

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 911 of 2017**

HDFC Ergo General Insurance Co. Ltd. Through Its Branch Manager H D F
C Ergo General Insurance Co. Ltd. Office Devendra Nagar Tiraha, Vanijaye
Bhawan, Raipur, District Raipur, Chhattisgarh.

---- Appellant**Versus**

1. Smt. Ramshila Bai W/o Late Shri Chaitram Patel, Aged About 30 Years
2. Rahul S/o Late Shri Chaitram Patel, Aged About 12 Years
3. Sahil S/o Late Shri Chaitram Patel, Aged About 10 Years
No. 2 & 3 are Minor Represented Through Natural Guardian Mother Smt.
Ramshila Bai, Respondent No.1, R/o Village Urdara, Chowki Hardibazar,
Thana Kusmunda, Presently Residing At Village Tarda, Thana Urga, Tehsil
Kartala, District Korba, Chhattisgarh(Claimant No.3)
4. Bedram S/o Late Shri Dayaram, Aged About 60 Years
5. Smt. Itwara Bai W/o Shri Bedram, Aged About 58 Years
All R/o Village Urdara, Chowki Hardibazar, Thana Kusmunda, Presently
Residing At Village Tarda, Thana Urga, Tehsil Kartala, District Korba,
Chhattisgarh(Claimant No.5)
6. Ashok Kumar Jaiswal S/o Ganesh Ram Jaiswal, Aged About 37 Years R/o
Budgahan, Thana Baloda, Tehsil Baloda, District Janjgir-Champa,
Chhattisgarh(Non-Applicant No.1/ Driver Of Pick Up Vehicle No.
C.G.04 J C 7492)
7. K J S L Coal And Power Pvt. Proprietor Dheer Vidit Sharma, Office 5th
Floor, Ozone Complex, Fafadih, Raipur, Chhattisgarh R/o Budgahan,
Thana Baloda, Tehsil Baloda, District Janjgir-Champa,
Chhattisgarh(Non-Applicant No.2/ Owner Of Pick Up Vehicle No.
C.G.04 J C 7492)

---- Respondents**MAC No. 912 of 2017**

HDFC Ergo General Insurance Co. Ltd. Through Its Branch Manager H D F
C Ergo General Insurance Co. Ltd. Office Devendra Nagar Tiraha, Vanijaye
Bhawan, Raipur, District Raipur, Chhattisgarh(Insurer/
Respondent No.3).

---- Appellant**Versus**

1. Ramprasad S/o Shri Radhelal, Aged About 35 Years R/o Saravmangla
Road, Mission Road, Korba, Thana Kotwali, Korba, Tehsil and District
Korba, Chhattisgarh(Claimant No.1)
2. Ashok Kumar Jaiswal S/o Ganesh Ram Jaiswal, Aged About 37 Years R/o
Budgahan, Thana Baloda, Tehsil Baloda, District Janjgir-Champa,
Chhattisgarh(Non-Applicant No.1/ Driver Of Pick Up Vehicle No.
C.G.04 J C 7492).
3. K J S L Coal And Power Pvt. Proprietor Dheer Vidit Sharma, Office 5th
Floor, Ozone Complex, Fafadih, Raipur, Chhattisgarh R/o Budgahan,
Thana Baloda, Tehsil Baloda, District Janjgir-Champa,
Chhattisgarh(Non-Applicant No.2/ Owner Of Pick Up Vehicle No.
C.G.04 J C 7492)

---- Respondents

For Appellant

:Shri Amrito Das, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

25.09.2017.

1. By this common judgment both the appeals are being disposed of, as common facts & issues are involved in these appeals and arise out of the same accident.
2. Both the appeals under Section 173 of the Motor Vehicles Act have been filed against the award dated 27.02.2017 passed by the 2nd Additional Motor Accident Claims Tribunal, Korba, in Claim Case Nos.24/2014 and 21/2015 respectively. Claim Case No.24 of 2014 is in connection with death case and Claim Case No.21 of 2015 is an injury case. Vide the said impugned award, the Tribunal in a death case has awarded compensation of Rs.8,74,448/- and Rs.1,93,102/- in case of injury.
3. Both the appeals have been filed by the insurance company assailing the liability part. Counsel for the appellants submits that these are cases where the driver of the offending vehicle at the relevant point of time did not have a valid licence. According to him, the driver at the relevant point of time had only a licence to drive motorcycle with gear and light motor vehicle whereas, the vehicle involved in the accident was a Pick Up Van which was a transport vehicle and as such the driver did not have an endorsement of permission to drive a transport vehicle. In addition, the counsel for insurance company also argued on the issue of there being contributory negligence inasmuch as the

deceased was under the influence of Alcohol at the time of accident as is reflected from Postmortem report. Therefore, the Tribunal should have given a finding of contributory negligence while deciding the case. It is a case where the deceased himself had dashed the Pick Up van from the rear side which would further establish that there was an element of contributory negligence on the part of person driving the motorcycle.

4. A perusal of record does not show any evidence which have been led by the parties with which it can be said that there was an element of negligence on the part of driver of the motorcycle which resulted in the accident. In the absence of any strong material to take a different stand, the said contention of the insurance company stands negated.
5. So far as the driver of offending vehicle not having proper endorsement, this court is of the opinion that in the light of recent decision of larger bench of Supreme Court in case of Mukund Devangan Vs. Oriental Insurance Co. Ltd., AIR 2017 SC 3668, the said issue already stands decided. As per Mukund Dewangan's case, the requirement of endorsement on the licence is not required if the offending vehicle itself is a Light Motor Vehicle and the insurance company cannot be exonerated on this ground.
6. For the aforesaid reasons, this court is of the opinion that both the appeals do not have much force and are accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge