

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 320 of 2018**

1. Peku Ram Mar S/o Late Bhukhan Ram Aged About 55 Years R/o Village Rehda, Police Station Kusmi, Tahsil Shankargarh, District Balrampur-Ramanujganj, Chhattisgarh (Owner Of Bolero Pick-Up No. Jhay/5198), District : Balrampur, Chhattisgarh.
2. Vijay Ram Painkra S/o Shri Parsi Ram Painkra Aged About 30 Years R/o Village Kodwa, P.S. Kusmi, Tahsil Shankargarh, District Balrampur-Ramanujganj, Chhattisgarh (Driver Of Bolero Pick-Up No. Jhay/5198), District : Balrampur, Chhattisgarh.

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1. Smt. Mahgi Wd/o Late Dashrath Mar Aged About 43 Years
2. Sudama Ram S/o Late Dhashrath Ram Aged About 23 Years
3. Santosh Ram S/o Late Dashrath Ram Aged About 20 Years
4. Sandip Ram S/o Late Dashrath Ram Aged About 16 Years
5. Umesh Ram S/o Late Dashrath Ram Aged About 11 Years
6. Kumari Susmika D/o Late Dashrath Ram Aged About 9 Years

Respondents No.4 to 6 are minor through Natrual Guardian Mother Smt. Mahgi, Wd/o Late Dashrath Ram,
All R/o Village Rehda, Police Station Kusmi, Tahsil Shankargarh, District Balrampur-Ramanujganj, Chhattisgarh (Claimants)

7. Branch Manager National Insurance Company Limited, Ranchi, Branch Nambar, Kacheri Road, Ranchi, Jharkhand (Insurer Of Bolero Pick-Up No. Jhay/5198), District : Ranchi, Jharkhand.

---- Respondents

For Appellants	:	Shri Dashrath Kushwaha, Advocate.
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Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****21.02.2018**

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the owner and the driver against the award dated 07.01.2017 passed by the 5th Additional Motor Accident Claims Tribunal, Ambikapur (in short, the Tribunal) in Claim Case No.29/2013. Vide the impugned award, the Tribunal has awarded

compensation of Rs.6,01,500/-along with interest @ 7 percent per annum from the date of application. While passing the award, the Tribunal has applied the doctrine of “Pay and Recovery” and has directed the insurance company to pay the awarded amount and to recover the same from the owner and driver i.e. the appellants herein.

2. Though the impugned award was passed on 07.01.2017, the present appeal is being filed after more than one year i.e. on 13.02.2018. It is not a case where an ex parte award was passed against the owner and driver. The only ground for condonation of delay sought for is that they did not have requisite money available with them which was required for the purpose of filing of appeal.
3. For condonation of delay in filing the appeal, the explanation should be convincing and satisfactory. However, taking a pragmatic view, IA No.1 is allowed and delay in filing the appeal is condoned and the appeal is heard on admission.
4. Learned counsel for the appellants submits that the Tribunal has wrongly applied the principle of Pay and Recovery and the entire amount of compensation ought to have been upon the insurance company. The contention is that, the vehicle belonging to the appellants i.e. Bolero Pick UP bearing registration No.JHAY 5198 which was owned by the appellant No.1 and being driven by appellant No.2 was duly insured with the respondent No.7 and therefore for an accident and resulting death of a third party, the entire liability should had been upon the insurance company and the

principle of Pay and Recovery should not have been applied by the Tribunal in the instant case.

5. He further submits that it is a case where the driver had a proper and valid license on the date of accident and on this ground also the findings of the Tribunal is erroneous.
6. However, a perusal of records particularly the findings of Tribunal in paragraph 9 it reflects that the appellant No.2 the driver-Vijay Ram Painkra himself was examined before the Tribunal as NAW-1 and where he had produced his driving license Ex.D/1 which clearly reflects that he only had a license to drive motorcycle with gear. He did not have license to drive Light Motor Vehicle. Moreover, the witness from the office of RTO, Ambikapur namely Pawan Kumar Sahu was also examined, who on verification of records, has deposed that the appellant No.2-Vijay Ram was not having a valid license to drive four wheeler on the date of accident.
7. Given the aforesaid categorical findings of the Tribunal, this court is of the opinion that no strong case is made out by the appellants calling for an interference with the impugned award where the doctrine of Pay and Recovery has been applied by the Tribunal.
8. Under the said circumstances, the appeal fails and is accordingly dismissed.

Sd/-
(P.Sam Koshy)
Judge