NAFR

# HIGH COURT OF CHHATTISGARH AT BILASPUR

## MAC No.1560 of 2017

Magma ( N-91 ) General Insurance Company Ltd. H. D. I. Office No 502, 505 And 512, 5th Floor, D. B. C. T. Corporate Park, Block No. 9, Rajbandha Maidan Raipur Chhattisgarh. (Insurer Of Vehicle Truck Haiwa Bearing Registration No. M P - 20 - H - 1433).

---Appellant

Versus

1. Harishankar Yadav S/o Somnath, Aged About 55 Years.
2. Hirawati W/o Hrishankar Yadav, Aged About 43 Years.

   Both are by Cast - Ahir, R/o Vilalge Narmadapara, Tahsil Sitapur, Jila Sarguja Chhattisgarh. (Claimants)
3. K. N. Singh S/o Devilal Singh R/o - 151, Transport Nagar Korba Currently Residing At Bisal Nagar, Green Land Colony, Raipur, Police Station Mandir Hasaud, District Raipur Chhattisgarh. (Owner Of Vehicle Truck Haiwa Bearing Registration No. M P - 20 - H - 1433).
4. Lalu Prasad Yadav S/o Sonsai Yadav, Aged About 38 Years R/o Mathpara, Purena, Ward No. 17. Near Sahdadev Mandir, Telibadha, Raipur Chhattisgarh. (Driver Of Vehicle Truck Haiwa Bearing Registration No. M P - 20 - H - 1433).

---Respondents

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For appellant/Insurance Company : Shri Rohitashva Singh, Advocate

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

23/11/2017

1. Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 19/05/2017 passed by the learned Motor Accident Claims Tribunal, Ambikapur, District Sarguja (C.G.) in Motor Accident Claim Case No.230/2015.

2. Vide the said impugned award, the Tribunal in a Claim Case under Section 166 of the Motor Vehicles Act has awarded a compensation of

Rs.8,60,000/- along with interest @ 7% per annum from the date of application.

3. The ground of challenge by the Insurance Company is that, the owner of the vehicle while claiming the personal own damage claim from the Insurance Company had shown a different name showing as the driver of the vehicle at the time of the accident whereas in the claim case, the driver's name is different and therefore there appears to be some discrepancies and doubt on the stand taken by the owner and the Insurance Company cannot be fastened with the liability of indemnifying the owner under such circumstances. He further submits, that since, the driver whose name has been reflected in the own damage claim application was not a party before the Tribunal, it could not be ascertained whether he had a valid driving license or not and whether there was any breach of policy condition. It appears that, the owner has subsequently as an after thought put up the name of the respondent No.4 as the driver of the vehicle so as to show, that there was no breach of policy condition.

4. Perusal of record show, that the Insurance Company in the instant case has not led any evidence before the Tribunal to substantiate any of the contentions put forth by them in their Written Statement before the Tribunal. In the absence of any evidence adduced before the Tribunal, this court does not find any strong case made out by the Insurance Company calling for an interference with the impugned award.

5. So far as the ground of future prospects is concerned it was contended by the counsel for the Insurance Company, that the said assessment made by the Tribunal is in contravention to the larger bench decision of the Hon'ble Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi & Ors. (SLP Civil No. 25590/2014, decided on 31/10/2017).**

6. However in the instant case what reflects is that, the impugned award under challenge was passed by the Tribunal much earlier to the decision of the Supreme Court in the case of Pranay Sethi (Supra) and the said judgment was in the light of the then prevailing judgments of the Supreme Court. Therefore, this ground raised by the Insurance Company also cannot be accepted or sustainable. Moreover the amount awarded cannot be said to be either exorbitant or excessive considering the date of accident.

7. The appeal thus fails and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

Sumit