

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 743 of 2012**

The National Insurance Company Limited, Through: Branch Manager, Mandal Bhartee Nagar Taha Complex, Vyapar Vihar Road, Tahsil and District Bilaspur Chhattisgarh

Through: Authorized Signatory for National Insurance Company Limited Divisional Office, Bilaspur Chhattisgarh

---- Appellant**Versus**

1. Smt. Gouri Devangan, Wd/o. Late Ramkhilawan Devangan, Aged about 40 years,
2. Purushottam Devangan, S/o. Late Ramkhilawan Devangan, Aged about 21 years,
3. Ku. Punam Devangan, D/o. Late Ramkhilawan Devangan, Aged about 18 years,

All R/o. Shyam Nagar Lingiyadih, Near Kali Mandir, Police Station Sarkanda, Tahsil and District Bilaspur Chhattisgarh

4. Balram Devangan, S/o. Jethu Ram Devangan, Aged about 21 years, R/o. Shyam Nagar Lingiyadih, Near Kali Mandir, Police Station Sarkanda, Tahsil & District Bilaspur Chhattisgarh

---- Respondents

For Appellant	:	Mr. B.N. Nande, Advocate
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Hon'ble Shri Justice P. Sam Koshy**Order on Board****28/02/2018**

1. The present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act. Challenge is to the award dated 11.05.2012, passed by the 2nd Additional Motor Accident Claims Tribunal, Bilaspur, Chhattisgarh, in Claim Case No. 67/2011.
2. Vide the impugned award, the Tribunal in a death case has awarded a compensation of Rs.3,24,000/- with interest @ 6% per annum from the date of application. The liability of payment of compensation has been fastened upon the present appellant-Insurance Company.

3. The counsel for the appellant submits that the liability has been falsely fastened since the Driver of the vehicle involved in the accident was not having a valid license on the date of accident. He submits that the deceased in the instant case late Ramkhilawan Devangan was a pillion rider and he was traveling sitting as a pillion rider to the Owner of the vehicle i.e. Balram Devangan. The vehicle involved was a motorcycle bearing registration No. CG/10/EK/2319.
4. According to the counsel for the Insurance Company, the said Balram Devangan did not have a valid license in as much as the license that was in his possession was learner's license and that he was not driving the motorcycle in company with a person having a valid license as is required under the provisions of section 9 read with rule 3 of the Central Motor Vehicles Rules. He further submits that this fact that the Driver had only a learner's license stands established from the evidence of the Owner himself, who has admitted this in his evidence. Likewise, the fact that the pillion rider also did not have a license to drive a motorcycle stands established from the statement of the widow of the deceased, who has categorically stated that he never had a license and he did not even know how to drive a motorcycle. He submits that given the said evidence, the liability should not have been fastened upon the present appellant rather it should have been shifted upon the Owner of the motorcycle i.e. the respondent No.4 himself.
5. None appears for the respondents including the Owner. In the light of the categorical admission by the Owner himself in his evidence that he was only having a learner's license, this Court is of the opinion that the case stands squarely covered by the decision of the Hon'ble

Supreme Court in the case of ***“National Insurance Company Limited vs. Swaran Singh & Others”*** reported in ***(2004) 3 SCC 297*** and the subsequent decisions rendered by the Hon’ble Supreme Court.

6. In the light of the judgment of the Hon’ble Supreme Court in the case of “Swaran Singh” (supra) so also in the subsequent decisions, it is a fit case, where the doctrine of ‘pay and recovery’ can be applied and the Insurance Company can be directed to deposit the entire amount with the liberty to recover the same from the respondent No.4 by initiating appropriate recovery proceedings.
7. Perusal of the record would show that this Court had already directed the Insurance Company to deposit the entire amount and 50% of which was ordered to be released to the Claimants. In the light of the aforesaid facts and circumstances of the case, it is held that let the entire amount be disbursed to the Claimants. However, the Insurance Company shall be at liberty to recover the same from the respondent No.4-the Owner of the motorcycle.
8. The appeal of the Insurance Company thus stands allowed in part.

Sd/-
(P. Sam Koshy)
Judge