

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1508 of 2017

1. Ashok Tandan S/o Bain Lal Tandan, Aged About 38 Years R/o Village Pachpedi, Post Khairagarh, Police Station Khairagarh, District Rajnandgaon Chhattisgarh.....(Driver).
2. Kishore Kumar Khatri S/o Bhagwan Das Khatri, Aged About 44 Years R/o Lalbag, Gali No. 3, Police Station Basantpur, District Rajnandgaon Chhattisgarh.....(Owner)

---- Appellants

Versus

1. Manoj Yadav S/o Bhikhari Ram Yadav, Aged About 39 Years
2. Smt. Jaya Yadav W/o Manoj Yadav, Aged About 38 Years
3. Pawan Yadav S/o Manoj Yadav, Aged About 12 Years Minor Through Legal Guardian Father Manoj Yadav Son Of Bhikhari Ram Yadav,
4. Bhikhari Ram Yadav, S/o Late Kodu Ram Yadav, Aged About 65 Years
5. Smt. Punni Bai Yadav, W/o Bhikhari Ram Yadav, Aged About 60 Years

All are R/o Village Farhad, Post Somani, Tahsil Rajnandgaon, District Rajnandgaron Chhattisgarh.....(Claimants)

6. Branch Manager, National Insurance Company Limited, Kamathi Line, Rajnandgaon, Tahsil And District Rajnandgaon Chhattisgarh.....(Insurer)

---Respondents

For Appellant	:	Mr. Abhishek Sharma, Advocate
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Hon'ble Shri Justice P. Sam Koshy

Order on Board

09/11/2017

1. The challenge in the present appeal is the award dated 04.08.2017, passed by the 2nd Additional Motor Accident Claims Tribunal, Rajnandgaon, Chhattisgarh, in Claim Case No. 40/2016.
2. Vide the impugned award, the Tribunal, in a death case under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.5,00,000/- with interest @ 6% per annum from the date of application.

3. While passing the impugned award, the Tribunal has exonerated the Insurance Company of its liability and fastened the liability to pay the compensation upon the present appellants i.e. the Owner and Driver of the offending vehicle.
4. The ground of challenge is on account of the fact that the offending vehicle i.e. TATA Tipper Truck bearing registration No. CG-07-ZC-4520 was being driven by the appellants without permit. The contention of the counsel for the appellants assailing the award is that the Insurance Company has not led sufficient evidence before the Tribunal to establish the fact that the vehicle was being driven without permit. On a query being put to the counsel for the appellants as to whether he has a permit or not, he candidly replied that the appellants did not have a permit on the date of accident.
5. In the given factual matrix of the case, this Court is of the opinion that the finding of the Tribunal cannot be said to be erroneous or contrary to the evidence and the impugned award does not warrant any interference.
6. What is all the more relevant to take note of the fact is that the non-applicants No. 1 & 2 had also entered appearance before the Tribunal and participated in the proceedings and they had every opportunity to produce the permit, if at all they had, for this reason also the finding of the Tribunal cannot be held to be bad in law.
7. The view of this Court stands fortified by the decision of the Hon'ble Supreme Court in the case of **"National Insurance Co. Ltd. vs. Challa Bharthamma"** (2004) 8 SCC 517 and also judgment passed by the Division Bench of Karnataka High Court in the case of

“Suresh Kumar vs. Oriental Insurance Company Limited and Others”, 2016 ACJ 679.

8. In view of the same, the present appeal being devoid of merit, same deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved