

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 242 of 2009**

The Oriental Insurance Co. Ltd. Raipur, Through: the Divisional Manager, Divisional Office No.1, Oriental Insurance Co. Ltd. Jail Road, Raipur, District Raipur, Chhattisgarh, Through: the Divisional Manager, Divisional Office, Bilaspur, In front of Rajiv Plaza, Bilaspur, Chhattisgarh

---- Appellant**Versus**

1. Smt. Indu Tiwari, Wd/o. Late Goverdhan Prasad Tiwari, aged about 45 years,
2. Mahesh Tiwari, aged about 25 years, S/o. Late Goverdhan Prasad Tiwari,
3. Kumari Madhu Tiwari, aged about 20 years, D/o. Late Goverdhan Prasad Tiwari,
4. Kumari Meenu Tiwari, aged about 18 years, D/o. Late Goverdhan Prasad Tiwari,

All R/o. Sahid Bhagat Singh Chouk, Tikrapara, Kailashpuri, Gabrapara, Raipur, Chhattisgarh

5. Excel Carriers Pvt. Ltd., through: the Branch Manager, Excel Carriers Pvt. Ltd. Bhanpuri (Near Patidar Bhawan) Raipur, P.S. Khamtarai, District Raipur, Chhattisgarh

----Respondents**MAC No. 675 of 2009**

Excel Carriers Pvt. Ltd., through: the Branch Manager, Excel Carriers Pvt. Ltd. Bhanpuri, Near Patidar Bhawan, Raipur, P.S. Khamtarai, District Raipur, Chhattisgarh

---- Appellant**Versus**

1. Smt. Indu Tiwari, Wd/o. Late Goverdhan Prasad Tiwari, aged about 45 years,
2. Mahesh Tiwari, aged about 25 years, S/o. Late Goverdhan Prasad Tiwari,
3. Kumari Madhu Tiwari, aged about 20 years, D/o. Late Goverdhan Prasad Tiwari,
4. Kumari Meenu Tiwari, aged about 18 years, D/o. Late Goverdhan Prasad Tiwari,

Respondents No. 1 to 4 are R/o. Shahed Bhagat Singh Chowk, Tikrapara, Kailashpuri, Gabrapara, Raipur, Chhattisgarh

5. The Oriental Insurance Co. Ltd. Through: its Divisional Manager, The Oriental Insurance Co. Ltd. Jail Road, Raipur, District Raipur, Chhattisgarh

----Respondents

For Claimants	:	Mr. Amiyakant Tiwari, Advocate
For Excel Carriers Pvt. Ltd.	:	Mr. P.R. Patankar, Advocate
For Insurance Company	:	Mr. H.P. Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

13/10/2017

1. These are two appeals arising out of an award dated 07.11.2008, passed by the Chief Motor Accident Claims Tribunal, Raipur, Chhattisgarh, in Claim Case No. 6/2008.
2. Vide the said impugned award, the Tribunal in a claim case under Section 163-A of Motor Vehicles Act in a death case has awarded a compensation of Rs.6,45,000/- with interest @ 6% per annum from the date of application.
3. MAC No. 675/2009 is an appeal preferred by the registered owner of the offending vehicle involved in the accident assailing the impugned award and MAC No. 242/2009 is an appeal preferred by the Insurance Company challenging the liability of the Insurance Company.
4. For convenience, we intent to take the appeal of the Insurance Company first. The ground of challenge raised by the appellant-Insurance Company is that the deceased in the instant case, since he was himself driving the vehicle when he met with an accident and the vehicle got skidded from the road and fell down resulting in his death would show that there was no negligence of any third person involved in the accident and that it was the deceased himself, who was responsible for the accident. Further, it was contended that the

deceased would not fall within the definition of the third party covering the risk as per the policy.

5. A perusal of the record would show that the documents i.e. the conditions of the policy in respect of liability of third party was produced before the Tribunal and where condition No.3 clearly stipulates that it includes those persons who is driving the motor vehicle with the permission of the insured. In the instant case, the admitted factual matrix is that the deceased was an employee of Excel Carrier Pvt. Ltd. and he met with an accident during the course of his employment.
6. Thus, the contention raised by the Insurance Company is not sustainable in the light of condition No.3 of the guidelines/conditions, which envisages the liability of the third party.
7. As regards the fact that the deceased died because of his own negligence is concerned, since it is a claim under Section 163-A, the aspect of negligence need not be proved. Thus, the appeal of the Insurance Company being devoid of merit, the same deserves to be and is accordingly rejected.
8. So far as the appeal preferred by the employer-Excel Carrier Pvt. Ltd. is concerned, since the award has been passed jointly and severally making the Owner and Insurance Company a party, this Court is of the opinion that once when the liability has been fastened upon the Insurance Company, the appeal of the employer has become inconsequential and the same deserves to be and is accordingly rejected. Moreover, the employer has also not been able

to show any sufficient ground calling for interference with the impugned award. The two appeals, thus stands rejected.

9. Any interim order, which much have been passed by this Court shall stand merged with the present final order, thus the interim directions, if any, stands vacated.

Sd/-
(P. Sam Koshy)
Judge

Ved