and District-Raipur (C.G.) at present resident of Dhotra Fast Courier, Tekanaka Kamthi Road, Nagpur, Tahsil and District-Nagpur (Maharashtra) (Owner)
3. The Oriental Insurance Company Limited, Branch: Nagpur, 10 Ramdas Peth, Verdha Road Nagpur (Maharashtra) (Insurer)

---- Respondents

For Appellants	:	Shri Rishi Mahobia, Advocate
For Respondent no.3	:	Shri Sudhir Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

25/09/2017

Since these bunch of five appeals arise out of the same accident, the same are decided by this common order. MAC Nos. 971/07 & 194/07 have been preferred by the Insurance Company challenging the award dated 23.03.2007 and 15.11.2006 in Claim Case Nos. 99/06 & 46/02 passed by the 2nd and 1st Additional Motor Accident Claims Tribunal, Durg respectively. MAC Nos. 516/06, 517/06 & 518/06 arise out of the same judgment dated 24.06.2006 passed by 11th Additional Motor Accident Claims Tribunal (FTC), Durg in Claim Case Nos. 58/05, 46/05 & 49/05 respectively. In MAC Nos. 971/07 & 194/07 i.e. the appeals preferred by the Insurance Company, the

liability of payment of compensation has been fastened upon the Insurance Company whereas in other three appeals i.e. MAC Nos. 516/06, 517/06 & 518/06, the Insurance Company has been exonerated of its liability of payment of compensation and the liability has been fastened upon the owner and driver of the offending vehicle.

2. Counsel appearing for the claimants as well as the owner and the driver submit that it is a case where different claim cases were filed before different Tribunals and there have been conflicting evidences laid by the parties before different Tribunals including that of the Insurance Company and that the material witnesses examined before one Tribunal have not been examined before the other Tribunal which has also led to the different Tribunals taking different views. They submit that it is a case where the Tribunals ought to have taken into consideration Rule 237 of the Madhya Pradesh Motor Vehicles Rules, 1994 which deals with the procedure in connected cases.

For ready reference Rule 237 is reproduced hereinunder:

“237. Procedure in connected cases – (1) where two or more cases pending before a Claims Tribunal arise out of the same accident, and any issue involved is common to two or more cases, such cases may, so far as the evidence bearing on such issue is concerned, be held simultaneously.

(2) Whereas action is taken under sub-rule(1) the evidence bearing on the common issue or issues shall be recorded on the record of one case and the Claims Tribunal shall certify under its hand on the records of any such other case, the extent to which evidence so recorded applies to such other case and the fact that the parties to such other case had the opportunity of being present, and, if they were present, of cross-examining the witnesses.”

3. At this juncture, it would be relevant to refer to a recent decision of this High Court in the case of Smt. Kamla Bai Vs. Tej Singh & Others reported in 2014 (1) C.G.L.J. 374 wherein it has been held that if different claim cases arise before different Tribunals in respect of the same accident, it is necessary that the matters should be consolidated together and decided by one Tribunal.

4. A perusal of the record would show that in the instant case also there are witnesses who have been examined before one Tribunal have not been

examined before the other Tribunal and the two Tribunals have taken conflicting views in different claim cases. Considering the facts and circumstances of the case, this Court is of the opinion that ends of justice would meet if the impugned awards under challenge in the five appeals are set aside and the matter is remitted back to the Tribunal for a fresh adjudication by one Tribunal. It is ordered accordingly.

5. Let the matter be placed before the District Judge, Durg who in turn shall mark all these claim cases to one Tribunal for further consideration and disposal of the same. The parties to the dispute shall have the liberty of leading fresh evidence in respect of their respective contentions on merit as well as on the liability aspect. The parties present before this Court today are directed to remain present before the concerned Tribunal on the 7th of November, 2017. The District Judge, Durg is directed to ensure that the cases are allotted to one Tribunal well before 7th of November, 2017. Needless to mention that the Tribunal shall not be influenced by any of the observation made by this Court in this order.

Sd/-

**(P. Sam Koshy)
JUDGE**