

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MA No. 1346 of 2005**

The Oriental Insurance Co. Ltd. through Divisional Manager, Oriental Co. Divisional Officer, Near High Court Road, Bilaspur (CG).

---- Appellant**Versus**

1. Saukhi Ram Patel S/o Dukhu Ram Patel, aged about 30 years, R/o village Bhalpahari, Post Madmada, Thana, Bodla, District Kabirdham (CG).
2. Gangadhar Sahu, S/o Kalaram Sahu, aged about 21 years.
3. Kalaram Sahu S/o Najar Singh, aged about 55 years
Both R/o village Leelapur, PS Mungeli, Tahsil Lormi, District Bilaspur (CG).

---- Respondents**MA No. 1437 of 2005**

The Oriental Insurance Co. Ltd. through Divisional Manager, Oriental Co. Divisional Officer, Near High Court Road, Bilaspur (CG).

---- Appellant**Versus**

1. Smt. Roop Bai W/o Badalram Kumbhakar, aged about 40 years, R/o Nutan Chowk, Sarkanda, Bilaspur (CG).
2. Gangadhar Sahu, S/o Kalaram Sahu, aged about 21 years.
3. Kalaram Sahu S/o Najar Singh, aged about 55 years, Both R/o village Leelapur, PS Mungeli, Tahsil Lormi, District Bilaspur (CG).

---- Respondents

For Appellant	:	Shri AK Athaley, Advocate.
For Claimants	:	Shri Malay Kumar Bhaduri, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****06/09/2017**

1. These are two appeals filed by the insurance company under Section 173 of the Motor Vehicles Act assailing the common award dated 25.07.2005 passed by the 9th Additional Motor Accident Claims Tribunal (FTC) Bilaspur (in short, the Tribunal) in Claim Case Nos.49/05 and 54/05. Vide the impugned award, the Tribunal in an application filed under Section 166 of the Motor Vehicles Act, has awarded compensation of Rs.43,502/- and 32,900/- respectively

along with interest @ 6 percent per annum from the date of application.

2. The challenge by the insurance company is the liability aspect. The contention of the appellant is that from the evidence which have come on record and from the findings of the Tribunal itself, it is evidently clear there was breach of policy conditions inasmuch as the Tribunal has given the positive finding of the driver of the Tractor not having any licence on the date of accident. In addition, the finding of the Tribunal is also positive to the extent that at the time of accident there were around 25-30 persons travelling on the Tractor-trolley. The Tribunal has not taken these aspect into consideration while deciding the claim case. The only criteria of saddling liability upon the insurance company is the finding which is reflected in paragraph 24 which deals with the owner and driver of the offending vehicle not having given proper intimation to the insurance company pertaining to the accident which according to Tribunal was not a ground by which the insurance company could be exonerated of its liability.
3. The Tribunal has not taken into consideration the aspect of the driver not having any licence at the time of accident so also in spite of Tractor taking around 25-30 persons at the time of accident. What is more relevant is the fact that a perusal of policy would also reveal that it is only a Policy which was issued only covering the risk of driver. No extra premium was paid for any persons extra who would be travelling on the Tractor-Trolley.
4. For all the aforesaid reasons, this court is of the opinion that the

finding of the Tribunal holding the insurance company also as jointly and severally liable for payment of compensation is contrary to the evidence which have come on record and also contrary to the law.

5. In view of the same, this court is inclined to allow the appeals of the insurance company. However, considering the facts that these appeals of the year, 2005 i.e. almost 12 years old and the amount awarded is also too meager and the insurance company in both the appeals having already deposited the entire amount awarded, this court is of the opinion that amount so deposited, if not released, may be released to the respective claimants in both the appeals. However, liberty shall be with the the appellants-insurance company to recover the said amount from the owner and driver of the offending Tractor-Trolley.
6. With the aforesaid observations, both the appeals are allowed to the above extent. Interim order passed earlier stands merged with this order.

Sd/-
(P.Sam Koshy)
Judge