

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1582 of 2017

Branch Manager Magma H.D.I. General Insurance Company Ltd.
Hotel Amantran, Satya Shanti Complex, G. E. Road, Supela Bhilai,
District Durg Chhattisgarh At Present D. B. Complex, 5th Floor, G. E.
Road, Raipur Chhattisgarh.(Insurer).

---- Appellant

Versus

1. Smt. Purnima Bai Wd/o Late Omprakash Mahipal, Aged About 29 Years
2. Mukesh S/o Late Omprakash Mahipal Aged About 10 Years
3. Divet Alias Vishesh D/o Late Omprakash Mahipal Aged About 7 Years
4. Rajkumar S/o Late Omprakash Mahipal Aged About 5 Years
5. Sukhdev S/o Sonasai Mahipal Aged About 50 Years
6. Smt. Shivkumari Bai W/o Sukhdev Mahipal Aged About 49 Years
Respondent No. 2, 3 & 4 are Minor and hence representing Through
Their mother Smt. Purnima Bai (Respondent No.1)
All are R/o Village Mahrumkhurd, Police Station Dhumka, Tahsil And
District Rajnandgaon Chhattisgarh.....(Claimants).
7. Ishwar Ram Sinha S/o Shyamlal Sinha, R/o Village Paneka (Bankel),
Police Station Basantpur, Tahsil And District Rajnandgaon
Chhattisgarh.(Driver).
8. Ramvilas Sinha S/o Shyamlal Sinha, R/o Village Paneka (Bankel),
Police Station Basantpur, Tahsil And District Rajnandgaon
Chhattisgarh.(Owner)

---Respondents

For Appellant	:	Mr. Rohitashva Singh, Advocate
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Hon'ble Shri Justice P. Sam Koshy

Order on Board

21/11/2017

1. Present is an appeal under Section 173 of the Motor Vehicles Act by
the Insurance Company. The challenge is to the award dated
09.08.2017, passed by the 1st Additional Motor Accident Claims
Tribunal, Rajnandgaon, Chhattisgarh, in Claim Case No.28/2015.

2. Vide the impugned award, the Tribunal in a death case has awarded a compensation of Rs.4,39,000/- with interest @6% per annum from the date of application.
3. The contention of the counsel for the appellant is that it is a case where the Owner and the Insurance Company of the motorcycle in which the deceased was traveling was not made a party and that there is an element of contributory negligence as the dash to the offending vehicle was from the rear side and therefore the present appellant should have been exonerated or at least compensation part should have been reduced after attributing contributory negligence. Both grounds raised by the Insurance Company would not be sustainable for the reason that the deceased in the instant case was a pillion rider and therefore negligence on his part cannot be considered for assessing the contributory negligence and so far as the Owner and the Insurance Company not being made a party, there does not seem to be any evidence which with it could be said that the offending vehicle was not involved in the accident and there is no sufficient evidence also produced by the Insurance Company with which it could be said that the offending vehicle which has been insured by the present appellant was not at fault for the accident to have arisen.
4. In view of the same, the appeal being devoid of merit, deserves to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

Ved