

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1086 OF 2009

ICICI Lombard General Insurance Co. Ltd., ICICI Towers, Bandra Kurla Complex, Bandra (East), Mumbai, through its Legal Manager, 3rd Floor, Lal Ganga Shopping Complex, G.E. Road, Raipur (C.G.)

... Appellant

versus

1. Smt. Sunita Kewat, W/o Late Shri Dinesh Kumar Kewat, age not known to the appellant.

2. Romit, S/o Late Shri Dinesh Kumar Kewat, aged about 3 years

3. Annu, D/o Late Shri Dinesh Kumar Kewat, aged about 7 years

Both Respondent Nos. 2 and 3 being minor, through their mother, Smt. Sunita Kewat, W/o Late Shri Dinesh Kumar Kewat, age not known to the appellant.

All R/o Sidhi Dafai, Raj Nagar, Thana Bijuri, Tehsil Kotma, District Anuppur (M.P.)

4. Smt. Maya Tiwari, W/o Shri Balmik Prasad Tiwari, aged about 43 years, R/o Ward No.7, Kotma, Tehsil Kotma, District Anuppur (M.P.)

5. Lakhbir Singh, S/o Shri Sundar Singh, aged about 50 years, R/o Muhalla Atehi, Thana Kolgaon, District Satna (M.P.), presently residing at care of Balmik Prasad Tiwari, aged about 43 years, R/o Ward No.7, Kotma, Tehsil Kotma, District Anuppur (M.P.)

... Respondents

For Appellant	:	Mr. P. Acharya, Advocate, under instructions of Mr. Amrito Das, Advocate.
For Respondents No. 1 to 3	:	Mr. Pawan Shrivastava, Advocate.
For Respondent No.4	:	Mr. J.A. Lohani, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

14/11/2017

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, preferred by the appellant-insurance company, assailing the award dated 21.4.2009 passed by Second Additional Motor Accident Claims Tribunal (F.T.C.), Manendragarh, in Motor Accident Claim Case No.44/2008.

2. Vide the impugned award, the learned Tribunal, in a death case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.2,50,000/- in favour of respondents no.1 to 3-claimants with interest

thereon at the rate of 6% per annum from the date of claim application and has fastened the liability for payment of compensation upon the appellant-insurance company indemnifying the respondent no.4-owner and respondent no.5-driver.

3. The present appeal has been filed by the appellant-insurance company challenging the liability which has been fastened upon it.

4. The sole ground of challenge to the impugned award by the appellant-insurance company is that the liability upon the insurance company has been fastened on wrong appreciation of facts by the learned Tribunal. According to the learned counsel for the appellant-insurance company, the vehicle involved in the accident was a Heavy Goods Vehicle and its gross laden weight was 25000 as is reflected from the policy which has been issued and the licence which the driver at the relevant point of time was having was that of a Light Motor Vehicle. Learned counsel for the appellant-insurance company thus prayed that the finding being erroneous the award deserves to be set suitably modified, exonerating the insurance company.

5. Perusal of record would show that the witness examined on behalf of the appellant-insurance company, i.e., AW-3 Yashwant Sahu, an Assistant Sub Inspector of the concerned Regional Transport Office, has categorically deposed before the learned Tribunal referring to the registration certificate of the vehicle that the unladen weight of the vehicle is around 5500 and therefore the vehicle would not fall within the category of Heavy Goods Vehicle but would be a Light Motor Vehicle. The said registration certificate is also on record though not marked.

6. In view of the evidence of the insurance company who has examined the witness from the concerned Regional Transport Office, the contention of the insurance company stands disproved and on the contrary

it is established that the vehicle involved in the accident would fall under the Light Motor Vehicle category. Thus, the finding of the learned Tribunal to that effect seems to be proper, legal and justified warranting no interference.

7. The appeal of the insurance company thus being devoid of merits the same deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge