

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 423 OF 2012

Reliance General Insurance Company Limited, through Branch Manager,
Jaistambh Chowk, Ravi Bhawan, G.E. Road, Raipur (C.G.)

... Appellant

versus

1. Mamta Sharma, W/o Amarjeet Sharma, aged about 23 years
2. Aditi Sharma, D/o Amarjeet Sharma, aged about 1 year and 6 months (minor) through mother Mamta Sharma.

Both R/o Vivekanand Colony, Camp 2, Bhilai, Pole No.37, P.S. Chhawani, Tahsil and District Durg (C.G.)

3. Suresh Sharma, S/o Late Bhikho Sharma, aged about 50 years
4. Mrs. Shakuntala Sharma, W/o Shri Suresh Sharma, aged about 48 years.

Both R/o Chhatrapati Shivaji Para, Camp 2, Bhilai, near G.G.S. Public School, Bhilai, District Durg (C.G.)

5. Shrawan Singh, S/o Lallan Singh, aged 30 years, R/o Jagdishpur, P.S. Amba, District Aurangabad (Bihar), at present C/o Sunil Kumar Agrawal Construction, Raigarh.

6. Sunil Kumar Agrawal, S/o Radheshyam Agrawal, R/o near Mahila Mahavidhyalaya, Sewakunj Road, Raigarh (C.G.)

... Respondents

For Appellant : Mr. Rohitasva Singh, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08/02/2018

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, filed by the appellant-insurance company.
2. Challenge in the present appeal is to the award dated 16.12.2011 passed by the First Additional Motor Accident Claims Tribunal, Durg, in Motor Accident Claim Case Nos. 14/2009 and 33/2009.
3. Since it is a joint appeal which is not permissible as the award passed was in separate claim applications filed before the Tribunal, the appellant restricts the present appeal so far as the award passed in Motor Accident Claims Tribunal No. 33/2009.

4. 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.4,28,000/- in favour of the claimants with interest thereon at the rate of 6% per annum.

5. Contention of the learned counsel for the appellant-insurance company is that the ground of challenge in the present appeal is the liability part. According to him, the offending vehicle involved in the instant case is a Heavy Goods Vehicle which is a Tipper, bearing registration no. CG13-A-474, owned by respondent no.6 and driven by respondent no.5. He submits that though the offending vehicle is a Heavy Goods Vehicle, the driver of the vehicle on the date of accident only had a licence to drive a Light Motor Vehicle and as such there is a clear breach of policy condition and therefore the liability if any should have been fastened upon the owner and driver of the offending vehicle and not upon the insurance company.

6. A perusal of record would show that the appellant-insurance company in the instant case has not led any evidence to substantiate the said fact. Moreover, the licence of the driver was neither brought on record by the insurance company nor has it been verified or inquired upon by the concerned RTO. In the absence of any such material on record, the finding of the Tribunal cannot be found fault with. The Tribunal has rightly fastened the liability upon the insurance company in the light of there being a valid policy covering the risk of the vehicle involved.

7. The appeal of the insurance company thus being devoid of merits, the same deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge