

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 1094 of 2012**

The United India Insurance Co. Ltd. Paras Complex, in front of S.B.I. Station Road, Durg, through - its Divisional Manager, Divisional Office- 2nd Floor, Guru Kripa Towers, Vyapar Vihar Road, Bilaspur, P.S. Tarbahar, P.O. Bilaspur, Pin Code No. - 495001, District Bilaspur, Chhattisgarh

---- Appellant**Versus**

1. Smt. Savitri Sahu Wd/o Banshilal Sahu, aged about 38 years (now 40 years), R/o Village - Potiyakala, Ward No. 53, Durg, P.S. Poalgaon, Distt. Durg, Chhattisgarh
2. Ku. Yogeshwari Sahu D/o Late Banshilal Sahu, aged about 21 years, (now 23 Years), R/o Village - Potiyakala, Ward No. 53, Durg, P.S. Poalgaon, Distt. Durg, Chhattisgarh
3. Ku. Purnima Sahu D/o Late Banshilal Sahu, aged about 19 years, (now 21 Years), R/o Village - Potiyakala, Ward No. 53, Durg, P.S. Poalgaon, Distt. Durg, Chhattisgarh
4. Nukesh Sahu S/o Late Banshilal Sahu, aged about 17 years, (now 19 Years), R/o Village - Potiyakala, Ward No. 53, Durg, P.S. Poalgaon, Distt. Durg, Chhattisgarh
5. Gulshan @ Pintu S/o Shiv Narayan, aged about 20 Years, R/o Village - Potiyakala, Ward No. 53, Durg, P.S. Poalgaon, Distt. Durg, Chhattisgarh
6. Chhabish Kumar Sahu S/o Shiv Narayan Sahu, aged about 23 Years, R/o Village - Potiyakala, Ward No. 53, Durg, P.S. Poalgaon, Distt. Durg, Chhattisgarh

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate
For Respondents 1 to 4	:	Shri D. N. Prajapati, Advocate
For Respondents 5 & 6	:	Shri P. R. Patankar with Shri Utsav Mahiswar, Advocates

Hon'ble Shri Justice P. Sam Koshy**Order On Board**

05/03/2018

The present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act. The challenge is to the award dated 30.06.2012 passed by the 1st Additional Motor Accident Claims Tribunal, Durg (CG) in Claim Case No.103/2011. Vide the impugned award, in a death case, the Tribunal has awarded compensation of Rs.3,93,000/- with interest @ 6% per annum from the date of application.

2. Contention of the counsel for the appellant is that the offending Hero Honda motorcycle bearing registration No. CG 07 LT 2396 owned by respondent no.6 was being driven by respondent no.5 on the date of accident without proper licence. He submits that the driver of the motorcycle had only a learner's licence on the date of accident and as such it amounts to breach of policy condition. Even if the respondent no.5 was having a learner's licence, he could have driven the motorcycle provided there was somebody with an effective licence sitting behind him as an instructor which in the instant case is not available. He submits that pillion rider to the respondent no.5 was in fact a minor which stands established from the document produced in the present appeal by way of an application under Order 41 Rule 27 CPC which is a proof of the age of the pillion rider as per the school record.

3. From the record it reflects that the owner and the driver have not been able to adduce before the Tribunal or before this Court any substantive material to show that the motorcycle was being driven by a person having an effective driving licence on the date of accident.

4. Given the facts and circumstances of the case, the exclusive liability of payment of compensation upon the Insurance Company seems to be unreasonable and the same thus deserves to be and is accordingly set aside.

5. However, taking into consideration the fact that by virtue of the award and the subsequent order, the Insurance Company having deposited the entire

amount and the entire amount also having been disbursed to the claimants, the only option left for the direction which can be given in favour of the Insurance Company is that of recovering the same from the owner and the driver of the offending motorcycle i.e. respondents 5 & 6 herein.

6. Accordingly, it is directed that the amount of compensation deposited by the Insurance Company and which stands released to the claimants shall be recovered from the respondents 5 & 6.

7. The appeal thus stands allowed in part.

**Sd/-
(P. Sam Koshy)
JUDGE**