

HIGH COURT OF CHHATTISGARH AT BILASPUR**MISC. APPEAL (C) NO. 147 OF 2018**

The Branch Manager, the Oriental Insurance Co. Ltd., City Branch Office, Commercial Complex, Block D, T.P. Nagar, Korba, Tahsil and District Korba (C.G.), represented through: The Divisional Manager, the Oriental Insurance Co. Ltd., Divisional Office, Rama Trade Centre, First Floor, Opposite Rajeev Plaza, Bilaspur (C.G.) PIN 495001

... Appellant**versus**

1. Smt. Laxmin Bai, W/o Late Duwas Ram Patel, aged about 62 years
2. Balram Krishna Patel, S/o Late Duwas Ram Patel, aged about 40 years

Both the Respondents No. 1 and 2 are by caste Patel, at Village Jaampani, P.S. Uрга, Tahsil Kartala, District Korba (C.G.)

3. Sheikh Mahboob, S/o N.M. Mahboob, R/o Badi Aamti (Badi Omti), Jabalpur, Tahsil Jabalpur (M.P.), presently R/o Ram Nagar, Mudapur, P.S. Kotwali, Korba, District Korba (C.G.)
4. Brijesh Kumar Tripathi, S/o Ram Niwas Tripathi, permanent R/o Maharana Pratap Nagar, Korba, Tahsil and District Korba (C.G.), present address : Bus Stand, Bilaspur, Tahsil and District Bilaspur (C.G.)

... Respondents

For Appellant	:	Mr. Pallav Mishra, Advocate, under instructions of Mr. Ratan Pusty, Advocate.
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Hon'ble Shri Justice P. Sam Koshy**Order on Board****29/01/2018**

1. The appeal is listed on default.
2. Considering the default to be minor in nature, the appellant is directed to remove the default during the course of the day in the Court itself.
3. Heard on admission.
4. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 filed by the appellant-insurance company.
5. Challenge in the present appeal is to the award dated 9.10.2017 passed by the Second Additional Motor Accident Claims Tribunal, Korba, in Claim Case No. 99/2015.

6. Vide the impugned award, the learned Tribunal, in a death case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.3,03,610/- to the respondents no. 1 and 2/claimants with interest thereon at the rate of 7% per annum from the date of claim application.

7. Learned counsel for the appellant-insurance company submits that the challenge to the impugned award firstly is on the ground of contributory negligence. According to the learned counsel for the insurance company, it is a case where the deceased Duwas Ram was standing at the door step of the bus involved in the accident and that it is not a place where a passenger was supposed to stand while the bus is in motion and therefore there is an element of contributory negligence on the part of the deceased himself for the accident to have occurred.

8. The second ground raised by the learned counsel for the insurance company is that the offending bus did not have a valid permit and fitness certificate at the time of accident and this also amounts to a breach of policy condition and the insurance company should not have been saddled with the liability of payment of compensation.

9. Perusal of record would show that the insurance company has led evidence of one Vedram Sahu to substantiate their contentions. However, after considering the evidence the learned Tribunal relying upon a Full Bench decision of the Kerala High Court dealing with the same issue, has rejected the contentions of the insurance company so far as the non-availability of valid permit and fitness certificate is concerned.

10. So far as the issue of the deceased standing at the door step of the bus is concerned, though there is a finding to that effect but the fact that the owner of the vehicle and the cleaner have permitted the deceased to travel standing on the bus by itself would not amount the insurance

company being absolved of its liability of covering the risk of a passenger travelling in the bus.

11. This Court thus does not find the finding arrived at on the two issues raised by the insurance company to be either a perverse finding or a finding contrary to the evidence, particularly when we take into consideration the permissible grounds under Section 149 of the Motor Vehicles Act. Therefore, there does not seem to be any strong case made out worth admitting the appeal.

12. The appeal thus being devoid of merits the same deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge