

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on : 24/10/2018

Judgment delivered on : 24/01/2019

MAC No. 396 of 2018

- Kondaram Kerketta S/o Late Shri Jagatu Aged About 55 Years Occupation Agriculturist, R/o Village Devgarh (Junapara), Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Claimant)

---- Appellant/claimant

Versus

1. Manoj Kumar S/o Shri Mohar Say Tirkey Aged About 26 Years R/o Village Ulkiya (Chhipaniya) Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Driver Of Vehicle No. UP-64T/3391)
2. Laxmi Prasad Minj S/o Shri Garib Say Aged About 54 Years Occupation Teacher, R/o Adarshnagar, Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Owner Of Vehicle No. UP-64T/3391)
3. Branch Manager Shri Ram General Insurance Company Limited, Branch Office G.E.Road Mahova Bajar, R.K.Mall Raipur, District Raipur, Chhattisgarh (Insurer Of Vehicle No. UP-64T/3391)

---- Respondents

MAC No. 375 of 2018

- Ramkumar S/o Late Shri Dhansay Aged About 45 Years Caste-Uraon, Occupation- Agriculturist, R/o Village Dhelsara, Thana And Tahsil Seetapur, Civil And Revenue District- Surguja, Chhattisgarh.(Claimant).

---- Appellant/claimant

Versus

1. Manoj Kumar S/o Shri Mohar Say Tirkey Aged About 26 Years R/o Village Ulkiya (Chhipaniya) Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Driver Of Vehicle No. UP-64T/3391)
2. Laxmi Prasad Minj S/o Shri Garib Say Aged About 54 Years Occupation Teacher, R/o Adarshnagar, Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh

(Owner Of Vehicle No. UP-64T/3391)

3. Branch Manager Shri Ram General Insurance Company Limited,
Branch Office G.E.Road Mahova Bajar, R.K.Mall Raipur, District
Raipur, Chhattisgarh (Insurer Of Vehicle No. UP-64T/3391)

---- Respondents

MAC No. 383 of 2018

1. Jarge Tirkey S/o Late Shri Marsel Tirkey Aged About 30 Years
Caste Uraon, Occupation Agriculturist,
2. Antonis Tirkey S/o Late Shri Marsel Tirkey Aged About 28 Years
Caste Uraon, Occupation Agriculturist,
3. Anit Tirkey S/o Late Shri Marsel Tirkey Aged About 26 Years
Caste Uraon, Occupation Agriculturist,

All are R/o Village Kadam Toli, Post Dhelsara (Pracharpara), Thana
And Tahsil Seetapur, Civil And Revenue District Surguja,
Chhattisgarh

---- Appellants/claimants

Versus

1. Manoj Kumar S/o Shri Mohar Say Tirkey Aged About 26 Years
R/o Village Ulkiya (Chhipaniya) Thana And Tahsil Seetapur, Civil
And Revenue District Surguja, Chhattisgarh (Driver Of Vehicle
No. UP-64T/3391)
2. Laxmi Prasad Minj S/o Shri Garib Say Aged About 54 Years
Occupation Teacher, R/o Adarshnagar, Thana And Tahsil
Seetapur, Civil And Revenue District Surguja, Chhattisgarh
(Owner Of Vehicle No. UP-64T/3391)
3. Branch Manager Shri Ram General Insurance Company
Limited, Branch Office G.E.Road Mahova Bajar, R.K.Mall
Raipur, District Raipur, Chhattisgarh (Insurer Of Vehicle No. UP-
64T/3391)

---- Respondents

MAC No. 385 of 2018

1. Ramkumar S/o Late Shri Dhansay Aged About 45 Years Caste
Uraon, Occupation Agriculturist,
2. Ku. Nutan Kerketta D/o Shri Ramkumar Aged About 18 Years
Caste Uraon,
3. Ashish Kerketta S/o Shri Ramkumar Aged About 12 Years, by
caste – Uraon.

4. Neelam Kerketta S/o Shri Ramkumar Aged About 9 Years, by caste – Uraon.

Appellants No. 3 & 4 are Minor through Natural Guardian Father Shri Ramkumar S/o Dhansay,

All are R/o Village Kadam Toli, Post Dhelsara, Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh.

