

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 1403 of 2017**

Oriental Insurance Company Limited, Divisional Office -1, Jail Road
Madina Building, Raipur Tahsil And District Raipur Chhattiagarh.

---- Appellant**Versus**

1. Smt. Ganeshwari Sahu Wd/o Late Santosh Sahu, Aged About 30 Years
2. Ashish Kumar Sahu, Aged About 11 Years
3. Ku. Rani Sahu, Aged About 9 Years
Both Daughter of Late Santosh Sahu and Both Minor Through
Guardian Mother Smt. Ganeshwari Sahu.
4. Arun Lal Sahu, S/o Gopal Ram Sahu, Aged About 57 Years
5. Smt. Bisahin Sahu, W/o Shri Arun Sahu, Aged About 55 Years
All R/o Village Dahdaha, Tahsil And Thana Kurud District Dhamtari,
Chhattisgarh.
6. Dharma Singh S/o Shuru Singh Aged About 61 Years R/o Amanaka
Kukurbeda, Thana Sarswati Nagar, Raipur Chhattisgarh,
7. Raipur Institute Of Technology, C-15, Main Road Shailendra Nagar,
Raipur Tahsil And District Raipur Chhattisgarh.

----Respondents

For Appellant	:	Mr. Sudhir Agrawal, Advocate
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Hon'ble Shri Justice P. Sam Koshy**Order on Board****13/10/2017**

1. Present is an appeal by the Insurance Company under Section 173 of Motor Vehicles Act, assailing the award dated 06.07.2017, passed by the Chief Motor Accident Claims Tribunal, Raipur, Chhattisgarh, in Motor Accident Claim Case No. 672/2015.
2. Vide the said impugned award the Tribunal, in a death case under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.8,95,000/- with interest @ 6% per annum from the date of application.

3. Present is an appeal by the Insurance Company and the ground of challenge is that the accident occurred because of the negligence of the deceased himself, who while trying to overtake another vehicle dashed against the vehicle coming from opposite direction. It was also contended that at best it could be a case of contributory negligence, since it was a head on collision and therefore the present appellant could not be fastened the entire liability of payment of compensation. It was also contended by the counsel for the appellant that the offending vehicle at the relevant point time of was operated without proper permit.
4. The counsel for the appellant further submits that the negligence on the part of the deceased also can be established on the ground that the place of accident was a square and the road was wide enough, which could permit the vehicles to go pass the road at the same time and had he been more vigilant the accident could have been avoided and thus the impugned award deserves to be interfered with suitably.
5. A perusal of the record would show that the driver of the said vehicle had been prosecuted for the offence punishable under Section 304-A of the I.P.C. vide Crime No. 269/2015 and an F.I.R. lodged at Police Station Abhanpur, District Raipur (C.G.). Further the deposition of the driver of the offending vehicle which has been enclosed along with the appeal would show that the driver himself has admitted the fact that he had stopped the vehicle on the road waiting for another vehicle which was coming from behind, which by itself would show that the driver of the offending vehicle had stopped the vehicle without taking necessary precautions of providing

necessary side to the vehicles which were passing on the road and that it also does not reflect that he had given sufficient indication of the vehicle being in a stationary condition with all the parking lights and indicators on. Thus, the grounds of the deceased, being negligent has not been sufficiently proved by any of the witnesses. The reliance to the evidence of the driver of the offending vehicle may not be of any consequence for the reason that he admittedly is the person who is responsible for the accident and against whom the criminal case is also being prosecuted.

6. So far as the witnesses of the claimant's side are concerned, they have not stated anything so far as the negligence on the part of the deceased. Neither is there any witness to the incident, who could have established the negligence on the part of the deceased. Thus, the said ground of the Insurance Company stands negated. So far as the second ground of the vehicle not having proper permit is concerned, the law in this regard is by now well settled, wherein couple of decisions have already been passed, wherein it has been held that only on the ground that the vehicle was not having a valid permit at the time of accident by itself would not absolve the Insurance Company of its liability. At best it may be an offence or a breach under the provisions of the Motor Vehicles Act. Thus, the Insurance Company cannot be exonerated of its liability on this ground. Thus, both the grounds raised by the counsel for the Insurance Company stands negated.
7. The appeal of the Insurance Company thus stands dismissed.

Sd/-

(P. Sam Koshy)
Judge