

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 345 of 2011**

The New India Assurance Co. Ltd. through the Divisional Manager,
Divisional Office, Madina Building, Jail Road, Kachari Chowk, Raipur,
Tehsil and District Raipur (CG).

---- Appellant**Versus**

1. Smt. Nanda Singh aged about 43 years, W/o late Madan Kumar Singh.
2. Binu Singh S/o Late Madan Kumar Singh,
3. Mukund Singh S/o Late Madan Kumar Singh,
4. Ku. Anuradha Singh D/o Late Madan Kumar Singh ,aged about 16 years,
Appellant No.4 Minor Thr. Mother and Natural Guardian Nanda Singh,
All R/o Shivanand Nagar, P.S. Khamtari, District Raipur.
5. Upender Singh (Upendra Singh) S/o K. Singh R/o Refugee Colony, Sakshi,
Thana Sakshi District Jamshedpur Jharkhand, Other Address, C/o Aditya
Transport, Bhanpuri, Thana Khantari, District Raipur.
6. Anil Kumar Singh S/o Ranbhir Singh, R/o Village Zonpur, Thana Patouri,
District Samastipur, Bihar, Other Address- Jharhi Nagar, Bhakragar,
Siliguda West Bengal.

---- Respondents

For Appellant	:	Shri Ajay Barik, Advocate.
For Claimants	:	Shri SS Rajput, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****17.01.2018**

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed assailing the award dated 26.11.2010 passed by the 7th Additional Motor Accident Claims Tribunal, Raipur (in short, the Tribunal) in Claim Case No.30 of 2008. Vide the said impugned award, the Tribunal in a death case has awarded a compensation of Rs.17,74,000/- with interest @ 6 percent per annum from the date of application. The liability of payment of compensation has been fastened upon the appellant -insurance company.
2. It is a case where the deceased Madan Kumar Singh met with an

accidental death on 26.02.2008 when he was hit by a Truck bearing registration No.NL-01-D-7038, owned by respondent No.6 and driven by respondent No.5.

3. Learned counsel appearing for the appellant-insurance company assailing the award submits that it is a case where the witness of the insurance company has stated before the Tribunal that the policy issued seems to be fake policy inasmuch as the branch from where the policy is shown to have been issued i.e. Patna, Bihar, does not have the same code as is reflected in the policy. It was also the contention of the appellant-insurance company that the driver of the offending vehicle was also not having a valid license at the time of accident.
4. A perusal of record would show that the insurance company has not led any cogent evidence to establish the fact that the driver of the offending vehicle did not have a valid license. Thus, the said ground raised by the insurance company is not sustainable.
5. So far as the ground of the policy being fake also is concerned, from the records it appears that the appellant had initially moved an application under Section 170 of the Motor Vehicles Act seeking permission to defend the case in the light of the policy which has been issued and that it is only subsequently during the course of evidence the insurance company has raised a plea of policy being a fake policy.
6. The owner and the driver, for the reasons best known to them, were proceeded exparte before the Tribunal. They have also not entered

appearance before this court inspite of service of notice.

7. Given the facts since there is no substantial evidence led by the owner and the driver that they have taken a policy from the insurance company and the fact that there is evidence of the insurance company of the policy being fake, inasmuch as, the Branch code from where it is alleged to have been issued does not match, this court is of the opinion that considering the facts and circumstances of the case and also taking note of the fact that it is a case of the year, 2008 and the claimants have been deprived of the compensation till date, it is a fit case where the doctrine of "Pay and Recover" could be applied.
8. It is ordered accordingly that the appellant-insurance company shall deposit the awarded amount before the Tribunal with liberty to initiate recovery proceedings against the respondents No.5 & 6, the driver and owner of the offending vehicle.
9. The appeal thus stands partly allowed and disposed of.

Sd/-
(P.Sam Koshy)
Judge