**NAFR**

# HIGH COURT OF CHHATTISGARH, BILASPUR

**MAC No. 1140 of 2013**

- Sri Ram General Insurance Company Ltd, Manager, Plot No. 48, Zone 02, Maharana Pratap Nagar, Bhopal M.P.,

**---- Appellant**

**Versus**

1. Smt. Yougeshwari Vishvakarma, W/o Late Sharavan Vishvakarma,Aged About 20 Years, R/o Ward No. 02, Emiele Bhata, Mahasamund, Thana, Tah. And Distt. Mahasamund C.G., (Claimant)

2. Manikram Vishvakarma, S/o Late Babaram, Aged About 50 Years, R/o Ward No. 02, Emiele Bhata, Mahasamund, Thana, Tah. And Distt. Mahasamund C.G.,

3. Smt. Yashoda, W/o Manikram Vishvakarma, R/o Ward No. 02, Emiele Bhata, Mahasamund, Thana, Tah. And Distt. Mahasamund C.G.,

4. Palu Yadav, S/o Sadanand Yadav, Aged About 45 Years, R/o Ward No. 05, Nayapara, Mahasamund, Thana, Tah. And Distt. Mahasamund C.G., (Driver of Tata 709 No. CG 04-ZB-0194)

5. Indrapal Singh Chawala S/o Niranjan Chawala Aged About 29 Years R/o Ward No. 09, Station Road, Mahasamund, Distt. Mahasamund C.G., (Owner of Tata 709 No. CG 04-ZB-0194)

**---- Respondents**

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| For Appellant | : | Shri Deepak Gupta, Advocate |

**Hon'ble Shri Justice Sanjay Agrawal**

**Award on Board**

**17.01.2019**

1. Heard on admission.

2. This Miscellaneous Appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act, 1988) questioning the award dated 15th July, 2013 passed by the Principal Motor Accidents Claims Tribunal, Raipur in Claim Case No. 250/2011 whereby the

claim petition has been allowed in part while fastening the liability upon the appellant/insurance company.

3. Briefly stated the facts of the case are that on 15.06.2011, the deceased Shrawan Kumar Vishvakarma was travelling in the Offending Vehicle "TATA 709" bearing its registration No. CG 04-ZB-0194 from village Jhalap to Mahasamund. At the relevant time, the said Offending Vehicle, owned by Indra Pal Singh Chawla and insured with the appellant/insurance company, was being driven rashly and negligently by its driver Palu Yadav. It is pleaded in the claim petition that on account of rashness and negligent driving, the driver of the Offending Vehicle lost his control, as a result of which, it turned turtle. Owing to which, the deceased sustained serious injuries and was admitted immediately into the Hospital where, during the course of treatment, he expired.

4. On account of the aforesaid vehicular accident, a claim petition under Section 166 of the Act, 1988 has been filed by the legal representatives of the said deceased by submitting, inter alia, that the deceased, aged about 25 years, was working as *Hamal* and used to earn Rs. 6000/- per month and claimed total compensation of Rs.23,25,000/-.

5. Non-applicants No. 1 & 2, the driver and owner of the Offending Vehicle, contested the claim stating that the claim as made is extremely on higher side and pleaded further that since the vehicle in question was insured by the appellant/insurance company, therefore, in case of any liability being fastened, it would be indemnified by the appellant/insurance company. While, non-applicant No.3/appellant, the insurer, has contested the claim on the ground that the driver of the Offending Vehicle was not holding the effective and valid driving licence and contested further on the ground that the deceased Shrawan Kumar Vishvakarma was travelling in the said vehicle

as a gratuitous passenger, therefore, the said Offending Vehicle was being used in utter violation of the insurance policy as it was insured for commercial use. It contested further on the ground, after obtaining the permission under Section 170 of the Act, 1988, that the amount of compensation as claimed, is extremely on higher side.

6. After considering the materials available on record, the learned Claims Tribunal has arrived at a conclusion that the alleged accident has occurred on 15.06.2011 due to rashness and negligent driving of the offending vehicle by its driver Palu Yadav, resulting in said demise of deceased Shrawan Kumar Vishvakarma. It held further that the appellant/insurance company has failed to prove that the vehicle in question was being driven in violation of the insurance policy, for want of evidence. In consequence, while assessing the notional income of the deceased at Rs.36,000/- per annum and that by deducting 1/3 of it, the learned Claims Tribunal awarded total amount of compensation to the tune of Rs.6,33,000/- with 6% interest per annum from the date of claim petition till its realisation.

7. Being aggrieved, the appellant has preferred this appeal. Learned counsel for the appellant submits that the award impugned as passed by the learned Claims Tribunal while fastening the liability upon the insurance company is apparently contrary to law. He submits further that at the relevant time, the driver was not possessing the effective and valid driving licence and the vehicle in question was, thus, being used in utter violation of the insurance policy. He submits further that the awarded amount of compensation, is extremely on higher side, therefore, deserves to be modified while exonerating the insurance company from its liability.

8. I have heard learned counsel for the appellant and perused the record carefully.

9. In order to establish the fact that the vehicle in question was being driven in violation of the insurance policy and the awarded amount of compensation is on higher side, the burden was heavily upon the appellant/insurance company. However, perusal of the record would show that the appellant/insurance company has failed to produce any evidence in this regard, and as such, failed completely to establish the same. In such an eventuality, the learned Claims Tribunal has not committed any illegality in fastening the liability upon the appellant insurance company. The award impugned is, therefore, liable to be and is hereby affirmed.

10. The appeal is accordingly dismissed. No order as to costs.

Sd/-
(**Sanjay Agrawal)**
**Judge**

**Anjani**