

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No.571 of 2011**

Cholamandalam MS General Insurance Company Limited,
through Branch Manager, At present Devendra Nagar Road,
Near Chhoti Line, Raipur (C.G.).

---Appellant**Versus**

1. Lachhinder Netam S/o Litia Netam, aged about 45 years.
2. Rajesh Netam S/o Lachhinder Netam, aged 16 years (Minor)
through Natural guardian father Shri Lachhinder Netam.
Both are R/o village Malakot, Tahsil & P.S.Kondagaon,
District Bastar (C.G.).
3. Nijay Kumar Rai S/o Nirmal Rai, aged about 22 years, R/o
Premnagar, Mova, P.S.Pandri, District Raipur (C.G.), working
palce – C/o Shri Rakesh Sahu S/o Late Narayan Sahu, R/o
Indira Bhatha, Premnagar, Mova, P.S. Pandri, District Raipur
(C.G.).
4. Rakesh Sahu S/o Late Narayan Sahu, R/o Indira Bhatha,
Premnagar, Mova, P.S.Pandri, District Raipur (C.G.).

---Respondents

For appellant	:	Shri Roshitashva Singh on behalf of Shri Bhaskar Payashi, Advocate.
For resp.No.3 & 4	:	Shri K.K.Dewangan, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****16/11/2017**

1. Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 26/03/2011 passed by the learned 2nd Additional Motor Accident Claims Tribunal, Raipur (C.G.) in Motor Accident Claim Case No.119/2010.
2. Vide the impugned award, the Tribunal in a death case under Section 163-A of the Motor Vehicles Act has awarded a

compensation of Rs.1,87,000/- with interest @ 6% per annum from the date of application.

3. The challenge to the impugned award by the Insurance Company is on the ground, that the vehicle involved in the accident was running in breach of policy condition in as much as the driver did not have a valid license to drive the vehicle, the vehicle at the time of the accident did not have permit so also the owner-cum-driver have not produced the fitness certificate so far as the vehicle involved in the accident is concerned. He further submits, that an F.I.R. in the instant case has been lodged against an unknown vehicle and therefore the claim itself becomes doubtful and not maintainable.

4. Perusal of the record show, that so far as proceedings under Section 163-A is concerned, the negligence need not to be proved or pleaded by the claimant. The accident is not in dispute, the resultant death also is not in dispute and thus the ground that the deceased was hit by an unknown vehicle would be inconsequential as long as the accident and death are not in dispute.

5. So far as permit and fitness certificate is concerned, from the record it show, that the witness from the R.T.O. have not been examined by the Insurance Company to established this ground. The only witness examined on behalf of the Insurance Company is one of the Manager of the company. Thus, the said ground raised by the counsel for the Insurance Company stands negated.

6. As regards the driver not having valid license is concerned, the said issue is squarely covered by the larger bench decision of the

Hon'ble Supreme Court in the case of ***Mukund Dewangan Vs. Oriental Insurance Company Limited [AIR 2017 SC 3668]***.

7. Thus, the appeal being devoid of merits deserves to be and is accordingly dismissed.

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

Sumit