

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 910 of 2012**

The Oriental Insurance Co. Ltd. Through Divisional Manager, The Oriental Insurance Co. Ltd. Branch No. 2, 2nd Floor, Chawla Complex, Sai Nagar, Devendra Nagar, Raipur C.G.

---- Appellant**Versus**

1. Punit Ram Dahariya S/o Late Babulal Dahariya Aged About 39 Years
2. Duj Bai W/o Punitram Dahariya Aged About 38 Years
3. Ku. Ramla Dahariya D/o Punitram Dahariya Aged About 16 Years
Respondent No.3 is minor through father Punitram Dahariya
All R/o Village And Post Sarva, P.S. Kasdol, Dist. Raipur C.G., District :
Raipur, Chhattisgarh.
4. Shailendra Kumar Singh S/o Ram Babu Singh Rajput R/o Telghani Naka
Behind Swastika Dal Mill Raipur P.S. Ganj, Raipur C.G.
5. M/s Vijay Steel Corporation S/o Through Manager, M/s Vijay Steel
Corporation, Qtr, No. 32, Kabir Nagar Hirapur, Ring Road, No. 2, Raipur,
Tahsil And District Raipur C.G.,

---- Respondents

For Appellant	:	Shri Pankaj Agrawal, Advocate.
For respondent No.1 to 3	:	Shri Amiykant Tiwari, Advocate.
For Respondents 4 & 5	:	None.

Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****23.02.2018.**

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the insurance company against the award dated 22.08.2012 passed by the 4th Additional Motor Accident Claims Tribunal, Raipur (in short, the Tribunal) in Claim Case No.141/2011. Vide the said impugned award, the Tribunal in a death case has awarded compensation of Rs.6,07,820/- along with interest @ 6 percent per annum from the date of application.
2. The ground of challenge by the insurance company is that the driver of the offending vehicle i.e. respondent No.4 was having a fake

license and since the driver had a fake license, there is a clear breach of policy conditions and therefore the liability of payment of compensation should not have been fastened upon the insurance company. Rather, it had to be fastened upon the driver and owner of the offending vehicle. Thus, the impugned award to that extent is bad in law.

3. In support of his contention, the appellant refers to the statement of one Rajesh Kumar Bhargava, officer from the office of RTO, Raipur, who has deposed that the license which is alleged to have been in possession of the respondent No.4-the driver, was not issued from the office of RTO, Raipur, and thus, it was a fake license.
4. As per the evidence of said witness Rajesh Kumar Bhargava, NAW-1, the series which has been reflected in the license of the driver was not from the office of RTO, Raipur. He further deposed that the license number which was reflected in that license was infact issued in the name of one Sheikh Jalaluddin that too for the purpose of driving motorcycle and light motor vehicle whereas, the vehicle involved in the accident is a heavy goods vehicle.
5. Under the said circumstances, this court has no hesitation in holding that the insurance company so far as its liability and burden is concerned, have discharged the same. The driver and the owner inspite of notice being issued, did not appear before the Tribunal and were proceeded ex parte. Even paper publication were made for their appearance before the Tribunal, yet they did not appear. This attitude of the driver and owner itself speaks of their conduct.

6. Under the said circumstances, this court is of the opinion that the findings of the Tribunal to the extent of fastening entire liability upon the insurance company does not appear to be just and reasonable. However, considering the facts that award is of the year, 2012, and the fact that appellant have already deposited the entire amount, this is a fit case where the doctrine of "Pay and Recovery" can be made applicable.
7. Accordingly, the impugned award stands modified to the extent that the insurance company shall have a liberty of recovering the entire amount from the owner and the driver of the offending vehicle.
8. The appeal thus stands partly allowed and disposed of.

Sd/-

(P.Sam Koshy)
Judge

inder