

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No.1404 of 2017**

Shriram General Insurance Co. Ltd. Through The Branch Manager,
Branch Office, E- 8, Rico Industrial Area, Sitapura, Jaipur, Rajasthan.

---Appellant

Versus

1. Smt. Phoolmati Kashyap @ Phoolo W/o Late Shri Naresh Kumar Kashyap Aged About 34 Years.
2. Bhavtyek Kashyap S/o Late Shri Naresh Kumar Kashyap Aged About 14 Years.
3. Ku. Seema Kashyap D/o Late Shri Naresh Kumar Kashyap Aged About 12 Years.
4. Ku. Reema Kashyap D/o Late Shri Naresh Kumar Kashyap Aged About 9 Years.
5. Ku. Meena @ Gudiya D/o Late Shri Naresh Kumar Kashyap Aged About 5 Years.

Respondent Nos.2 to 5 are being Minors are represented Through their next friend being mother Smt. Phoolmati Kashyap @ Phoolo, W/o Late Shri Naresh Kumar Kashyap.

All are R/o Village Kangoli, Khalepara, Lokmanya Tilak Ward No.37, Tehsil Jagdalpur, District Bastar (C.G.).

6. Jagatu Ram Kashyap (J R Kashyap), S/o Late Shri Bhagatu Kashyap Aged About 63 Years.
7. Smt. Ratni Kashyap W/o Shri Jagatu Ram Kashyap Aged About 58 Years.
Both are R/o Village Kumhali, Rawatpara, Post Kumhali, Tehsil Lohandiguda, District Bastar, Chhattisgarh.
8. Bachhu Ram Kashyap S/o Shri Aandaram Kashyap Aged About 29 Years R/o Village Chitrakot, Post And Thana Chitrakot, Tehsil Lohandiguda, District Bastar, Chhattisgarh.
9. Umesh Kumar Rangari S/o Shri Tejram Rangari Permanent Resident Of House No. 285, Mardum, Tehsil Lohandiguda, District Bastar, Chhattisgarh, Presently Residing At House No. 40, Ashoka Life Style, Dharampura, No.3, Jagdalpur, District Bastar, Chhattisgarh.

---Respondents

For Appellant/Insurance Company : Shri Amrito Das, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

13/10/2017

1. Heard on I.A.No.1 which is an application for condonation of delay.

2. Finding the reasons assigned in the said application to be satisfactory, I.A.No.1 is allowed and delay of 49 days in filing the appeal stands condoned.

3. Present is an appeal under Section 173 of the Motor Vehicles Act assailing the award dated 19/05/2017 passed by the Additional Motor Accident Claims Tribunal, Dantewada (C.G.) in Claim Case No.03/2014. Vide the said impugned award, the Tribunal in a death case has awarded the compensation of Rs.44,44,055/- along with interest @ 9% per annum from the date of application.

4. The challenge to the present award is on the ground that, there is the vehicle allegedly involved in the accident has been falsely implicated and the fact that it has been falsely implicated established from the fact that, the accident is said to have occurred on 29/05/2013, but an F.I.R. in this regard was lodged only after about three months time i.e. on 03/09/2013. No proper explanation has been given by the authorities as to why there was a delay in lodging of the F.I.R.

5. The counsel for the appellant/Insurance Company submits that, there is also a statement of two witnesses which has been relied upon by the Tribunal while fastening the liability in the Criminal Case which has been lodged against the driver of the offending vehicle i.e. Truck bearing registration No.CG-17-GA-1589. These two persons have not been cited as a eye-witness. The two eye-witnesses also have not given any plausible explanation as to why the intimation was not given by them to the police authorities on the date of accident itself or on a subsequent period immediately after the accident and all these facts leads to a great element of doubt so far as accident to have occurred from the offending vehicle which was insured by the present appellant.

6. Perusal of record would show that, the F.I.R. in this regard has been duly lodged against the driver of the offending vehicle Bacchu Ram Kashyap

vide Crime No.10/2013 at Police Station, Jangla, District Bijapur (C.G.). Further, he has also been charged for the offence punishable under Section 304-A.

7. It is reflected that, during the course of the evidence lead by the claimants, the statements of Nageshwar Prasad Sharma-AW/3 and Iqbal Khan-AW/4 who have stated to have witnessed the accident when AW/3 was passing from the area on the said date on a Motorcycle and AW/4 while he was in the course of carrying out some construction work near the place of the accident.

8. There is no strong evidence which has been brought by the counsel for the Insurance Company to disprove the statements of these two witnesses except praying for an adverse inference to be drawn that they are not disclosing the true facts to the police authorities.

9. The driver of the offending vehicle has been prosecuted for an offence under Section 304-A in which the deceased had died and applying the doctrine of preponderance of probability which is applied to prove the case under Section 166 of the Motor Vehicles Act, this court is of the opinion that, no strong case has been made out by the counsel for the Insurance Company to interfere with the impugned award passed by the Tribunal. It appears that the appeal is filed more being aggrieved by the quantum of compensation.

10. The appeal thus being devoid of merits deserves to be and is accordingly rejected.

**Sd/-
(P. Sam Koshy)
Judge**