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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 420 of 2016**

{Arising out of Order dated 22.06.2016 passed in Miscellaneous Claim Case No. 183 of 2015 by the 3rd Additional Motor Accident Claims Tribunal, Bastar, Jagdalpur}

1. Smt. Parbatiya Kujur Wd/o Late Khursai Kujur aged about 45 years.
2. Vijay Pascal Kujur S/o Late Khursai Kujur, aged about 27 years.

Both are resident of village Sahapur, Post Kusami, District Balrampur, Chhattisgarh.

---- Petitioners

Versus

1. Prasanna Kumar Tigga S/o Bhagat Tigga, aged about 48 years; R/o Village Farasguda, PS Bhanpuri, District Bastar, Chhattisgarh (Owner).
2. The Reliance General Insurance Co. Ltd. Shop No. 412, 413, Fourth Floor, Jay Stambh Chowk, Ravi Bhawan, Raipur, Chattisgarh. (Insurance Company)

---- Respondents

For Petitioner	: Shri Praveen Tulsyan, Advocate.
For Respondent No. 1	: None
For Respondent No. 2	: Shri Sourabh Sharma, Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Order on Board**29/01/2018**

1. The Petitioners are the legal representatives of a person who died in a motor accident on 10.11.2010. They have instituted this writ petition under Article 227 of the Constitution challenging the decision of the Motor Accident Claims Tribunal setting aside an ex-parte Award at the instance of the Insurer.
2. Heard the learned counsel for the Petitioners and the learned counsel for the Insurer, who is the second Respondent.

3. The first Respondent, owner of the vehicle though served, is not appearing. He did not appear before the Tribunal. There is an ex-parte Award as against him.
4. To my query, it is pointed out by the learned counsel for the Insurer that the Registration Certificate particulars and other details in relation to the vehicle do not match with the name of the first Respondent herein, Prasanna Kumar Tigga, who, according to the Insurer, does not appear to be the registered owner going by the particulars handed down to the Insurer by the owner of the vehicle. The fact of the matter remains that the insurance cover provided by the Insurer for the vehicle involved in the accident is not in dispute. Obviously, therefore, if the said insurance cover had been obtained contrary to the Registration Certificate particulars, it may be open to the Insurer to continue with the action and recover the amount from the owner of the vehicle; not beyond. However, this can be only after the Insurer-second Respondent herein satisfies the Award passed by the Tribunal. The Insurer may then proceed to have an adjudication before the Tribunal itself as regards its eligibility to recover the Award amount from the first Respondent-Prasanna Kumar Tigga, who is shown to be the owner of the vehicle.
5. In the result, this writ petition under Article 227 of the Constitution is ordered as follows:
 - (i) The impugned order will benefit the second Respondent-Insurer only to the extent of permitting it to agitate the issue as to indemnity on the basis of insurance or its repudiation by the Insurer. This means that the second Respondent-Insurer will be entitled to plead before the Tribunal that it is entitled to an order for recovery of the amounts from the first Respondent-Prasanna

Kumar Tigga to the extent the Insurer satisfies the Award passed by the Tribunal in favour of the Petitioners.

(ii) The aforesaid will be on condition that the second Respondent-Insurer satisfies the Award passed by the Tribunal by paying off the Petitioners, who are Claimants before the Tribunal, within a period of one month from today, without prejudice to the contentions that the Insurer may have against the first Respondent-Prasanna Kumar Tigga.

(iii) The directions contained herein are issued in exercise of authority under Article 227 of the Constitution in supersession of the order setting aside the *ex-parte* Award and also by modifying the Award to the extent as stated above.

(iv) It is made clear that if the second Respondent-Insurer avails the benefit of this order to agitate the issue relating to the insurance cover, as permitted herein, all the statutory defences that may be available to the Insurance Company, so far as it is against the first Respondent-Prasanna Kumar Tigga, will stand preserved.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE