

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A(C) No.1011 of 2014**

General Manager, Nmdc Limited Deposit No. 14 And 11 C, Kirandul Complex,
Distt. Dantewada C.G., Chhattisgarh **---- Appellant**

Versus

1. Padmini Podiya (Dead) Through Lrs., S/o As Per Court Order Dead 28-06-2019 And 20-08-2019., Chhattisgarh
 - 1.1 - (I) Smt. Ayati W/o - Late Padami Aged About 52 Years Relation First Wife. R/o - Bodli, Thana-Nelsanar, District South Bastar Dantewada Chhattisgarh, Chhattisgarh
 - 1.2 - (li) Smt. Ayati W/o - Late Padami Aged About 49 Years Relation Second Wife R/o - Bodli, Thana -Nelsanar, District South Bastar Dantewada Chhattisgarh, Chhattisgarh
 - 1.3 - (lii) Shri Mangadu S/o - Late Padam Aged About 33 Years R/o - Bodli, Thana -Nelsanar, District South Bastar Dantewada Chhattisgarh, Chhattisgarh
2. Radheshyam Sarkar S/o Pyarelal Sarkar Aged About 45 Years R/o Bengali Camp, Kirandul, Distt. Dantewada C.G. (Driver Of Vehicle Tata Truck 409 Cg 18 Zb 0102), District : Dantewada, Chhattisgarh
3. Ramesh Kumar Lohare S/o Manik Chand Lohare Aged About 27 Years R/o Main Market Kirandul, Distt. Dantewada C.G. (Owner Of Vehicle Tata Truck 409 Cg 18 Zb 0102), District : Dantewada, Chhattisgarh
4. The New India Insu.Co.Ltd. S/o Thru- Its Branch Manager, Branch Office, Jagdalpur, Distt. Bastar C.G. (Insurer Of Vehicle Tata Truck 409 Cg 18 Zb 0102), District : Bastar(Jagdalpur), Chhattisgarh
5. State Of Chhattisgarh S/o Thru- District Collector, Distt. South Bastar Dantewada C.G., District : Dantewada, Chhattisgarh **----Respondents**

For Appellant:-	Shri Viabhav Shukla, Advocate.
For Respondents No.1 to 3:	None, though served.
For Respondent No.4:	Shri NK Malviya, Advocate
For Respondent No.5/State:	Shri Vikas Bhaskar, Panel Lawyer.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Award On Board

12.09.2019

1. This Miscellaneous Appeal has been preferred by Non-Applicant No.5/NMDC Limited, Kirandul under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') questioning the legality and propriety of the award dated 26.07.2014 passed by the Additional Motor Accidents Claims

Tribunal, District South Bastar, Dantewada (CG) (for short 'the Claims Tribunal') in Claim Case No. 285/2014 (Padami Podiya vs. Radheshyam Sarkar and others) by which, the Claims Tribunal, while allowing the claim in part, awarded total amount of compensation to the tune of Rs.34,700/- with 7.5% interest p.a from the date of filing of the claim Petition till its realization while fastening the liability upon Non-Applicants No.1, 2 4 & 5 and that by exonerating Non-Applicant No.3/New India Insurance Company Limited. The parties to this Appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated, the facts of the case are that on 22.10.2005, Applicant Padami Podiya was travelling along with others in ill fated vehicle on the date of accident. It was pleaded by the Claimant that he and others were travelling in the offending vehicle "truck" i.e. Tata 409 bearing its registration No CG 18-ZB-0102 which was owned by Non-Applicant No.2-Ramesh Kumar Lohare. The vehicle in question was insured with Non-Applicant No.3/New India Insurance Company Limited. In the Claim Petition, the State Government was also arrayed as Non-Applicant No.4 while, the present Appellant herein as Non-Applicant No.5. The vehicle in question was being driven by its driver namely Radheshyam Sarkar, Non-Applicant No.1.

3. According to the claim Petition, when he was travelling along with others in the said truck to Bhairamgarh, the driver of it has driven the same in a rash and negligent manner, as a result of which, it turned turtle at a canal namely Ganeshbahara, whereby the claimant and others sustained injuries while one Padami Munna expired due to the injuries sustained by him. On account of the alleged accident, a claim enumerated under Section 166 of the Act of 1988 has been made by claiming total amount of compensation to the

tune of Rs.3,50,000/-.