---- Appellants/claimants

Versus

1. Manoj Kumar S/o Shri Mohar Say Tirkey Aged About 26 Years R/o Village Ulkiya (Chhipaniya) Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Driver Of Vehicle No. UP-64T/3391)
2. Laxmi Prasad Minj S/o Shri Garib Say Aged About 54 Years Occupation Teacher, R/o Adarshnagar, Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Owner Of Vehicle No. UP-64T/3391)
3. Branch Manager Shri Ram General Insurance Company Limited, Branch Office G.E.Road Mahova Bajar, R.K.Mall Raipur, District Raipur, Chhattisgarh (Insurer Of Vehicle No. UP-64T/3391)

---- Respondents

MAC No. 391 of 2018

1. Bodhan Minj S/o Late Shri Jhango Aged About 50 Years Caste Uraon, Occupation Agriculturist,
2. Smt. Budhkunwar W/o Shri Bodhan Minj Aged About 42 Years Caste Uraon, Occupation Labour,

Both are R/o Village Dhelsara, Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh.

---- Appellants/claimants

Versus

1. Manoj Kumar S/o Shri Mohar Say Tirkey Aged About 26 Years R/o Village Ulkiya (Chhipaniya) Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Driver Of Vehicle No. UP-64T/3391)
2. Laxmi Prasad Minj S/o Shri Garib Say Aged About 54 Years Occupation Teacher, R/o Adarshnagar, Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Owner Of Vehicle No. UP-64T/3391)

3. Branch Manager Shri Ram General Insurance Company Limited, Branch Office G.E.Road Mahova Bajar, R.K.Mall Raipur, District Raipur, Chhattisgarh (Insurer Of Vehicle No. UP-64T/3391)

---- Respondents

MAC No. 392 of 2018

1. Premsay S/o Shri Jagatu Aged About 45 Years Caste Uraon, Occupation Agriculturist,
2. Pramod Kerketta S/o Shri Jagatu Aged About 30 Years Caste Uraon,
3. Ku. Jasinta Kerketta D/o Premsay Aged About 23 Years Caste Uraon,
4. Ajela Kerketta S/o Premsay Aged About 20 Years Caste Uraon,
5. Ku. Ravita Kerketta D/o Premsay Aged About 18 Years Caste Uraon,
6. Ku. Suman D/o Premsay Aged About 18 Years Caste Uraon,
7. Ku. Susmita Kerketta D/o Premsay Aged About 18 Years Caste Uraon,

All R/o Village Siktapara, Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh

---- Appellants/claimants

Versus

1. Manoj Kumar S/o Shri Mohar Say Tirkey Aged About 26 Years R/o Village Ulkiya (Chhipaniya) Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Driver Of Vehicle No. UP-64T/3391)
2. Laxmi Prasad Minj S/o Shri Garib Say Aged About 54 Years Occupation Teacher, R/o Adarshnagar, Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Owner Of Vehicle No. UP-64T/3391)
3. Branch Manager Shri Ram General Insurance Company Limited, Branch Office G.E.Road Mahova Bajar, R.K.Mall Raipur, District Raipur, Chhattisgarh (Insurer Of Vehicle No. UP-64T/3391)

---- Respondents

MAC No. 393 of 2018

1. Isdor S/o Late Shri Lahru Aged About 40 Years Caste Uraon, Occupation Agriculturist,
2. Robert Kujur S/o Late Shri Lahru Aged About 28 Years Caste Uraon, Occupation Agriculturist,
3. David Kujur S/o Late Shri Lahru Aged About 25 Years Caste Uraon, Occupation Agriculturist,

All are R/o Village Kadam Toli, Post Bubari, Thana Kansabel, Civil And Revenue District Jashpur, Chhattisgarh

---- Appellants/claimants

Versus

1. Manoj Kumar S/o Shri Mohar Say Tirkey Aged About 26 Years R/o Village Ulkiya (Chhipaniya) Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Driver Of Vehicle No. UP-64T/3391)
2. Laxmi Prasad Minj S/o Shri Garib Say Aged About 54 Years Occupation Teacher, R/o Adarshnagar, Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Owner Of Vehicle No. UP-64T/3391)
3. Branch Manager Shri Ram General Insurance Company Limited, Branch Office G.E.Road Mahova Bajar, R.K.Mall Raipur, District Raipur, Chhattisgarh (Insurer Of Vehicle No. UP-64T/3391)

---- Respondents

MAC No. 395 of 2018

1. Dilbandhu S/o Shri Fudalu Aged About 48 Years Caste Uraon, Occupation Agriculturist,
2. Smt. Ursela W/o Shri Dilbandhu Aged About 42 Years Caste Uraon, Occupation Labour,

Both are R/o Village Dhelsara (Gadhapara), Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh

---- Appellants/claimants

Versus

1. Manoj Kumar S/o Shri Mohar Say Tirkey Aged About 26 Years R/o Village Ulkiya (Chhipaniya) Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Driver Of Vehicle No. UP-64T/3391)

2. Laxmi Prasad Minj S/o Shri Garib Say Aged About 54 Years Occupation Teacher, R/o Adarshnagar, Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Owner Of Vehicle No. UP-64T/3391)
3. Branch Manager Shri Ram General Insurance Company Limited, Branch Office G.E.Road Mahova Bajar, R.K.Mall Raipur, District Raipur, Chhattisgarh (Insurer Of Vehicle No. UP-64T/3391)

---- Respondents

MAC No. 397 of 2018

1. Smt. Raniya W/o Late Shri Basant Tigga Aged About 45 Years Caste Uraon, Occupation Agriculturist,
2. Bindu D/o Late Shri Basant Tigga Aged About 16 Years, by caste – Uraon.

Appellant No.2 Minor Through Natural Guardian Mother Smt. Raniya W/o Late Shri Basant Tigga,

Both are R/o Village Dhelsara, Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh

---- Appellants/claimants

Versus

1. Manoj Kumar S/o Shri Mohar Say Tirkey Aged About 26 Years R/o Village Ulkiya (Chhipaniya) Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Driver Of Vehicle No. UP-64T/3391)
2. Laxmi Prasad Minj S/o Shri Garib Say Aged About 54 Years Occupation Teacher, R/o Adarshnagar, Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Owner Of Vehicle No. UP-64T/3391)
3. Branch Manager Shri Ram General Insurance Company Limited, Branch Office G.E.Road Mahova Bajar, R.K.Mall Raipur, District Raipur, Chhattisgarh (Insurer Of Vehicle No. UP-64T/3391)

---- Respondents

MAC No. 423 of 2018

1. Telesphore S/o Late Shri Lahru Aged About 58 Years By Caste Uraon, Occupation Agriculturist,
2. Philip Kujur S/o Shri Telesphore Aged About 10 Years By Caste Uraon, Occupation Student,

3. Chandan Kujur S/o Shri Telesphore Aged About 6 Years By Caste Uraon, Occupation Student,

Appellants No. 2 & 3 are Minor Through Natural Guardian Father Telesphore S/o Late Shri Lahru, All are R/o Village, Post Budari, Thana, Tahsil Kasabel, Civil, Revenue District Jashpur, Chhattisgarh

---- Appellants/claimants

Versus

1. Manoj Kumar S/o Shri Mohar Say Tirkey Aged About 26 Years R/o Village Ulkiya (Chhipaniya) Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Driver Of Vehicle No. UP-64T/3391)
2. Laxmi Prasad Minj S/o Shri Garib Say Aged About 54 Years Occupation Teacher, R/o Adarshnagar, Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Owner Of Vehicle No. UP-64T/3391)
3. Branch Manager Shri Ram General Insurance Company Limited, Branch Office G.E.Road Mahova Bajar, R.K.Mall Raipur, District Raipur, Chhattisgarh (Insurer Of Vehicle No. UP-64T/3391)

---- Respondents

MAC No. 427 of 2018

1. Shivilal S/o Shri Sunder Aged About 35 Years Caste Uraon, Occupation Agriculturist,
2. Smt. Bhinsari @ Bhoura Dihin W/o Shri Shivilal Aged About 30 Years Caste Uraon,

Both are R/o Village Devgarh (Junapara), Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh

