

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No.248 of 2009**

Manager, The Oriental Insurance Company Limited, Bhusawal, Branch Office Manocha Bhawan, Near to Muliciple Hospital, Bhusawal, District Jalgaon (Maharashtra).

---Appellant

Versus

1. Daltan Nirmalkar S/o Punitram Nirmalkar, age 28 years.
2. Shekhar Thela @ Toran Nirmalkar S/o Punitram, age 30 years.
3. Vedprakash Nirmalkar S/o Shekhar Thela @ Toran, age 10 years, Minor through Father Guradian Shekhar Thela @ Toran Nirmalkar.
All are R/o 8B, Risali Sector, Thana Newai, Tahsil Durg, District Durg (C.G.).
4. Istekhar Ahmad S/o Mohd.Ramzan Beg, age 23 years, R/o Chandrapur, Mahakali Colony, District Chandrapur (Maharashtra).
5. Shekh Khalid S/o S.K.Daud, R/o Muktainagar, Edlawad, District Jalgaon (Maharashtra).
6. The New India Insurance Company, Thakkar Chember G.D.Road, Power House Bhilai, Tahsil & District Durg (C.G.).

---Respondents

For appellant/Insurance Company	:	Shri Sudhir Agrawal, Advocate.
For respondent No.6	:	Shri Qamrul Aziz, Advocate.

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

09/11/2017

1. Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 29/11/2008 passed by the learned 1st Additional Motor Accident Claims Tribunal, Durg (C.G.) in Motor Accident Claim Case No.20/2005.
2. Vide the said impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded the compensation of Rs.69,500/- along with interest @ 6% per annum and with penal interest of 9% if the amount is not deposited within a period of two months.
3. While passing the said impugned award the Tribunal has assessed contributory negligence on part of the two vehicles involved in the accident and

fastened the liability of 75% of the aforementioned amount upon the present appellant.

4. At this juncture the counsel for the appellant as well as the counsel for the respondent No.6/Insurance Company i.e. the insurer of the Sumo vehicle involved in the accident submits, that the appeal arising out of the another claim case which arose from the same accident i.e. claim case No.22/2005 the appeal of which was MAC No.708/2009 filed before this court has been partly allowed by modifying the award to the extent of the amount being directed to be deposited by the present appellant with the liberty of recovering the same from the owner and the driver of the Truck i.e. respondent Nos. 4 & 5.

5. Without entering into the merits of the case, since the coordinate bench has already taken a decision in an appeal filed by the present appellant from another different claim case arising out of the same accident, this court is also inclined to follow the order passed in the said judgment and it is ordered, that the present appeal in the given facts and circumstances deserves to be and is partly allowed and it is held, that the appellant/Insurance Company shall deposit 75% of the amount which has fallen upon it to be paid first and thereafter shall be entitled to recover the same from the owner and the driver of the Truck bearing registration No.MH-19-Z-0098.

6. It is made clear, that the provision of penal interest awarded by the Tribunal shall now become effective from today. In the event, if the appellant deposit the amount within two months time from today, the provision of penal interest shall not come into force. However, in the event if the amount is not deposited within two months time, the order of penal interest shall automatically become applicable.

7. The appeal of the Insurance Company stands partly allowed and disposed off.

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