

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No.1666 of 2016**

The Oriental Insurance Co. Ltd. Through Its Divisional Manager,
Divisional Office, 1st Floor, Rama Trade Centre, Near Bus Stand,
Bilaspur, Civil & Revenue Distt. Bilaspur, Chhattisgarh Pin- 495001

---Appellant

Versus

1. Gopi Yadav S/o Late Shri Jagannath Yadav, Aged About 46 Years.
2. Smt. Madhu Yadav W/o Shri Gopi Yadav, Aged About 44 Years
Both are R/o Ram Janki Naiyya Para, Ward No.3, Tahsil And P.S.
Dhamdha, Distt. Durg, Chhattisgarh.
3. Satish Kumar S/o Shri Kamlesh, Aged About 26 Years At Kugda, P.O.
Urla, P.S. Bhilai-3, Tahsil Patan, Distt. Durg, Chhattisgarh.
4. Jayprakash Sharma S/o M.L.Sharma, Opp. Oswal Ispat Udyog,
G.E.Road, Raipur, Tahsil And District Raipur, Chhattisgarh.
5. The Divisional Manager, Tata A I G General Insurance Co. Ltd. At Shot
No. 126, Ground Floor, Dhillan Complex, Supela Bhilai, P.S. Supela,
Tahsil And District Durg, Chhattisgarh

---Respondents

For appellant/Insurance Company	:	Shri R.N.Pusty, Advocate.
For respondent No.1 & 2	:	Shri Utsav Mahiswar under instruction of Shri P.R.Patankar, Advocate.
For respondent No.5	:	Shri Abhishek Sinha, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

12/10/2017

1. Present is an appeal under Section 173 of the Motor Vehicle Act challenging the award dated 23/09/2016 passed by the learned 6th Additional Motor Accident Claims Tribunal, Durg (C.G.) in Claim Case No.58/2014. Vide the said impugned, the Tribunal in a death case under Section 166 of the Motor Vehicle Act has awarded the compensation of Rs.11,97,000/- along with interest @ 9% per annum from the date of application.
2. It is a case where the deceased Phulchand Yadav, aged around 20 years while travelling in a Scorpio Jeep bearing registration No.CG-07-M-

9260 at around 9.45 p.m. on 15/03/2016 hit the Metadoor bearing registration No.CG-04-ZB-2083 which abruptly stopped on the middle of the road in front of Khan Dhaba at Patharia. As a result of the accident, the deceased, Phulchand, received greivous injuries to which he later on succumbed.

3. Present is an appeal preferred by the Insurance Company which had insured the Metadoor bearing registration No.CG-04-ZB-2083.

4. The contention of the counsel for the appellant/Insurance Company is that, the impugned award is bad in law on two grounds. Firstly, the court below has not properly appreciated the evidence which have come on record which would clearly establish the contributory negligence on the driver of the Scorpio in which the deceased was travelling. The Metadoor at the relevant point of time did not have fitness certificate and as such there was a breach of policy condition and the driver of the Metadoor was also prosecuted along with other offences for the offence under Section 56/192 of the Motor Vehicle Act. Lastly it was contended that, the quantum of the compensation is also erroneous to the extent that, the compensation paid under the conventional head is on the higher side.

5. So far as the contentions raised by the counsel for the respondents are concerned, what is primarily reflected from the proceedings before the Court below is that, none of the respondents have led any evidence before the Tribunal to justify and prove their respective contentions which they have raised. The contention which the counsel for Insurance Company intends to raise in this case so far as legal liability is concerned is claiming adverse inference to be drawn in the light of the decision laid down by the Hon'ble Supreme Court in the case of ***Raj Rani & Ors. Vs. Oriental Insurance Co.Ltd. & Ors.[2009 {13} SCC 654]***.

6. So far as the facts of the present case is concerned what is reflected is that, the accident in the instant case occurred at around 9.45 p.m. which is

quite a dark time and the place of incident is said to be in front of Khan Dhaba where the driver of the Metadoor is said to have parked the vehicle on the middle of the road without any sufficient indication or parking light which could have given a sufficient indication to the vehicle coming from the back.

7. Considering the fact that the vehicle was parked without any sufficient indication and at the middle of the road by itself would show that, it was the driver of the Metadoor who was primarily responsible for the accident to occur.

8. Now, whether there was any contributory negligence on part of the driver of the Scorpio in which the deceased was travelling, it would reveal that none of the counsel for the respondents have led any evidence even averring negligence on part of the driver of the Scorpio on which the contributory negligence could had been apportioned between the two drivers. Thus, the contention raised by the counsel for the respondent in the instant appeal stands negated.

9. So far as judgment which has been relied upon by the counsel for the appellant, it is distinguishable on it's fact itself where there was sufficient evidence in respect of pleadings that respective parties have placed which in the instant case is missing.

10. So far as breach of provision of Motor Vehicle Act are concerned, again what is reflected is that, there is no evidence in this regard led by the Insurance Company. Moreover, the only document which has been relied upon is the document which were prepared in the course of registering of the F.I.R. and the subsequent initiation of the Criminal Case where the driver of the Metadoor has been convicted on the said charge has not been brought on record with which it could be held that the vehicle was running without fitness certificate. Moreover, merely if it is alleged that the vehicle was

running without any proper fitness certificate by itself would not absolve the Insurance Company of its liability.

11. So far as compensation under the conventional head being on the higher side is concerned, this court keeping in view the decision of the Supreme Court in the case of ***Rajesh & Ors. Vs. Rajbir Singh & Ors. [2013 {9} SCC 54]*** and also considering the fact that the deceased at the time of accident was aged around 20 years and the parents of the deceased were middle aged persons in their 40's being awarded Rs.1,00,000/- each for the loss of there young son, this court does not find the awarded compensation in any manner on the higher side.

12. The appeal of the Insurance Company thus fails and is accordingly rejected.

Sumit

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