---- Appellants/claimants

Versus

1. Manoj Kumar S/o Shri Mohar Say Tirkey Aged About 26 Years R/o Village Ulkiya (Chhipaniya) Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Driver Of Vehicle No. UP-64T/3391)
2. Laxmi Prasad Minj S/o Shri Garib Say Aged About 54 Years Occupation Teacher, R/o Adarshnagar, Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Owner Of Vehicle No. UP-64T/3391)

3. Branch Manager Shri Ram General Insurance Company Limited, Branch Office G.E.Road Mahova Bajar, R.K.Mall Raipur, District Raipur, Chhattisgarh (Insurer Of Vehicle No. UP-64T/3391)

---- Respondents

MAC No. 447 of 2018

1. Smt. Khristina Lakda W/o Late Shri Smel Lakda Aged About 50 Years Caste Uraon, Occupation Agriculturist,
2. Amit Lakda S/o Shri Smel Lakda Aged About 24 Years Caste Uraon, Occupation Student,

All are R/o Village Upka, Post Bagicha, Thana And Tahsil Bagicha, Civil And Revenue District Jashpur, Chhattisgarh

---- Appellants/claimants

Versus

1. Manoj Kumar S/o Shri Mohar Say Tirkey Aged About 26 Years R/o Village Ulkiya (Chhipaniya) Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Driver Of Vehicle No. UP-64T/3391)
2. Laxmi Prasad Minj S/o Shri Garib Say Aged About 54 Years Occupation Teacher, R/o Adarshnagar, Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Owner Of Vehicle No. UP-64T/3391)
3. Branch Manager Shri Ram General Insurance Company Limited, Branch Office G.E.Road Mahova Bajar, R.K.Mall Raipur, District Raipur, Chhattisgarh (Insurer Of Vehicle No. UP-64T/3391)

---- Respondents

MAC No. 506 of 2018

1. Minu Ekka W/o Late Matu Uraon Aged About 38 Years Caste Uraon, Occupation Agriculturist, R/o Village Delsara, Thana And Tahsil Seetapur, District Surguja, Chhattisgarh

---- Appellant/claimant

Versus

1. Manoj Kumar S/o Shri Mohar Say Tirkey Aged About 26 Years R/o Village Ulkiya (Chhipaniya) Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Driver Of Vehicle No. UP-64T/3391)

2. Laxmi Prasad Minj S/o Shri Garib Say Aged About 54 Years
Occupation Teacher, R/o Adarshnagar, Thana And Tahsil
Seetapur, Civil And Revenue District Surguja, Chhattisgarh
(Owner Of Vehicle No. UP-64T/3391)
3. Branch Manager Shri Ram General Insurance Company
Limited, Branch Office G.E.Road Mahova Bajar, R.K.Mall
Raipur, District Raipur, Chhattisgarh (Insurer Of Vehicle No. UP-
64T/3391)

---- Respondents

MAC No. 507 of 2018

1. Prakash @ Lattharam S/o Teelu Aged About 53 Years
Occupation Agriculturist,
2. Smt. Sukhani W/o Prakash @ Lattharam Aged About 50 Years
Caste Uraon, Both R/o Village Delsara, Thana And Tahsil
Seetapur, District Surguja, Chhattisgarh

---- Appellants/claimants

Versus

1. Manoj Kumar S/o Shri Mohar Say Tirkey Aged About 26 Years
R/o Village Ulkiya (Chhipaniya) Thana And Tahsil Seetapur, Civil
And Revenue District Surguja, Chhattisgarh (Driver Of Vehicle
No. UP-64T/3391)
2. Laxmi Prasad Minj S/o Shri Garib Say Aged About 54 Years
Occupation Teacher, R/o Adarshnagar, Thana And Tahsil
Seetapur, Civil And Revenue District Surguja, Chhattisgarh
(Owner Of Vehicle No. UP-64T/3391)
3. Branch Manager Shri Ram General Insurance Company
Limited, Branch Office G.E.Road Mahova Bajar, R.K.Mall
Raipur, District Raipur, Chhattisgarh (Insurer Of Vehicle No. UP-
64T/3391)

---- Respondents

MAC No. 508 of 2018

- Anup Lakda S/o Late Hilariyus Aged About 26 Years Caste
Uraon, Occupation Agriculturist, R/o Village Bubri, Thana And
Tahsil Kansabel, District Jashpur, Chhattisgarh

---- Appellant/claimant

Versus

1. Manoj Kumar S/o Shri Mohar Say Tirkey Aged About 26 Years
R/o Village Ulkiya (Chhipaniya) Thana And Tahsil Seetapur, Civil

And Revenue District Surguja, Chhattisgarh (Driver Of Vehicle No. UP-64T/3391)

2. Laxmi Prasad Minj S/o Shri Garib Say Aged About 54 Years Occupation Teacher, R/o Adarshnagar, Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Owner Of Vehicle No. UP-64T/3391)
3. Branch Manager Shri Ram General Insurance Company Limited, Branch Office G.E.Road Mahova Bajar, R.K.Mall Raipur, District Raipur, Chhattisgarh (Insurer Of Vehicle No. UP-64T/3391)

---- Respondents

MAC No. 515 of 2018

1. Fuleshwari W/o Dhansay, Aged About 55 Years
2. Baalmukund S/o Dhansay Aged About 40 Years Occupation Agriculture, Cast Uraon,
3. Ram Kumar S/o Dhansay, Aged About 39 Years Occupation Agriculture, Cast Uraon,
4. Baal Kumar S/o Dhansay, Aged About 35 Years Occupation Agriculture, Cast Uraon,
5. Lalmuni D/o Dhansay, Aged About 41 Years Occupation Housewife, Cast Uraon,

All R/o Village Delsara (Siktapara), Thana And Tahsil Seetapur, District Surguja Chhattisgarh.

---- Appellants/claimants

Versus

1. Manoj Kumar S/o Shri Mohar Say Tirkey Aged About 26 Years R/o Village Ulkiya (Chhipaniya) Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Driver Of Vehicle No. UP-64T/3391)
2. Laxmi Prasad Minj S/o Shri Garib Say Aged About 54 Years Occupation Teacher, R/o Adarshnagar, Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Owner Of Vehicle No. UP-64T/3391)
3. Branch Manager Shri Ram General Insurance Company Limited, Branch Office G.E.Road Mahova Bajar, R.K.Mall Raipur, District Raipur, Chhattisgarh (Insurer Of Vehicle No. UP-64T/3391)

---- Respondents

MAC No. 517 of 2018

1. Fulmet W/o Ramkeshwar, Aged About 65 Years
2. Amit Kumar S/o Ramkeshwar, Aged About 23 Years Occupation Inspector,
3. Deewakar Ekka S/o Ramkeshwar, Aged About 19 Years
4. Ku. Anju D/o Ramkeshwar, Aged About 18 Years

All R/o Village Devgad, Thana And Tahsil Seetapur, District Surguja Chhattisgarh.,

---- Appellants/claimants

Versus

1. Manoj Kumar S/o Shri Mohar Say Tirkey Aged About 26 Years R/o Village Ulkiya (Chhipaniya) Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Driver Of Vehicle No. UP-64T/3391)
2. Laxmi Prasad Minj S/o Shri Garib Say Aged About 54 Years Occupation Teacher, R/o Adarshnagar, Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Owner Of Vehicle No. UP-64T/3391)
3. Branch Manager Shri Ram General Insurance Company Limited, Branch Office G.E.Road Mahova Bajar, R.K.Mall Raipur, District Raipur, Chhattisgarh (Insurer Of Vehicle No. UP-64T/3391)

---- Respondents

MAC No. 519 of 2018

1. Bhagmaniya W/o Juliyas Tirky, Aged About 45 Years
2. Premkanti Tirky D/o Juliyas Tirky, Aged About 24 Years Occupation Student,
3. Renu Kanti D/o Juliyas Tirky, Aged About 18 Years
4. Sujeet Tirky S/o Juliyas Tirky, Aged About 20 Years

All R/o Village Tori, Pracharya Para, Village Delsara, District Surguja Chhattisgarh.

---- Appellants/claimants

Versus

1. Manoj Kumar S/o Shri Mohar Say Tirkey Aged About 26 Years R/o Village Ulkiya (Chhipaniya) Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Driver Of Vehicle No. UP-64T/3391)
2. Laxmi Prasad Minj S/o Shri Garib Say Aged About 54 Years Occupation Teacher, R/o Adarshnagar, Thana And Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh (Owner Of Vehicle No. UP-64T/3391)
3. Branch Manager Shri Ram General Insurance Company Limited, Branch Office G.E.Road Mahova Bajar, R.K.Mall Raipur, District Raipur, Chhattisgarh (Insurer Of Vehicle No. UP-64T/3391)

---- Respondents

For Respective Appellants	:	Shri Sunil Sahu and Shri Vikas Pandey, Advocates.
For Respondent No.1 & 2	:	Shri B.M. Roy, Advocate.
For Respondent No.3	:	Shri Amrito Das, Advocate.

Hon'ble Shri Gautam Chourdiya, J

CAV Judgment

As all these above appeals arise out of the same accident occurred on 8.4.2014 involving the same vehicle Pickup bearing registration No.UP/64T/3391 (hereinafter referred to as “offending vehicle”), they are being disposed of by this common judgment.

02. Except MAC Nos.423/2018, 427/2018, 517/2018 & 447/2018, all the above appeals have already been admitted for hearing. Therefore, considering the fact that these appeals (MAC Nos.423/2018, 427/2018, 517/2018 & 447/2018) also involve the identical issue for adjudication and have been filed within limitation, they are **admitted** for hearing.

03. With the consent of the parties, the appeals were heard finally on 24/10/2018 and reserved for judgment.

04. All these appeals arise out of separate awards dated 16.1.2018 passed by First Additional Motor Accident Claims Tribunal, Ambikapur, Distt. Surguja (CG) in Claim Cases No.109/14, 137/14, 111/14, 124/14, 119/14, 107/14, 120/14, 123/14, 121/14, 139/14, 126/14, 128/14, 108/14, 122/14, 125/14, 138/14, 118/14 & 110/14 awarding compensation in favour of the claimants of Rs.5,30,600/-, 7,35,400/-; 6,80,000/-; 7,35,400/-; 9,01,400/-; 4,90,600/-; 7,97,000/-; 8,51,000/-; 7,35,400/-; 8,03,750/-; 7,35,400/-; 7,35,400/-; 7,35,400/-; 8,11,000/-; 5,85,050/-; 7,53,125/-; 4,95,950/- & 6,80,000/- with interest @ 6% per annum from the date of claim applications till realization respectively fastening liability on non-applicants No. 1 & 2/driver & owner of the offending vehicle while exonerating non-applicant No.3/insurance company of its liability on the ground of breach of policy conditions.

05. Brief facts necessary for disposal of these appeals are that on the date of accident i.e. 8.4.2014 some villagers namely Smt. Sudhnbai Kerketta, Fuleshwar; Basant Tigga; Poonam Kerketta; Salomi; Marsel Tirkey; Smt. Hero Kerketta; Jaswanti; Pushpa Tigga; Apolina Kerketta; Jwakim Bakhla; Rahul Ekka @ Munna; Ku. Sushilta; Hilariyus; Ramkeshwar; Julius Tirkey; Dhansai and Smel Lakra along with others were going from Village-Dhelsara to Pratappur to attend a marriage function by the offending vehicle. However, due to rash and negligent driving of the offending vehicle by non-applicant No.1 Manoj Kumar, which was owned by non-applicant No.2 Laxmi Prasad Minj and duly insured at the relevant time with non-applicant No.3/Shri Ram General Insurance Company Ltd., the said vehicle met with an accident at Village-Chendra, P.S. Ambikapur, Raigarh Road. As a result

thereof, the abovementioned persons travelling in the offending vehicle suffered grievous injuries and succumbed to the same.

06. On separate claim petitions under Section 166 of the Motor Vehicles Act being filed by the respective legal representatives/legal heirs of the deceased persons claiming compensation against their death, the Tribunal considering the pleadings of the parties and the evidence adduced in support thereof, by the impugned awards dated 16.1.2018 granted compensation in favour of the claimants in the respective claim cases as mentioned above.

07. Learned counsel for the appellants/claimants jointly submit that though they have raised various grounds in their memo of appeals for assailing the award dated 16.1.2018 of the Tribunal, however, they are not pressing all those grounds and are confining their arguments only to the extent that considering the facts and circumstances of the case, in particular the fact that till date the claimants have not received even a single penny out of the compensation awarded by the Tribunal, this Court may direct non-applicant No.3/insurance company to pay the respective amount of compensation to the claimants and then recover the same from non-applicant No.2/owner of the offending vehicle.

Reliance has been placed on the decision of the Hon'ble Supreme Court in the matter of ***Jugal Kishore and another Vs. Ramlesh Devi and others, 2003 (4) MPHT 574 (DB); Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796*** and ***Shivawwa and another Vs. Branch Manager, National India Insurance Company Limited and another, (2018) 5 SCC 762***.

08. On the other hand, learned counsel appearing for the respondent/insurance company supporting the impugned awards submits that the Tribunal considering all the relevant aspects of the matter has rightly exonerated the insurance company of its liability and fastened the same on non-applicants No. 1 & 2, which needs no interference by this Court as the offending vehicle was being driven in contravention of policy conditions by carrying number of persons in the vehicle and no premium was taken by the insurance company for covering risk of such passengers.

Reliance has been placed on the ***order dated 22.8.2017*** of this Court in ***MAC No.1732/2016 (HDFC Ergo General Insurance Company Ltd. Vs. Smt. Kumari Bai and others) and other connected appeals*** and in the matter of ***New India Assurance Company Ltd. Vs. Ashok Kumar Yadav and others, 2017 (3) CGLJ 110.***

09. Heard learned counsel for the respective parties and perused the material available on record.

10. From perusal of the record, it is seen that on the date of accident non-applicant No.1 Manoj Kumar was having a valid and effective licence to drive the offending vehicle which falls in the category of Light Motor Vehicle and further that the offending vehicle was duly insured with non-applicant No.3 at the relevant time. However, since the offending vehicle was a Light Goods Vehicle and the evidence goes to show that in the said vehicle, passengers were being carried, for which no premium was taken by the insurance company, the Tribunal rightly exonerated the insurance company of its liability on the ground of

breach of policy conditions and fastened the same on non-applicants No. 1 & 2/driver & owner jointly and severely.

11. The Hon'ble Supreme Court in a recent judgment in the matter of ***Shivawwa and another*** (supra) has held that even in absence of liability to pay compensation of the insurance company, it has to satisfy the awards in respect of third party risks on the principle of “*pay and recover*”. In para-13 it was observed as under:

“13. Assuming for the sake of argument that the insurance company was not liable to pay compensation amount awarded to the claimants as the offending tractor was duly insured, the insurer would be still liable to pay the compensation amount in the first instance with liberty to recover the same from the owner of the vehicle owner (respondent No.2), in light of the exposition in the case of *National Insurance Co. Ltd. Vs. Swaran Singh*, (2004) 3 SCC 297. In para 110 of the said decision, a three-Judge Bench of this Court observed thus: (SCC pp. 341-42)

"110. The summary of our findings to the various issues as raised in these petitions are as follows:

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by 1 (2004) 3 SCC 297 14 compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a) (ii) of the said Act.

(iii) xxx

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but

must also establish 'breach' on the part of the owner of the vehicle; the burden of proof where for would be on them.

(v) – (ix) xxx xxx xxx xxx

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with Sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by Sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in Sub-section (4) with proviso thereunder and Sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by, relegating them to the remedy before, regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims." *(emphasis supplied)*

12. In the matter of **Manuara Khatun and others** (supra), the Hon'ble Supreme Court held as under:

“13. The only question, which arises for consideration in these appeals, is whether the appellants are entitled for an order against the Insurer of the offending vehicle, i.e., (respondent No. 3) to pay the awarded sum to the appellants and then to recover the said amount from the insured (owner of the offending vehicle-Tata Sumo)-respondent No.1 in the same proceedings.

14. The aforesaid question, in our opinion, remains no more

res integra. As we notice, it was subject matter of several decisions of this Court rendered by three Judge Bench and two Judge Bench in past, viz., [National Insurance Co. Ltd. vs. Baljit Kaur & Ors.](#), (2004) 2 SCC 1, [National Insurance Co. Ltd. vs. Challa Upendra Rao & Ors.](#), (2004) 8 SCC 517, [National Insurance Co. Ltd. vs. Kaushalaya Devi & Ors.](#), (2008) 8 SCC 246, [National Insurance Co. Ltd. vs. Roshan Lal](#), (2017) 4 SCC 803 and [National Insurance Co. Ltd. vs. Parvathneni & Anr.](#), (2009) 8 SCC 785.

15. This question also fell for consideration recently in [Manager, National Insurance Company Limited vs. Saju P. Paul & Anr.](#), (2013) 2 SCC 41 wherein this Court took note of entire previous case law on the subject mentioned above and examined the question in the context of [Section 147](#) of the Act. While allowing the appeal filed by the Insurance Company by reversing the judgment of the High Court, it was held on facts that since the victim was travelling in offending vehicle as "gratuitous passenger" and hence, the Insurance Company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, this Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the Insurance Company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of "pay and recover".

16. R.M. Lodha, J. (as His Lordship then was and later became CJI) speaking for the Bench held in paras 20 and 26 as under: (Saju P. Paul Case)

"20. The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the Insurance Company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle (Respondent 2 herein).

26. *The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in Baljit Kaur, (2004) 2 SCC 1 and Challa Upendra Rao, (2004) 8 SCC 517 should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, the claimant was 28 years old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to the stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The Insurance Company has already deposited the entire awarded amount pursuant to the order of this Court passed on 1-8-2011 ([National Insurance Co. Ltd. vs. Saju P. Paul](#)), and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent 1) may be allowed to withdraw the amount deposited by the Insurance Company before this Court along with accrued interest. The Insurance Company (the appellant) thereafter may recover the amount so paid from the owner (Respondent 2 herein). The recovery of the amount by the Insurance Company from the owner shall be made by following the procedure as laid down by this Court in Challa Upendra Rao(supra)."*

19. We find no merit in any of the submissions. Firstly, as mentioned above, we find marked similarity in the facts of this case and the one involved in Saju P. Paul's Case (supra). Secondly, merely because the compensation has not yet been paid to the claimants though the case is quite old (16 years) like the one in Saju P. Paul's Case (supra), it cannot be a ground to deny the claimants the relief claimed in these appeals. Thirdly, this Court has already considered and rejected the argument regarding not granting of the relief of the nature claimed herein due to pendency of the reference to a larger Bench as would be clear from Para 26 of the judgment in Saju P. Paul's case (supra). That apart, learned counsel for the appellants stated at the bar that the reference made to the larger Bench has since been disposed of by keeping the issue undecided. It is for this reason also, the argument does not survive any more.

20. It is for all these reasons, we find no good ground to take a different view than the one consistently being taken by this Court in all previous decisions, which are referred supra, in this regard.

21. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Company (respondent No. 3) - they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Company-respondent No.3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo)-respondent No.1 in execution proceedings arising in this very case as per the law laid down in Para 26 of Saju P. Paul's case quoted supra."

13. I have gone through the judgments relied upon by counsel for the insurance company, however, I find myself in respectful agreement with the recent decisions of the Hon'ble Supreme Court in ***Shivawwa and another*** and ***Manuara Khatun and others*** (supra). Therefore, considering the facts and circumstances of the case, in particular the fact that at the relevant time the offending vehicle was duly insured with non-applicant No.3/insurance company, the claimants are poor tribal, have been contesting the claim cases since 2014 and as informed by counsel for the appellants, they have not received any amount till date out of the awarded sum by the Tribunal, keeping in view the above-mentioned judgments of the Apex Court, this Court feels it proper to order for "pay and recover" in these appeals. Hence, respondent No.3/Shri Ram General Insurance Company Ltd. is directed to pay the amount of compensation awarded by the Tribunal to the claimants in the respective claim cases and then recover the

same from non-applicant No.1/owner as per law laid down in *Saju P. Paul* (supra).

14. For the reasons mentioned above, all the appeals stand disposed of with modification in the awards impugned to the above extent. However, rest of the conditions of the impugned awards shall remain intact.

**Sd/
(Gautam Chourdiya)
Judge**