

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 179 of 2018**

The United India Insurance Co. Ltd. Branch Office, IInd Floor, adjacent to
Guru Kripa Tower, ICICI Bank, Vyapar Vihar Road, Bilaspur
(Chhattisgarh) through its Divisional Manager

---- Appellant**Versus**

1. Brijesh Kumar S/o Bodhan Lal, aged about 35 years, R/o Nagar Panchayat Malhar, Out Post Malhar, P.S. Masturi, Tahsil Masturi, Distt. Bilaspur (Chhattisgarh)
2. Roshan Singh S/o Budhram Singh, aged about 37 years, Caste - Bhanu, R/o Andhiyarkhor, Bhatthatola, Pendra Road, Gorela, P.S. Gorela, Tahsil Gorela, Distt. Bilaspur (Chhattisgarh) (Driver)
3. Vinayak Netralaya, Prop. Dr. Lalit Makhija, R/o Agrasen Chowk, Link Road, Bilaspur, P.S. Civil Lines, Bilaspur, Tahsil and District Bilaspur (Chhattisgarh) (Owner)

---- Respondents

For Appellant : Shri Pallav Mishra, Advocates

Hon'ble Shri Justice P. Sam Koshy**Order On Board****31/01/2018**

Present is an appeal by the Insurance Company assailing the award dated 17.08.2017 passed by the 4th Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No. 642/16. Vide the impugned award, the Tribunal, in an injury case, has awarded compensation of Rs.86,572/- with interest @ 8.5% per annum from the date of application.

2. The ground of challenge by the Insurance Company is three folds. i) Three persons i.e. injured Brijesh Kumar along with two deceased persons namely Durga Prasad Banjare and Shyamsundar Suryavanshi were travelling

on a motorcycle which was not otherwise permissible and which would have led the vehicle getting imbalanced resulting in the accident. ii) During the course of postmortem, the smell of alcohol was found coming out from the body of the deceased persons. iii) The driver of the motorcycle involved in the accident did not have a driving licence. Counsel for the Insurance Company submits that all the three reasons together clearly establishes contributory negligence.

3. So far as the issue of triple driving is concerned, the said issue stands squarely decided by the Full Bench decision of Madhya Pradesh High Court in **2008 ACJ 393 (Devisingh Vs. Vikramsingh and Ors.)** which is also reported in **2007 (4) MPHT 535** wherein the Full Bench of MP High Court has categorically held that merely because there were three persons travelling on a motorcycle by itself cannot be inferred that they were negligent while driving so as to constitute contributory negligence.

4. So far as the drunken driving is concerned, merely because smell of alcohol was detected during the course of postmortem by itself cannot be presumed that they were in such a drunken condition or an inebriated condition that they were not able to drive the motorcycle properly. Moreover, from perusal of the record it would reveal that the Insurance Company on its own has not led any evidence to substantiate its contention. In the absence of any independent, strong & cogent evidence on the part of the Insurance Company establishing the contention raised in its written statement, the grounds raised in the present appeal may not have much force.

5. The present appeal thus being devoid of merit deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE