

HIGH COURT OF CHHATTISGARH, BILASPUR**REVP No. 64 of 2019**(Arises in MAC No. 140/2019)

1. The Oriental Insurance Co. Ltd., Through - Manager, Branch Office, Rajendra Park Chowk, G.E. Road, Durg, Tahsil And District Durg (C.G.) (Insurer)

---- Applicant

Versus

1. Smt. Santoshi Kewat (Nishad) W/o Late Balkrishna @ Balkishan Kewat (Nishad), Aged About 27 Years,
2. Ku. Neha Nishad D/o Late Balkrishna @ Balkishan Nishad, Aged About 9 Years,
3. Ku. Gouri Nishad D/o Late Balkrishna @ Balkishan Nishad, Aged About 7 Years,

Respondent No. 2 & 3 are Minor, through natural guardian mother Respondent No. 1, R/o Through Sanjay Bandhu Dubey (Banjare) S/o Gajanand Bandhu, Near Mahadev Talab, Infront Of Satya Auto Parts Gali, Changorabhata, Post Sunder Nagar, Police Station - D.D. Nagar Raipur, Tahsil And District Raipur (C.G.).

4. Ghasiya S/o Late Murari Nishad Aged About 60 Years,
5. Dukhni W/o Ghasiya Nishad, Aged About 59 Years,
6. Ravi S/o Ghasiya Nishad, Aged About 21 Years,

Respondent No. 4 to 6 R/o Ramkund, Matiyapara Sound Service, Vivekanand Ashram Raipur, Police Station Azad Chowk, Raipur, Tahsil And District Raipur (C.G.).

7. Kamlesh Singh Rajput S/o Late Vishnu Singh Rajput Aged About 38 Years R/o Sikola Bhata, Prem Nagar, Police Station - Mohan Nagar, Durg, Tahsil And District Durg (C.G.).
8. Manager, Sahkari Vipnan Samiti Maryadit, Near F.C.I Godown, Dhamdha Naka, Durg, Tahsil And District Durg (C.G.).

---- Respondents

For Applicant	:	Shri Raj Awasthi, Advocate.
For Respondents	:	None.

Hon'ble Shri Gautam Chourdiya, J

ORDER
(IN CHAMBER)

28/06/2019

- 1) The instant review petition has been filed by the Oriental Insurance Company Limited seeking review of the judgment dated 21/01/2019 passed by this Court in MAC No. 140/2019. By the said judgment the appeal filed by the Insurance Company was dismissed at the motion stage. Learned counsel for the Insurance Company assailed the award in the aforesaid appeal on the ground of validity of fitness certificate but the same was not considered while passing judgment dated 21/01/2019. On this ground this review petition has been filed by the Insurance Company for modification in the judgment dated 21/01/2019.
- 2) As argued by learned counsel for the appellant/Insurance Company, the same was mentioned in para 6 of the judgment dated 21/01/2019 passed in MAC No. 140/2019. Though, the Insurance Company in its written statement has mentioned in para 2 while making specific averments that at the time of accident on 26/11/2015 fitness certificate was not valid and it was renewed only after 21 days by the concerned authority, however, no evidence whatsoever has been adduced by the Insurance Company to substantiate the said plea. It is well settled principle of law that mere raising of a particular plea is not sufficient and the party is required to substantiate the plea so raised by adducing relevant and cogent evidence. Therefore,

merely on the ground of plea of the Insurance Company it cannot be said that at the time of accident the offending vehicle was being driven without fitness certificate. Even no such issue was raised by the appellant/Insurance Company while advancing arguments before the appellate Court. The Tribunal in its award in para 20 has considered the plea of the Insurance Company regarding fitness certificate and rejected the said plea on the ground that no evidence has been adduced by the Insurance Company in support thereof. This Court considering the facts and circumstances of the case and the arguments advanced by learned counsel for the Insurance Company passed the judgment on 21/01/2019. Even otherwise the defence of absence of fitness certificate as raised in the review petition cannot be considered for the reasons that the same is not mentioned in the terms and conditions of the Insurance Policy and such defence is also not available under section 149 of the Motor Vehicles Act, 1988.

- 3) On the basis of the above discussion, this Court finds no substance in this review petition and therefore, it is dismissed accordingly.

-Sd/-
(Gautam Chourdiya)
Judge