

**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 09.05.2018****Delivered on 14.05.2018****MAC No. 480 of 2016**

(Arising out of award dated 7-4-2015 of 6th Additional Motor Accident Claims Tribunal, Raipur in Claim Case No. 158/2012)

IFFCO Tokio General Insurance Co. Ltd. through Its Legal Manager, IFFCO Tokio General Insurance Co. Ltd., 205, 2nd Floor, M.M. Silver Plaza, Ring Road No.1, Raipur, Chhattisgarh .....Insurer/ Respondent No.3

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

1. Smt. Tetra Devi W/o Late Shri Fekuram, Aged About 40 Years
2. Raju Ram S/o Late Shri Fekuram, Aged About 20 Years
3. Ku. Santoshi D/o Late Shri Fekuram, Aged About 16 Years Minor
4. Shravan Kumar S/o Late Shri Fekuram, Aged About 13 Years Minor
5. Ratan Kumar S/o Late Shri Fekuram, Aged About 8 Years

Respondent No. 3 go 5 are minor and represented through mother Smt. Tetra Devi (Respondent No.1)

All R/o Village Sakaldiha, Thana Sakaldiha, District Chandoli, Utta Pradesh, Presently Residing At Aacholi, Thana Urla, District Raipur, CG .....**Claimants**

6. Shankar Yadav S/o Shri Ramu Yadav, R/o Village Kanhera, Thana Urla, District Raipur, CG. Present Address:- through Hincharam Yadav, Village Gomchi, Thana Urla, District Raipur, Chhattisgarh

**Driver-Respondent No.1**

7. Hinchu Yadav S/o Shri Santosh Yadav, R/o Village Gomchi Thana Urla, Tehsil and District Raipur, CG

**Owner-Respondent No.2****---- Respondents**


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| For Appellant               | : | Shri P. Acharya, Adv.       |
| For Respondents No. 1 to 5  | : | Shri Amiyakant Tiwari, Adv. |
| For Respondents No. 6 and 7 | : | None though served.         |

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**Hon'ble Shri Sharad Kumar Gupta, Judge****C.A.V. JUDGMENT**

1. In this appeal, challenge is levied to the award dated 7-4-2015 of 6th Additional Motor Accident Claims Tribunal, Raipur (in brevity 'the Tribunal') in

Claim Case No. 158/2012 whereby and whereunder, the Tribunal ordered the appellant-Insurance Company to first pay the awarded amount of Rs. 4,34,000 to the respondents No. 1-5 /claimants and then recover it from the respondent No. 6-driver and respondent No. 7-owner of the offending vehicle jointly and severely.

2. In brief, case of the respondents No. 1 to 5 is that they are legal heirs of deceased Fekuram. On 15-4-2012, the deceased Fekuram was going to Achholi on his bicycle, at about 1.45 pm near Shivam company at village Kanhera, respondent No. 6 driving the motorcycle bearing registration No. CG 04 CT 1506 in a rash and negligent manner dashed deceased Fekuram, as a result of which he sustained grievous injuries and succumbed to his injuries during treatment. The respondent No. 7 was owner of the aforesaid motorcycle. The vehicle was insured with the appellant.

3. In brief, case of respondents No. 6 and 7 is that all the pleadings of the respondents No. 1 to 5 are denied by them.

4. In brief, case of the appellant is that the aforesaid motorcycle was not insured by it. The alleged accident is a result of contributory negligence of deceased Fekuram. The driver of the offending motorcycle was not possessing valid and effective driving licence.

5. After conclusion of the trial, the Tribunal exonerated the appellant-Insurance company and passed the aforesaid award. Being aggrieved, the appellant preferred this appeal.

6. Shri P. Acharya, counsel for the appellant vehemently argued that the Tribunal has recorded the finding that though the appellant is not liable to pay compensation to the claimants yet directed it to first pay compensation to the claimants and then recover it from respondents No. 6 and 7, which is

illegal and bad in the eyes of law. Thus, the impugned award may be set aside only to the above extent.

7. Shri Amiyakant Tiwari, Counsel for the respondents No. 1 to 5 argued that the impugned award regarding the appellant is just and proper and no interference is called for by this Court. Thus, the appeal may be dismissed.

8. None appeared for the respondents No. 6 and 7 though served.

9. The question for adjudication before this Court is that whether the order of the Tribunal that the appellant shall pay the compensation to the respondents No. 1 to 5 and then recover it from the respondents No. 6 and 7 is sustainable in law.

10. In *National Insurance Co. Ltd. v. Challa Bharathamma* (2004 ACJ 2094) the Supreme Court held that considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured.

11. Relevant portion of para 21 of the decision in **National Insurance Comp. Ltd. -v- Baljit Kaur and other** {(2004) 2 SCC 1} is extracted herebelow:-

“21. ....We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. ....”

12. Shri Amiyakant Tiwari, counsel for respondents No. 1 to 5 cited judgment of the Hon'ble Supreme Court in **National Insurance Company Ltd. v. Swaran Singh and Others {(2004) 3 SCC 297}**, relevant para 104, 105, 106 are extracted herebelow:-

“104. It is, therefore, evident from the discussion made hereinbefore that the liability of the Insurance Company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time.

105. Apart from the reasons stated hereinbefore, the doctrine of stare decisis persuades us not to deviate from the said principle.

106. It is well settled rule of law and should not ordinarily be deviated from.”

13. Looking to the above mentioned judicial precedents laid down in ***Challa Bharathamma (supra)*, *Baljit Kaur (supra)* and *Swaran Singh (supra)*** this Court finds that the order of the Tribunal that the appellant shall pay the compensation to the respondents No. 1 to 5 and then recover it from the respondents No. 6 and 7 is sustainable in law and the Tribunal has not committed any illegality while passing the aforesaid order.

14. Looking to the above mentioned facts and circumstances, material placed on record this Court finds that appeal is devoid of merit. Thus, this Court affirms the aforesaid order of Tribunal as to above extent. The appeal is dismissed.

15. Appellant shall bear his own costs as well as costs of the respondents.

Sd/-  
(Sharad Kumar Gupta)  
JUDGE