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**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 1011 of 2018**

- United India Insurance Company Limited Registered Office 24 For Whited Road Chennai 600014, Through Authorized Signatory United India Insurance Company Limited, Divisional Office, Bilaspur, 2nd Floor, Gurukripa Towers, Vyapar Vihar Road, Bilaspur Chhattisgarh. (Insurer), District : Bilaspur, Chhattisgarh

**---- Appellant****Versus**

1. Tuba Kodako S/o Devnath, Aged About 34 Years R/o Village Sendoor, P.S. Ramanujganj, District Balrampur Ramanujganj Chhattisgarh., District : Balrampur, Chhattisgarh
2. Atawariya, W/o Devnath, Aged About 77 Years R/o Village Sendoor, P.S. Ramanujganj, District Balrampur Ramanujganj Chhattisgarh. (Claimants), District : Balrampur, Chhattisgarh
3. Hasbul Ansari, S/o Yunus Ansari, Aged About 28 Years R/o Village Bailchampa Sidekhurd P.S. And District Gadhva (Jharkhand). (Driver), Jharkhand
4. Rajiv Ranjan Prasad S/o Vijay Prasad Aged About 32 Years Caste - Patwa R/o Village Sai Mohalla, P.S. And District Gadhva (Jharkhand). (Owner), Jharkhand

**---- Respondents**


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For Appellant : Shri B.N. Nande, Advocate

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**Hon'ble Shri Justice Ram Prasanna Sharma**  
**Order on Board**

**08/8/2018**

1. Heard on I.A.No.1/2018, application for condonation of delay in filing the appeal.
2. For the reasons mentioned in the application, same is allowed and delay of 11 days in filing the appeal is hereby condoned.

3. This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short, "the Act, 1988") against the award dated 14<sup>th</sup> March, 2018, passed by the Motor Accidents Claims Tribunal (for short, "the Tribunal"), Balrampur at Ramanujganj (CG) in Claim Case No. 41/2017, wherein the said Tribunal has awarded a sum of Rs.3,48,400/- on account of death of one Devnath Kodaku in a motor accident on 1.5.2017.

4. As per the claim case, on 1.5.2017 driver of Truck bearing registration No.CG 15 AC/2283, was driving the vehicle rashly and negligently and hit the deceased Deva Kodaku resulting into his death. The claim petition was filed by the legal representatives of the deceased and after hearing the parties, learned Tribunal has awarded the compensation as mentioned above.

5. Learned counsel for the appellant submits that the owner of the vehicle has not filed the driving licence and he did not enter into witness box to depose as to whom the vehicle was handed over, therefore, there is breach of insurance contract and the Company is not liable to pay the compensation. He placed reliance on **Pappu and others Versus Vinod Kumar Lamba and Another, 2018 (1) T.A.C. 360 (S.C.)**.

6. In the present case, the driving licence of respondent Hasbul Ansari was produced before the Tribunal and it was marked by Tuba Kodado (AW1). The driving licence was valid on the date of incident as the validity period was upto 28.6.2018. It means, the vehicle was handed over by the owner to a person who was having effective and valid driving licence on the date of incident. As the Insurance Company entered into contract with the

owner, who is respondent No.4 and there is nothing to establish that the owner has committed any breach while handing over the vehicle to the duly licenced person, the arguments advanced on behalf of the appellant/Insurance Company is not sustainable. The case law cited on behalf of the appellant/Insurance Company is distinguishable from the facts and circumstances of the present case as in the said case name of the driver and other particulars were not disclosed.

7. Learned counsel for the appellants submits that the award amount is on higher side and the same is liable to be reduced.

8. In the present case, date of incident is 1.5.2017 and the Tribunal has assessed the notional income @ Rs.100/- per day, whereas, the minimum wages prevailing at the time of incident was more than Rs.200/- per day, therefore, the notional income calculated by the Tribunal and 15 % of future prospect cannot be termed on higher side looking to the entire calculation of the Tribunal. It is further argued on behalf of the appellant that the Tribunal has awarded Rs.1,00,000/- on conventional head, which is also on higher side. As discussed above, the Tribunal has assessed notional income at lower side and the same would have been doubled as to what is calculated by the Tribunal. Looking to the entire calculation, it is not a case where the whole amount awarded by the Tribunal is liable to be reduced.

9. Learned counsel for the appellant submits that his application for filing additional documents may be allowed under Order 41 Rule 27 of the C.P.C.1908. The said provision is applied only when the Tribunal has refused to admit any evidence which ought to have been admitted or the

party seeking to produce additional evidence establishes that notwithstanding the exercise of due diligence such evidence was not within his knowledge.

10. In the present case, the Tribunal has not refused any document filed by the appellant and it is also not the case that the appellant could not trace the document during proceeding of the Tribunal. Witnesses have been examined by the appellant before the Tribunal and full opportunity of hearing was provided to the appellant.

11. Considering the entire facts and circumstances of the case, I am of the view that the Tribunal has rightly awarded the compensation of Rs. 3,48,400/- on account of death of Deva Kodaku to the claimants who are the legal representatives of the deceased which is not on higher side and there is no breach of insurance contract. The appeal has no substance and the same is liable to be and is hereby dismissed at the motion stage itself.

Sd/

**(Ram Prasanna Sharma)**

Judge