

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 1470 of 2017**

The New India Assurance Company Ltd. Through its Divisional Manager, Divisional Office, Madina Building, Jail Road, Raipur, Tahsil and District Raipur, Chhattisgarh.

---- Appellant**Versus**

1. Bhuwanlal Sahu S/o Chaman Sahu, Aged About 43 Years
2. Smt. Resham Bai W/o Bhuwanlal Sahu, Aged About 40 Years
3. Chhannu Sahu S/o Bhuwanlal Sahu, Aged About 19 Years
4. Ku. Sunita Sahu D/o Bhuwanlal Sahu, Aged About 18 Years

All are R/o Village Banrasi, P.S. Arang, District Mahasamund, Chhattisgarh,

Halmukam Imli Bhantha, Ward No.2, Mahasamund, Chhattisgarh.

5. Umar Alishah S/o Mohd. Alauddin Shah, Aged About 27 Years R/o Gopinathpur, P.S. Kachaiya, District Mujaafarpur (Bihar)

Halmukam B-33, Krishna Vihar, Delhi

6. K. Madhukar Rao S/o K.Narayan Swami, R/o J-64, Tilak Nagar, Gudhiyari Chowk Raipur, Chhattisgarh

7. Narendar Singh S/o Gurmukh Singh, Aged About 53 Years R/o Tatibandh Housing Board Colony, MIG-238, Near Gurudwara Raipur, Chhattisgarh

8. Branch Manager, Shriram General Insurance Company Ltd. Divisional Office 4th Floor Maruti Height Mohba Bazar G.E. Road Raipur, Chhattisgarh

----Respondents

For Appellant	:	Mr. Dashrath Gupta, Advocate
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Hon'ble Shri Justice P. Sam Koshy**Order on Board****02/11/2017**

1. Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act challenging the award dated 31.07.2017, passed by the Additional Motor Accident Claims Tribunal (FTC), Mahasamund, Chhattisgarh, in Claim Case No. H-21/2014.
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.11,00,000/- with interest @ 6% per annum from the date of application.

3. The appeal is by the Insurance Company primarily on the ground that the license which was being used by the offending vehicle i.e. Truck bearing registration No. CG-04-SC-9544 was using a fake license. Another ground which was raised by the Insurance Company is that of there being contributory negligence on the part of the vehicle, which was dashed by the offending vehicle. Perusal of record does not show any sufficient material to have been produced by the Insurance Company to substantiate this contention. Further, the ground of questioning the quantum part is concerned, this Court does not find that there was any scope of interference with the impugned award as claimed for by the counsel for the appellant and in the opinion of this Court the award does not seem to be either exorbitant or disproportioned.
4. The counsel for the Insurance Company refers to the evidence of Shri Satindra Kumar Ahuja, the administrative officer of the Insurance Company, who had produced before the Tribunal a report of the Investigating Officer, which has marked as Exhibit D-2 on the basis which it was found that the license which was produced by the Driver-respondent No.5 namely Umar Alishah was a fake license and that no such license was issued from the concerned R.T.O. and that the number which is reflected on the alleged license of the respondent No.5 was in fact issued in the name of one Dayanand Kumar. Based upon this evidence, the counsel for the appellant

submits that the Insurance Company should have exonerated the appellant of its liability and should have shifted the same upon the respondents No. 5 & 6.

5. A perusal of record show that the respondent No.5 & 6 were proceeded ex-parte before the Tribunal and they inspite of proper service have deliberately avoided the appearance before the Tribunal nor have they led any evidence to disprove the contentions put forth by the Insurance Company-appellant.
6. In the given factual matrix of the case, this Court does not intend to admit the appeal at this stage and issue notice to respondent No.1 & 2 and disposes of the appeal in the light of the decision of the Hon'ble Supreme Court in the case of ***“National Insurance Company Limited vs. Geeta Bhat and Others” (2008) 12 SCC 426***, by allowing the appeal of the Insurance Company in part to the extent that the Insurance Company is granted the liberty to recover the amount of compensation awarded from respondents No. 5 & 6.
7. Applying the principles of pay and recovery the present appeal stands allowed in part and is disposed of with a direction that the impugned award stands modified to the extent that the liability of payment of compensation shall be upon the Insurance Company with the liberty to recover the same from the respondent No. 5 & 6.

Sd/-
(P. Sam Koshy)
Judge