

**HIGH COURT of CHHATTISGARH, BILASPUR****MAC No. 562 of 2012**

The Oriental Insurance Co. Ltd. through Divisional Manager, the Oriental Insurance Co. Ltd. Permanand Building, Rajendra Park Chowk, GE Road, Durg (CG).

**---- Appellant**

**Versus**

1. Narsingh Usare S/o Shri Mahar Singh, caste, Gond, Aged about 45 years, occupation Labour.
2. Shyambai W/o Shri Narsingh Usare, W/o Narsing Usare, Caste Gond, aged about 43 years,  
Both R/o Village Ramkumhari, Post Kumhari, P.S. And Tahsil Manpur, District Rajnandgaon C.G. Present R/o Sahupara, Ward No. 14, Pt. Dindayal Chowk, Pipariya, Tahsil And District Kabirdham (CG).
3. Rajesh Kumar @ Ravi Jaiswal S/o Kudru Jaiswal, R/o Village Pipariya, Sahu Para Ward No. 14, Near Pandit Deendayal Chowk, Kabirdham, Dist Kabirdham C.G.
4. Smt. Sweta Agrawal, W/o Mukesh Agrawal, R/o Village-Pipariya, Tahsil And Distr. Kabidham C.G.

**---- Respondents**

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| For Appellant    | : | Smt. Chitra Shrivastava, Advocate. |
| For Respondent 4 | : | Shri Vivek Tripathi, Advocate.     |

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**Hon'ble Shri Justice P. Sam Koshy**

**Judgment On Board**

**15.02.2018**

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the insurance company against the award dated 24.03.2012 passed by the Additional Motor Accident Claims Tribunal, Kabirdham (in short, the Tribunal) in Claim Case No.85/2010. Vide the impugned award, the Tribunal has awarded compensation of Rs.2,85,000/- along with interest @ 9 percent per annum from the date of application.
2. The challenge to the award is on the ground that there was a clear

breach of policy conditions. According to appellant, it was a case where the policy which was issued in respect of the offending vehicle i.e. Ex. NA-2-C was covering the risk of 2+1 persons. It was a truck involved in the accident. The deceased person was sitting on the body of the Truck when the accident occurred which was not permissible, and therefore, the insurance company should not be held liable for covering the risk of person sitting on the body of the Truck. It was the contention of the appellant that the insurance company would cover the risk of person sitting in the Cabin of Truck.

3. A perusal of record would show that there was no sufficient evidence to show or brought on record with which it can be conclusively held that the deceased was sitting on the body of the Truck. It is a case where the Truck involved in the accident had turned turtle resulting in to death of the deceased. The place where the deceased was sitting was not established before the Tribunal. Moreover, the policy issued was covering the risk of 2+1 inclusive of driver and thus with the aforesaid facts, the Tribunal has fastened the liability upon the insurance company.
4. The insurance company could only lead evidence of one Vijay who has admitted before the Tribunal that he was not an eyewitness to the incident and that there is no deposition on behalf of any of the eyewitness to establish that the deceased was sitting on the body of the Truck at the time of accident.
5. Under the given circumstances, this court is of the opinion that no strong case has been made out by the appellant-insurance company

to interfere with the award impugned.

6. The appeal thus being devoid of merit deserves to be and is hereby dismissed.

**Sd/-**

(P.Sam Koshy)  
**Judge**

inder