

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 137 of 2017**

M/s Basant Roadways through Arvind Agrawal S/o Late Radheshyam Agrawal, Aged About 50 Years, R/o Seth Basant Lal Marg, Ambikapur, P.S. & P.O. Ambikapur, Civil And Revenue District Surguja, CG .(Owner)

---- Appellant**Versus**

1. Dayabai Dhritlahre Wd/o Late Ramkhilawan Dhritlahre, Aged About 35 Years(Claimant No.1)
2. Ku. Neelam Dhritlahre D/o Late Ramkhilawan Dhritlahre, Aged About 16 Years(Claimant No.2)
3. Ku. Chandrakala Dhritlahre D/o Late Ramkhilawan Dhritlahre, Aged About 12 Years(Claimant No.3)
4. Yash Kumar Dhritlahre S/o Late Ramkhilawan Dhritlahre, Aged About 10 Years

No. 2 to 4 Minor Through Mother And Natural Guardian Smt. Dayabati Dhritlahre,

All R/o Village Ghusera, P.S. Kurud, District Dhamtari, Chhattisgarh, At Present R/o Pandari, Raipur, P.S. Pandari, District Raipur, CG (Claimant No.4)

5. Rinku Kashyap S/o Kanhaiya Kashyap, R/o Darripara, Darridih, Near Bilaspur Chauk, Ring Road, Ambikapur, P.S. & P.O. Ambikapur, District Surguja, CG(Driver)
6. The Oriental Insurance Company Limited, Through Divisional Manager, The Oriental Insurance Company Limited, Kutchhari Chauk, Jail Road, Raipur, District Raipur, CG (Insurance Company)

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For appellant	:	Ms. Priyanka Mehta, Adv.
For Respondent 1 to 4	:	Mr. Arvind Shrivastava, Adv.

ORDER**7/3/2017**

1. Ms. Priyanka Mehta, Adv. for appellant.
2. Mr. Arvind Shrivastava, Adv. for R- 1 to 4.
3. None for R-5 though served as per office note dated 1-3-2017.
4. Notice issued to R-6 is awaited.
5. Heard on I.A. No. 1/17 under Section 14 and Section 5 of the

Limitation Act as the instant MAC has been preferred after 234 days of its limitation.

6. Learned counsel for the appellant submits that respondent No. 6/ Oriental Insurance company preferred MAC No. 889/2016 and under bonafide belief the appellant preferred cross-appeal in that appeal. In the said appeal on 5-1-2017 the appellant prays for withdrawal of said cross-appeal with liberty to file a fresh MAC under the relevant provisions of Section 173 of the Motor Vehicles Act. This Court permitted the appellant to withdraw the said cross-appeal with liberty to file appeal under the provisions of law and also under the provisions of Limitation Act if permissible. Thereafter they have filed present appeal on the basis of observation made in para 30 of the impugned award wherein the Court observed that firstly the Insurance company has to satisfy the award and thereafter the Insurance company may file execution proceedings against the appellant/owner and R-5/driver and realize the awarded amount from them but even in the said para 31, there was no pronouncement of the court below that after initial payment by the Insurance company to the claimants, the Insurance Company may file execution petition against the appellant/ owner and R-5/driver. It is also submitted that as there is no declaration of said repayment of the awarded amount from the present appellant and R-5 in operative part of para 31 and in the entire operative part of para 31, the court below held the non-applicants jointly and severally responsible, with this as there is no direction in favour of R-6 to file execution petition against the present appellant and R-5 to get the awarded amount back and as the R-6/Oriental Insurance Company has also preferred MAC against the said award and same is pending before this Court as MAC No. 889/2016, for the moment they are not pressing the instant MAC which is also barred by limitation of 234 days.
7. On due consideration, as the said MAC No. 889/2016 is pending, and there is no pronouncement against the present appellant that R-6 may file execution proceeding against him after payment to the claimant firstly and as the court below in the operative part of

the judgment held jointly and severally responsible to all the non-applicants, the insurance company had filed MAC which is pending consideration, instant MAC is hereby disposed of as barred by limitation of 234 days, also as the MAC No. 889/2016 is pending consideration.

8. As prayed by learned counsel for the appellant, Annexure A-3 and A-4 be returned to the appellant after retaining authenticated true copy of the same in the file.
9. Instant MAC is disposed of.

Sd/-
(Chandra Bhushan Bajpai)
Judge