

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 523 of 2017**

Cholamandlam M.S. General Insurance Company Limited Hinduja Complex, 1st Floor, Parasnagar Chowk, Near Railway Line, Devendra Nagar, Raipur, Post And Distt. Raipur, At Present- 2nd Floor, In Front Of L.I.C. Office, Simran Tower, Raipur, Police Station Pandri, Civil & Revenue District Raipur, Chhattisgarh(Insurer of Vehicle No. C.G.17 SS 9295).

---- Appellant**Versus**

1. Smt. Samari Kashyap Wd/o Late Bholaram Kashyap, Aged About 52 Years R/o Trival Colony, Dr. Bhimrao Ambedkar Ward, Dantewada, Post, Tahsil And Distt. Dantewada, Chhattisgarh(Claimant).
2. Ashwani Rajkumar Mining And Trading Company, Geedam Road, Jagdalpur, Distt. Bastar, Chhattisgarh(Owner Of Vehicle Bus No. C.G.17 S S 9295).

---- Respondents

For Appellant	:	Shri Shokie Yadav, Advocate.
For respondents	:	Shri Vikas Shrivastava, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****21/07/2017**

1. This is insurer's appeal under Section 173 of the Motor Vehicles Act against the award dated 09.01.2017 passed by the 1st Additional Motor Accident Claims Tribunal, Dantewada (in short, the Tribunal) in Claim Case No.17/2014.
2. The facts and brief is that Ku. Shanti Kashyap while travelling in the offending vehicle Bus belonging to the Respondent No.2 bearing Registration No. CG-17-SS-9295, which was duly insured by the present appellant, met with an accident when the Bus was blown up in a Naxal Attack on 17/05/2010. As a result of the said accident, Ku. Shanti Kashyap sustained grievous injuries and later succumbed.

Report in this regard was registered at Police Station Gadiras in Crime No.20/2010. The claimant, who is mother of the deceased, filed a claim application under section 163-A read with section 140 of the Motor Vehicles Act (In short MV Act) seeking for compensation.

3. The Tribunal taking into consideration the pleadings and evidence which have come on record allowed the claim application and granted compensation to the tune of Rs.2,75,000/- along with interest at the rate of 6% per annum from the date of application. It is this award which is under challenge by the Insurance Company.
4. The main contention raised by the counsel for the appellant is that the application filed by the claimant itself was not sustainable in view of section 163-B of the MV Act. According to him since the application has been filed under section 163-A read with section 140 of the MV Act, the application ought to have been rejected by the Tribunal as application under section 163-A of the MV Act could not have been entertained along with an application under section 140 of the MV Act. It could had been only one of the reliefs.
5. The said contention of the appellant seems to be hyper technical for the reason that there does not appear to have been any relief granted under section 140 of the MV Act and that the relief confined by the Tribunal is also only under section 163-A of the MV Act.
6. The other objection which the appellant has raised is that there was no fault on the part of the driver and owner of the vehicle on the basis of which the compensation could have been fastened jointly and severally upon the owner and insurer. This contention of the

appellant also is not sustainable for the reason that for grant of compensation under section 163-A, negligence on the part of the driver is not required.

7. It was further contended by the appellant that it was necessary for the claimant to have also impleaded the State Government as party and should have claimed compensation against the State Government. This argument of the Appellant also is untenable for the reason that section 163-A of the MV Act clearly envisages the fact that the owner and the driver of the offending vehicle shall be liable to pay compensation in respect of an accident arising out of the use of Motor Vehicle and which in the instant case has been fully established. It may not be a case where the accident arose because of the rash and negligent driving of the driver of the Bus. It is a case where the accident occurred due to Naxal Attack on the offending Bus. Thus, indisputably the accident occurred in the use of Motor Vehicle and for which section 163-A of the MV Act provides for the owner and the driver to pay compensation in the event of any accident that takes place.
8. In view of the same, this court is of the opinion that no strong case is made out by the appellant-Insurance Company calling for any interference with the impugned award.
9. Thus, the appeal being devoid of merit deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

inder