

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No.806 of 2009**

Bajaj Allianz General Insurance Company Limited, Through Branch Manager, Shiv Mohan Bhawan, Vidhan Sabha Road, Pandri, Raipur (C.G.).

---Appellant

Versus

1. Maniram Yadav S/o Shri Baratu Yadav, aged about 40 years.
2. Smt.Saraswati Yadav W/o Maniram Yadav, aged about 38 years.
3. Kumari Pooja Yadav D/o Maniram Yadav, aged about 17 years.
Respondent No.3 is minor represented through natural guardian Mother Smt.Saraswati Yadav.
All are R/o Village Baldidih, Thana Pithora, District Mahasamund (C.G.).
Presently at Virendra Nagar, Ward No.2, Saraipali, Thana Saraipali, District Mahasamund (C.G.).
4. Virendra Kumar Yadav S/o Durdeshi Yadav, aged about 22 years, R/o village Baldidih, Thana Pithora, District Mahasamund(C.G.).

---Respondents

For appellant/Insurance Company	:	Shri S.S.Rajput, Advocate.
For respondent No.1 to 3	:	Shri Jameel Akhtar Lohani, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board**

12/10/2017

1. Present is an appeal under Section 173 of the Motor Vehicle Act challenging the award dated 13/03/2009 passed by the Chief Additional Motor Accident Claims Tribunal, Mahasamund (C.G.) in Claim Case No.103/2008. Vide the said impugned, the Tribunal in a death claim under Section 166 of the Motor Vehicle Act has awarded the compensation of Rs.3,62,000/- along with interest @ 6% per annum from the date of application.
2. Present is an appeal preferred by the Insurance Company questioning the liability aspect. The counsel for the appellant/Insurance Company has raised two grounds of appeal. Firstly, the deceased in the instant case was

not an employee/labour in the offending vehicle i.e. Truck bearing registration No.CG-04-JA-7648 and was traveling as a gratuitous passenger. The second ground which has been raised is that, the driver of the offending vehicle did not have a valid license and the license produced during the course of the proceedings was a fake license and thus prayed for the liability part be shifted upon the owner and the driver exonerating the Insurance Company. He further submits that, in the instant claim petition, the statement of the claimants themselves was that, the deceased Rupesh Kumar, aged about 20-22 years was a Hawker by profession and used to sell ready-made clothes by travelling from one village to another. It was further contended by the counsel for the appellant that, the evidence which have come on record would show that there was already a driver and a khalasi in the said Truck and in addition the deceased was also found to be travelling and that there was no evidence as to whether the deceased at any point of time was engaged with the owner to work as a khalasi in the said Truck. He further contended that, the evidence of the claimants by itself would show that, there was no sufficient evidence adduced by the claimants to show that he was working in the said Truck at the time of the accident as khalasi/labour in the absence of which once when there is evidence that there was already the driver and the cleaner in the said Truck at the time of the accident, the requirement of the deceased to work as a cleaner could not be justified and has not been properly explained. The driver of the said vehicle has been proceeded ex-parte and he has not been able to give the exact details in spite of being duly served, but he did not lead any evidence in support of his contention. Thus, this court is of the opinion that, the said issue has been sufficiently proved that, the deceased in the instant case was not an employee working on the Truck as khalasi.

3. So far as ground No.2 as regards the driver was not having a valid license is concerned, this court is of the opinion that, the witness who has

been examined on behalf of the Insurance Company i.e. an employee of the Regional Transport Office, Raipur (C.G.) has himself demolished the case of the Insurance Company by making the statement that, the record show that the said license was issued in the name of the driver of the offending vehicle i.e. Virendra Kumar Yadav. Thus, the said ground of the counsel for the Insurance Company does not have much force and the same stands negated.

4. In view of the same considering the first issue of the deceased not working as an employee/labour of the owner at the time of the accident, this court is of the opinion that, the Insurance Company has been able to prove its case so far as this issue is concerned and accordingly it is decided in its favour.

5. The present appeal is of the year 2009. The Insurance Company has already deposited substantial part of the amount awarded. Considering the facts and circumstances of the case and also considering the fact that the owner and the driver have not represented, this court is of the opinion that ends of justice would meet if the Insurance Company is directed to deposit the entire compensation amount awarded by the Tribunal with liberty to recover the same from the owner and the driver of the offending vehicle.

6. The appeal of the Insurance Company thus stands allowed in part.

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