4. The driver and owner of the offending vehicle have filed their written statements and stated that because of the programme of the Governor arranged by the State Government, as such people were being arranged by the State Government. In pursuance thereof, the State Government summoned and procured the alleged vehicle from him by its Protocol Officer through NMDC, the Appellant herein. It was stated further by the owner and driver of the offending vehicle that the possession of the vehicle was taken over by the State Government and was deployed in such job. After the procurement of the vehicle in question as such, the owner did not have any control over the same. It was further stated that the driver of the alleged offending vehicle had the valid and effective driving license to drive the same and since it was duly insured with Non-Applicant No.3/New India Insurance Company Limited, therefore, they are entitled to be indemnified by the said Insurance Company.

5. Non-Applicant No.3-The Insurance Company contested the claim on the ground that the accident had occurred due to rash and negligent act of the driver of the offending vehicle and on the date of accident, the subject vehicle was being plied in breach of condition of the policy in as much as 70-80 persons were being carried in the vehicle, which could not have been even allowed otherwise. In such circumstances, the Insurance Company cannot be held liable to pay any amount of compensation in relation to the accident occurred on 22.10.2005.

6. The State Government (Non-Applicant No.4) resisted the claim by submitting *inter alia* that the State is not a necessary party as the subject vehicle was acquired by the Collector, South Bastar Dantewada through

General Manager, NMDC, Kirandul in order to maintain law and order. Since the Governor was to visit the place, therefore, on the requisition of the State, the NMDC, Kirandul had sent the subject vehicle along with other vehicles. Therefore, no liability could be fastened upon it.

7. The Non-Applicant No.5/NMDC Limited (Appellant herein) denied the averments made in the Claim Petition and pleaded that the vehicle in question was taken on rent from Ramesh Kumar Lohare, the owner of the vehicle in question and pleaded further that the said vehicle was procured on the basis of the instruction issued by the State Government and after acquiring the same, it was handed over to the State Government through its Officers and therefore, the entire control and possession of the same was with the State Government. In such circumstances, the NMDC neither being the owner nor having any control over the alleged vehicle, could not be held liable to pay the amount of compensation.

8. After considering the evidence led by the parties, it has been held by the Claims Tribunal that Non-Applicants, except Non-Applicant No.3 (the New India Insurance Company Limited), are jointly and severally liable to make good the amount of compensation, while exonerating the said Insurance Company from its liability as the vehicle in question was being used in violation of the insurance policy. Being aggrieved, the Appellant/NMDC has preferred this Appeal.

9. During the course of the arguments, it has been pointed out by Shri Shukla, learned Counsel for the Appellant that apart from this Appeal, the Appellant and the Non-Applicant No.4/State had preferred certain Appeals while questioning the award impugned dated 26.07.2014 which was passed in various Claim Petitions. The Particulars of the Appeals preferred by the

Appellant/NMDC were as under:-

- i) M.A(C) No.1009/2014
- ii) M.A.(C) No.1010/2014
- iii) M.A.(C) No.1012/2014 and
- iv) M.A.(C) No.1013/2014

10. In the aforesaid Appeals, it was held by the Co-ordinate Bench of this Court vide its order dated 24.04.2015 that the vehicle in question was in possession and in control of the State Government. Accordingly, it was held that the State Government falls within the purview of “owner” defined under Section 2 (30) of the Act of 1988 and thus, the Appeals preferred by the Appellant were allowed, while the Appeals preferred by the State Government being M.A(C) No.1231/2014, M.A.(C) No.1235/2015, M.A.(C) No.1236/2014 and M.A.(C) No.1153/2014 were dismissed. Consequently, the liability imposed upon the Appellant – NMDC was set aside while upholding the validity of the said impugned common award in so far as it was passed against the other Respondents including the State Government.

11. In view of the findings recorded by the Co-ordinate Bench of this Court, the instant Appeal deserves to be and is hereby allowed in the same line. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge