

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 465 of 2011**

Chhattisgarh State Electricity Board, through Officer in charge,
Chhattisgarh State Electricity Board, Viduat Nagar, Tifra, Bilaspur, PS
Civil Lines Bilaspur, District Bilaspur (CG) (Non Applicant no.2) (Vehicle
No. CG 10 ZB/2254) **---- Appellant**

Versus

1. Mina Bai W/o Kamlesh Kumar Sahu, aged about 20 years, R/o Village Lanja, Post Kamata, District Raipur (CG)
2. Pilaram S/o Itwari Sahu, aged about 48 years, R/o Village Lanja, Post Kamata, District Raipur (CG)
3. Mantora W/o Pilaram Sahu, R/o Village Lanja, Post Kamata, District Raipur (CG)
4. Ku. Gulshan Sahu D/o Kamlesh Sahu, aged about 1 month, through mother Mina Bai
5. Anil Kumar S/o B. P. Joshi, R/o Viduat Nagar (Tifra) Bilaspur, PS Civil Lines Blaspur, District Bilaspur (CG)(Non Applicant no.1) (Vehicle No. CG 10 ZB/2254)
6. The New India Insurance Company Ltd. through Divisional Manager, the New India Insurance Company Ltd. Division No. 2, in front of LIC Office, Pandari, Raipur (CG) (Vehicle No. CG 10 ZB/2254) Insurance Company **---- Respondents**

For Appellant	:	Dr. Shailesh Ahuja, Advocate
For Respondents 1 to 4	:	Shri K. K. Dewangan, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****09/01/2018**

The present appeal has been filed under Section 173 of the Motor Vehicles Act assailing the award dated 13.12.2010 passed by the 14th Additional Motor Accident Claims Tribunal (FTC), Raipur (CG) in Claims Case

No. 120 of 2009. Vide the impugned award, the Tribunal, in a death case has awarded a compensation of Rs.2,62,125/- with simple interest @ 9% per annum from the date of application.

2. There are two grounds raised by the appellant while contesting the appeal. First ground being that the vehicle involved in the accident belonged to the appellant which is an establishment of the State Govt. as the appellant establishment falls within the ambit of State under Article 12 of the Constitution of India, therefore, the requirement of obtaining a permit as is required under the Motor Vehicles Act would not be applicable for the vehicle belonging to the appellant. Counsel for the appellant referred to Section 66(3) of MV Act in this regard. The second ground which has been raised is that the Insurance Company of the motor-cycle on which the deceased was travelling was also not made a party, therefore, the claim application itself suffered from non-joinder of necessary party.

3. Brief facts of the case are that deceased Kamlesh Kumar Sahu while driving a motor-cycle on 18.06.2009 was hit by the Metador bearing registration No. CG10ZB/2254 belonging to the appellant which was being driven by respondent no.5 and was insured with respondent no.6, the New India Insurance Co. Ltd. The undisputed facts as have been reflected from the appeal as well as from the record are; the accident to have occurred on 18.06.2009, the vehicle involved in the accident, the vehicle being duly insured with respondent no.6 and driven by respondent no.5. Further that, as a result of the accident, the deceased succumbed to the injuries that he had sustained from the said accident. Another aspect which is also not in dispute is that the vehicle involved in the accident did not have a permit on the date of accident though counsel for the appellant submits that subsequently the vehicle had in fact obtained a permit in the year 2010.

4. As regards the argument of Section 66 (3) of MV Act is concerned, this Court is of the opinion that the said argument would not be applicable in the instant case for the simple reason that the appellant which is an Electricity Board cannot be treated as a department of the State Government nor can the vehicle belonging to the appellant Electricity Board be considered as the vehicle belonging to the State. Further, it is also evident and a known fact that the main object of appellant is generation and distribution of electricity and selling it to consumers with which the appellant Electricity Board is also earning profit. As such it is a commercial enterprise and there cannot be any exemption under Section 66 (3) (a) of the Motor Vehicles Act.

5. So far as the ground of non-joinder of necessary party is concerned, again the said ground would not be sustainable for the reason that the Tribunal has already assessed a contributory negligence of 25% on the part of the deceased and 25% of the amount awarded has already been ordered to be deducted from the total compensation payable to the claimants. Therefore, the present appeal by the Electricity Board would not in any manner adversely affect on the non-joinder of the Insurance Company which had insured the motor-cycle which was being driven by the deceased, in the proceeding before the Tribunal.

6. Given the facts and circumstances of the case, this Court is of the opinion that the two grounds raised by the counsel for the appellant are not sustainable and the present appeal deserves to be and is accordingly dismissed.

**Sd/-
(P. Sam Koshy)
JUDGE**