**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 1119 of 2012**

- Pawan Chauhan S/o M.S. Chauhan Aged About 36 Years R/o Devpuri, P.S. Mainpuri, Distt. Mainpuri U.P. (wrongly mentioned as driver)

**---- Appellant**

**Versus**

1. Smt. Nand Kuwar Yadav W/o Late Laxman Yadav Aged About 32 Years

2. Prakash Yadav S/o Late Laxman Yadav Aged About 16 Years

3. Ku. Sheela D/o Late Laxman Yadav Aged About 14 Years

3(1) Ku. Kulvanteen D/o Late Laxman Yadav, age 10 years

4. Akash S/o Late Laxman Yadav Aged About 9 Years

   Respondents No. 2 to 4 minor through mother Smt. Nand Kunwar wd/o late Laxman Yadav)

5. Sonkunwar Yadav W/o Late Manohar Yadav Aged About 65 Years

   All R/o Village Bandhatola, Police Station and Post Rengakhar Kala, Distt. Kabirdham (CG)

6. Anil Dhurve S/o Harishchandra Dhurve Aged About 25 Years At Present Rampur, Post- Rengakhar Kala, P.S. Rengakhar Kala, Distt. Kabirdham C.G., Permanent R/o Krishna Nagar, Mainpuri (UP)

7. United India Insurance Company Ltd. Thru- Branch Manager, Branch- Mainpuri, P.S. Mainpuri U.P. Office At 367 Devi Road, Mainpuri, Awas Colony, Mainpuri U.P.

**---- Respondents**

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| For Appellant | : | Shri Ajit Singh, Advocate. |
| For Respondent No.1 to 6 | : | None though served. |
| For Respondent No.7 | : | Shri HB Agrawal, Sr. Advocate with Ms. Preeti Yadav, Advocate. |

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**Hon'ble Shri Gautam Chourdiya, J**

**Judgment On Board**

**10/04/2019**

This appeal is by the owner of the vehicle under Section 173 of the Motor Vehicles Act, 1988 against the award 30th March, 2012 passed by Motor Accident Claims Tribunal, Kabirdham (Kawardha) in Claim Case No.14/2010 awarding total compensation of Rs.10,06,600/- with interest @ 9% per annum from the date of application till realization, fastening liability on the non-applicants No. 1 & 2/driver & owner jointly and severally while exonerating non-applicant No.3/insurance company on the ground of there being no insurance policy of the vehicle in question.

02. As per claim petition, on 10.8.2009 Laxman, aged 35 years, earning Rs.9000/- per month from agriculture, labour work as well as by selling milk, suffered grievous injuries due to rash and negligent driving of vehicle tractor trolley bearing No. UP 84 1030 (offending vehicle) by non-applicant No.1 and died during treatment in hospital on 11.8.2009. At the relevant time, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.

03. On claim petition being filed by the claimants, wife, children and mother of the deceased, under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

04. Learned counsel for the appellant/owner submits that the Tribunal has wrongly exonerated the insurance company of its liability on the ground of there being no insurance policy of the offending vehicle. He submits that the appellant obtained certain information as to the insurance policy of the offending vehicle under Right to Information Act and vide Annexure A/8, it is clear that the insurance policy relates to the offending vehicle bearing No. UP 84-1030 and not UP 84-1033. The insurance company has also filed IA No.04, application for submitting copy of policy after verification with affidavit,

on the direction of this Court vide order dated 14.3.2018 which bears the same chassis (90360084) and engine number (790177) as are there in the correct insurance policy of the offending vehicle filed with Annexure A/8. As per the insurance policy, the offending vehicle was insured from 19.8.2008 to midnight 18.8.2009 and since the accident took place on 10.8.2009 and there is no breach of policy conditions on the part of owner or driver of the vehicle, the insurance company is liable to pay compensation to the claimants.

05. The aforesaid facts have not been disputed by counsel for the respondent No.7/non-applicant No.3 i.e. insurance company. He admits that the insurance policy was actually issued for vehicle tractor trolley bearing No. UP 84 1030. No counter appeal has been filed by the insurance company as submitted by learned counsel for the parties.

06. In view of above admitted position, the appeal is allowed in part with modification in the impugned award to the extent that non-applicant No.3/insurance company is held liable jointly and severally alongwith non-applicants No. 1 & 2/driver & owner of the vehicle to satisfy the award. If any amount has been deposited by non-applicant No.2/owner and the same has been disbursed to the claimants, he has the right to recover the same from non-applicant No.3/insurance company in accordance with law.

Sd/

**(Gautam Chourdiya)**

**Judge**

Khan