

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 579 of 2016**

- Cholamandlum MS General Insurance Company Limited Through Branch Manager, Branch Office, Ward No. 25, Second Floor, In-Front Of L.I.C. Building , Simran Tower, Raipur, Police Station Pandri, Civil & Revenue District Raipur (Chhattisgarh) (Insurer of Vehicle No. C.G. 17 SS 9295)

---- Petitioner**Versus**

1. Gangaram S/o Hungaram, Aged About 50 Years
2. Smt. Hadme, W/o Gangaram, Aged About 47 Years

Both R/o Bakulaghat, Kanjipaani Panchayat, Post Office Chindgarh, Tehsil And District Sukma Chhattisgarh.....
(Claimants)

3. Ashwani Raj Kumar Mining Company, Geedam Road, Jagdalpur, District Bastar (Chhattisgarh).....(Owner)

---- Respondent**And****MAC No. 580 Of 2016**

- Cholamandlum MS General Insurance Company Limited Through Branch Manager, Branch Office, Ward No. 25, Second Floor, Infront Of LIC Building, Simran Tower, Raipur, Police Station Pandri, Civil & Revenue District Raipur (Chhattisgarh) (Insurer of Vehicle No. C.G. 17 SS 9295)

---- Petitioner**Vs**

1. Smt. Dudhi Mukhe Wd/o Late Lakha, Aged About 42 Years R/o Bakulaghat, Kanjipaani Panchayat, Postoffice Chindgarh, Tehsil And District Sukma (Chhattisgarh).....(Claimant)
2. Ashwani Raj Kumar Mining Company, Geedam Road, Jagdalpur, District Bastar (Chhattisgarh)

---- Respondent**And**

MAC No. 1502 OF 2016

- Cholanandlum M.S. General Insurance Company Limited Through Manager/ Branch Office, Devendra Nagar, Near Railway Crossing, Raipur, At Present- 2nd Floor, Infront Of L I C Building, Simran Tower, Raipur, Police Station Pandri, Civil & Revenue District Raipur, Chhattisgarh(Insurer Of Vehicle No. C.G. 17 S S 9295)

---- Petitioner**Vs**

1. Smt. Kumari Jain Wd/o Late Ramswaroop Jain, Aged About 35 Years
2. Minor Pushpraj Jain Aged About 8 Years
3. Minor Ku. Himanshi Jain, aged about 5 years,

both children of late Late Ramswaroop Jain, Respondent No.2 & 3 are minors and hence representing through her Mother Res. No. 1 Smt. Kumari Jain Wd/o Late Ramswaroop Jain, All R/o Village Bhanbeda, Post and Police Station Bhanupratappur, Distt. Kanker, Chhattisgarh (Claimants)

4. A.R.T. Co. C/o Ashwani Raj Kumar Mining And Trading Company, Geedam Road, Jagdalpur, Tahsil Jagdalpur, Chhattisgarh(Owner Of Vehicle Bus No. C.G. 17 SS 9295)

---- Respondent

For Appellants
For Respective
Respondents

Mr. Rohitshava Singh, Advocate

Mr. P.K. Tulsyan and Mr. A.K. Singraul,
Advocates

Hon'ble Shri Justice P. Sam Koshy**Order On Board****11/7/2017**

1. Heard.

2. Present are the appeals filed under Section 173 of the Motor Vehicles Act assailing the awards dated 31.10.2015 (impugned in MAC Nos.579 & 580 of 2016), passed by Third Additional Motor Accident Claims Tribunal, Bastar at Jagdalpur in Claim Case Nos.38/2015 & 37/2015 respectively and award dated 22.8.2016 (impugned in MAC No.1502/2016) passed by the Second Additional Motor Accident Claims Tribunal, Raipur in Claim Case No.86/2015.
3. Since all the appeals arise out of the same accident, they are being disposed of by this common order.
4. Vide the said impugned awards, the Claims Tribunals in claim applications under Section 163-A of the Motor Vehicles Act have allowed the claim applications and have ordered for payment of compensation to the claimants in MAC Nos.579 & 580 of 2016 to the tune of Rs.3,75,000/- in each claim case and to the claimants in MAC No.1502 of 2016 to the tune of Rs.3,09,505/-. In all the cases, the Tribunal directed for payment of interest @ 9% per annum from the date of applications till realization. It is these awards which are under challenge.
5. The solitary ground which has been raised by the appellant is the fact that the accident in the instant case arose on account of the ill-fated bus being blasted by a bomb by the naxalites when the bus bearing registration NoC.G.17-SS/9295 was plying between Dantewada to Sukma on 17.5.2010. According to the appellant/insurance company, the said incident cannot be termed as an accident, which was a deliberate act on the part of

the naxalites and therefore, the insurance company cannot be forced to indemnify the owner and driver for the said act of the naxalites.

6. Learned counsel for the appellant/insurance company submits that it is a case where the accident occurred because of no fault of the driver as well as the owner and for which reason, the insurance company cannot be saddled for making the payment of compensation. He submits that the claim could have been raised against the State Government and for which, the State was to be arrayed as a necessary party and further, the driver of the vehicle was also not made a party in the present cases. Thus, the proceeding suffers from non-joinder of necessary parties also.
7. Perusal of the record also reveals that the insurance company has not led any evidence before the Tribunal to controvert the findings arrived at by the Tribunal or the evidence which has been led by the claimants. In the absence of any version of the appellant/insurance company except their pleadings in the written statement, the issues raised by the appellant cannot be said to be properly founded.
8. Having considered the contentions put-forth by the appellant and if we look into the provisions of Section 163-A of the Motor Vehicles Act, it clearly reflects that what is meant by the provisions, which was incorporated by way of amendment in the year 1994, is that the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or

permanent disablement due to an accident arising out of the use of the motor vehicle. What is meant to note is the fact that the term used under Section 163 is 'accident' which arises out of the use of the motor vehicle. The said provision does not envisage a situation where the accident has to take place because of rash and negligent act on the part of the owner/driver.

9. In the given circumstances, the contention put-forth by the insurance company that the insurance company would not be liable for indemnifying the owner in the event of the accident/incident, which arises out of a naxalite attack, is unsustainable
10. The appeals, thus, fail and the same being devoid of merits, are liable to be and are hereby dismissed.

Sd/-

(P. Sam Koshy)

Judge

Shyna