

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No.1448 of 2017**

Insurance Company - Future General India Insurance Company Pvt. Ltd. (Actual Name Of The Appeal Is- Future Generali India Insurance Co. Ltd.), Through Mandal Prabandhak, Future General India Insurance Company Pvt. Ltd., Maruti Business Park, Near Rajkumar College, G. E. Road, Raipur, Tahsil And District Raipur, Chhattisgarh. (Insurer Of Santro Car Bearing Reg. No. C G -04- D L -1888.

---Appellant**Versus**

1. Smt. Ambika Sahu W/o Late Shri Gulzari Lal Sahu Aged About 40 Years.
2. Kumari Aakansha Sahu D/o Late Gulzari Lal Sahu, Aged About 14 Years.
3. Kumari Devika Sahu D/o Late Gulzari Lal Sahu, Aged About 7 Years
Respondent Nos.2 & 3 are Minor And Hence Representing Through Mother Smt. Ambika Sahu, W/o Late Shri Gulzari Lal Sahu, R/o M. I. G. 1/110, Kabeer Nagar, Ringh Road No. 2, Police Station Kabeer Nagar, Raipur, Tahsil And District- Raipur, Chhattisgarh.
4. Smt. Fulbai W/o Gyanram, Aged About 80 Years R/o M. I. G. 1/110, Kabeer Nagar, Ringh Road No. 2, Police Station Kabeernagar, Raipur, Tahsil And District Raipur, Chhattisgarh, (Claimants)
5. Pushpendra Singh Parihar S/o R. B. S. Parihar, Aged About 50 Years R/o Aadarsh Nagar, Near Barud Kothri, Santoshi Chowk, Kushalpur, Raipur, Tahsil And District Raipur, Chhattisgarh. (Owner Of Santro Car Bearing Reg. No. C. G. -04- D. L. -1888)

---Respondents**AND****MAC No.1481 of 2017**

Future Generali India Insurance Company Pvt. Ltd. (Actual Name Of Appellant Future Generali India Insurance Co. Ltd.) Through Mandal Prabandhak, Future General India Insurance Company Pvt. Ltd. , Maruti Business Park, Near Rajkumar College, G. E. Road, Raipur, Tahsil And District Raipur, Chhattisgarh. (Insurer Of Santro Car Bearing Reg. No. C. G. 04 D. L. 1888)

---Appellant**Versus**

1. Smt. Heena Mansukh Bhai Patel W/o Late Shri Mansukh Bhai Patel, Aged About 36 Years.
2. Kumari Vidhi Patel, D/o Late Mansukh Bhai Patel, Aged About 15 Years.
3. Divyesh Kumar Patel, D/o Late Mansukh Bhai Patel, Aged About 12 Years.
Respondent Nos.2 & 3 are Minor And Hence Representing Through Mother Smt. Heena Mansukh Bhai Patel, W/o Late Shri Mansukh Bhai Patel, R/o Behind Dhelabai Chhatrawas, Changorabhata, P. S. D D Nagar, Raipur, Tahsil And District Raipur, Chhattisgarh.
4. Smt. Fuli Ben Patel, W/o Late Shri Lalji Bhai Patel, Aged About 75 Years R/o Behind Dhelabai, Chhatrawas, Changorabhata, P. S. D D Nagar, Raipur, Tahsil And District Raipur, Chhattisgarh. (Claimants)
5. Pushpendra Singh Parihar, S/o R. B. S. Parihar, Aged About 50 Years R/o Aadarsh Nagar, Near Barud Kothari, Santoshi Chowk, Kushalpur, Raipur,

Tahsil And District Raipur, Chhattisgarh. (Owner Of Santro Car Bearing Reg. No. C. G. -04- D. L. -1888)

---Respondents

For appellant/Insurance Company : Shri Rohitashva Singh, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06/11/2017

1. These are the two appeals filed under Section 173 of the Motor Vehicle Act arising out of the claim case Nos. 252/2015 and 33/2015 passed by the learned 9th Additional Motor Accident Claims Tribunal, Raipur (C.G.) vide its order dated 10/04/2017.
2. Vide the said impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicle Act has allowed the Claim Applications and have awarded the compensation of Rs.9,15,000/- and Rs.25,36,500/- respectively in the two claim cases with interest @ 6% per annum from the date of application.
3. The brief facts of the case is that, an accident occurred on 08/02/2014 as a result of which one Gulzarilal Sahu and Mansukhbhai Patel had died. The vehicle involved in the accident was a Hyundai Santro Car bearing registration No.CG-04-DL-1888 owned by the respondent No.5-Pushpendra Singh Parihar and was driven by one Gopal Krishna Negi who also died from the said accident.
4. MAC No.1448/2017 is an appeal preferred against the death of the deceased Gulzarilal Sahu i.e. Claim Case No. 252/2015 and MAC No.1481/2017 is an appeal arising out of the death of the deceased Mansukhbhai Patel i.e. Claim Case No. 33/2015. While passing the said impugned award, the Tribunal has fastened the liability upon the appellant/Insurance Company.
5. The appeal has been preferred by the Insurance Company on mainly two grounds. Firstly, there is no negligence proved in the instant case so as to make the claim application maintainable. According to the counsel for the appellant,

the accident did not involve two vehicles and that it is a case where the driver had dashed the tree which resulted in the accident and the resultant death and therefore unless there is a negligence proved or established, the claim application under Section 166 is not maintainable. He refer to the statement of eye-witness AW/3-Vishwanath Sikdaar who has stated, that the accident occurred when the driver tried to save the cattle which was crossing the road and therefore it would clearly show, that there was no negligence on part of the driver in the accident to occur and therefore the claim application ought to have been rejected by the Tribunal.

6. The second ground raised by the counsel for the appellant is that, the vehicle was registered as a private car and that it was being used for commercial purpose which again is a breach of policy condition and therefore the appeals deserves to be allowed and the liability if any, should had been fastened upon the owner of the said vehicle.

7. Perusal of the record would show, that undisputedly, the evidence which has come on record does not show any proof or evidence in respect of any fair being paid by the persons who are traveling in the said car i.e. the two deceased persons. Neither is there any evidence except for the report of the investigator of the Insurance Company, that the vehicle was being used for commercial purpose.

8. In the absence of any sufficient proof to establish that the vehicle being used for commercial purpose, only by virtue of statement of the Insurance Company by itself it cannot be said that the vehicle was being used for commercial purpose.

9. Perusal of the impugned judgment and on considering the evidence which have come on record, undisputedly, the statement of the eye-witness, that the accident occurred when the driver tried to save the cattle which was crossing the road by itself shows, that the vehicle was being driven at a great speed and when the cattle tried to cross the road, the driver could not control the vehicle because of its speed and as a result, it got down from the road and hit the tree.

Thus, there is a clear negligence on part of the driver in driving the vehicle on an excessive speed.

10. So far as the issue related to the vehicle being used for commercial purpose is concerned, this court does not find any good evidence or proof on record with which the contention of the counsel for the appellant/Insurance Company could be accepted in the absence of which the said ground raised by the counsel for the appellant also stands negated.

11. Both the appeals filed by the Insurance Company thus being devoid of merits deserve to be and is accordingly rejected.

Sumit

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