

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 337 of 2012**

1. The Oriental Insurance Co. Ltd., Rajnandgaon, Though Divisional Manager Oriental Insurance Company Ltd., Division Office Durg, Parmanand Building, Dr. Rajendra Park Choul, GE Road Durg (C.G.). (**Insurer**)

---- Appellant**Versus**

1. Tilak S/o Lallu Mehar Aged About 50 Years,
 2. Kumari Bai D/o Tilak Mehar Aged About 48 Years,
 3. Savita Mehar W/o Topu Mehar Aged About 21 Years,
- Respondent No. 1 to 3 are R/o Village Gota, P.O. Biroda P.O. Berla District Durg (C.G.) (**Claimants**)
4. Rohit S/o Swroop Kumar Rajput Aged about 33 years, Village Police Station Khamriya, District Durg (C.G.). (**Driver**)
 5. Shiv Kumar Tamrkar S/o R.P. Tamrkar, Tamrkar Bus Service, Gandai Pandariya District Rajnandgaon (C.G.) (**Owner**)

---- Respondents

For Appellant	:	Shri Ghanshyam Patel, Advocate.
Respondent No. 1 to 3	:	Shri Amit Kumar Sahu, Advocate on behalf of Shri C.P. Sahu, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****17/06/2019**

1. This appeal is preferred by the Insurance Company/non-applicant No. 3 under Section 173 of the Motor Vehicles Act, 1988 against the award dated 15/12/2011 passed by Additional Motor Accident Claims Tribunal, Bemetara, District Durg (C.G.) in Claim Case No. 136/2011 awarding total compensation of Rs. 4,50,000/- with interest @ 6% per annum from the date of

application till realization, fastening liability on the non-applicant No. 3/Insurance Company.

2. As per averments of claim petition, on 29/05/2011, deceased Topu Mehar, aged about 25 years was coming from village Dhamdha to village Gota in his Motorcycle with a moderate speed. However on the way near Basni Chowk Non-applicant No. 1 Rohit driver of the offending Bus bearing No. CG07 ZA 0276 driven the vehicle rashly and negligently dashed the motorcycle of deceased. As a result of this accident, Topu sustained grievous injuries and died on the spot. At the time of accident the offending vehicle is owned by non-applicant No. 2/Shiv Kumar Tamrkar and insured with non-applicant No. 3/Oriental Insurance Company Ltd.
3. On claim petition filed by claimants' wife and parents of deceased under section 166 of Motor Vehicles Act, 1988 the Tribunal considered the evidence led by the parties and passed an award as mentioned above in Para No. 1 of this judgment.
4. Learned counsel for the appellant/Insurance Company has raised various grounds in this memo of appeal, however, he is not pressing all those grounds and is assailing the award on the following grounds only:-
 - i) that the vehicle was not involved in accident because the time on which the accident happened at Dhamdha Chowk is differ from the timing of the route permit and in Postmortem Report prepared by Doctor prior to accident, therefore, learned Tribunal wrongly fastened liability upon the Insurance Company looking to vehicle was not involved in the case.
 - ii) that looking to the Postmortem Report and statement of the driver of the offending vehicle Rohit Kumar Rajput learned Tribunal wrongly fastened the liability on two grounds and this appeal is challenged by Insurance company.

5. On the other hand, learned counsel for the respondents vehemently opposes the contention made by the counsel for the appellant and supports the impugned award and submits that no any route permit is produced and proved by the respondent owner of the vehicle and driver was given the oral statement regarding timing but no any timing is mentioned in the route permit. Therefore, learned counsel arguing this matter on the route permit is not acceptable. Learned Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court.
6. Heard learned counsel for the parties and perused the material available on record.
7. As per postmortem report itself disclosed this fact the application for postmortem is prepared on 29/05/2011 around 07:00 PM, therefore, date is wrongly mentioned by the Doctor it cannot be only reason to discard the claim petition filed by claimant.
8. There is no any route permit is produced and proved by the respondent driver and owner of the vehicle before the Tribunal only on the oral basis the Rohit Kumar Rajput stating his timing of Bus for departure place to destination, therefore, it cannot be acceptable unless the document permit is produced before the Tribunal.
9. That the vehicle is involved in this case proved by claimants, after due investigation by the concerned Police Authority, Station Dhamdha Charge-sheet is filed against respondent No.-1 Rohit Kumar Rajput Ex.-P-1, claimant in this F.I.R. only mentioned the fact that one Bus is dashed the motorcycle as per Ex. P-2 after due investigation charge-sheet filed against the non-applicant No. 1 no any complaint made by the respondent No. 1 before any authority false implication in this accident. As per statement of Rohit Kumar driver of offending vehicle NAW-1 himself admitted in his para 4 at the time of accident he was driven the

Bus bearing No. CG07 ZA 0276 the Investigating Officer seized the Bus from driver of the offending vehicle and charge sheet is filed against non-applicant No. 1. no any enmity with the Police Officer and claimants with the driver after filing the charge sheet by the concerned Police Station against non-applicant No. 1, no any complaint is made by the driver to any authority regarding false implication of the non-application No.1. Therefore, looking to the evidence adduced by the AW-01 Savita Bai and AW-02 Rohit Kumar and documents as per Ex. P-1 to Ex. P-6 no substance in the appeal. Considering the facts and circumstances of the case, the nature and quality of evidence adduced by the appellant as reflected from the impugned award, the said assessment appears to be just and proper, warranting no interference by this Court.

10. Resultantly, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed.

-Sd/-
(Gautam Chourdiya)
Judge