

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No.1554 of 2017**

Branch Manager, Magma H.D.I. General Insurance Company Ltd. S/o 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 Of Vehicle Truck Bearing Reg. No. C. G. - 08 - B - 0388).

---Appellant**Versus**

1. Smt. Pemin Bai W/o Ramchandra Nirmalkar, Aged About 51 Years.
2. Kishorilal, S/o Ramchandra Nirmalkar, Aged About 30 Years. Both are R/o Village Maharumkhurd, Police Station Ghumka, Tahsil And District Rajnandgaon Chhattisgarh. (Claimants)
3. Ishwar Ram Sinha S/o Shyamlal Sinha, R/o Village Paneka (Bankel), Police Station Basantpur, Tahsil And District Rajnandgaon Chhattisgarh. (Driver Of Vehicle Truck Bearing Reg. No. C. G. - 08 - B - 0388)
4. Ramvilas Sinha, S/o Shyamlal Sinha, R/o Village Paneka (Bankel), Police Station Basantpur, Tahsil And District Rajnandgaon Chhattisgarh. (Owner Of Vehicle Truck Bearing Reg. No. C. G. - 08 - B - 0388)

---Respondents

For appellant : Shri Rohitashva Singh, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****16/11/2017**

1. Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 09/08/2017 passed by the learned 1st Additional Motor Accident Claims Tribunal, Rajnandgaon (C.G.) in Motor Accident Claim Case No.36/2015.

2. Vide the impugned award, the Tribunal in an injury case under Section 163-A of the Motor Vehicles Act has awarded a compensation of Rs.4,10,000/- with interest @ 6% per annum.

3. The contention of the counsel for the appellant is that, the instant case would not be maintainable under Section 163-A of the Motor Vehicles Act as the injured/claimant himself was responsible for the accident and a Criminal Case was also lodged against the injured himself and therefore, the claim application would not be maintainable. He further submits, that since, the injured in the instant case had dashed the Truck from rear side, there is a great element of contributory negligence on part of the injured so the compensation ought to be apportioned accordingly.

4. Perusal of record show, that the Insurance Company has not led any evidence in support of its contention. The Insurance Company wants the contention of the contributory negligence to be inferred without any substantive material. No witness has come up before the Tribunal with which it could establish, that there was some amount of negligence on part of the injured which resulted in the accident.

5. In the absence of any substantive material to establish the contributory negligence on part of the injured, the contention of the counsel for the appellant stands negated.

6. So far as the first ground as the claimant himself being responsible for the accident is concerned, this court is of the opinion, that once when it is the claim under Section 163-A of the Motor Vehicles Act, the issue of negligence is not to be considered while deciding the claim application and therefore, the appeal of

the Insurance Company does not have any strong substantive material calling for an interference with the impugned award.

7. The appeal thus fails and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

Sumit