

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 893 of 2019**

1. IFFCO-TOKIO General Insurance Company Ltd., Through Its Branch Manager, 1st Floor, Galaxy Height, Near ICICI Bank, Vyapar Vihar Bilaspur (C.G.) (Insurer Of Motor Cycle No. C.G.12 AK 8145)

**---- Appellant****Versus**

1. Smt. Muniya Bai Dhurv W/o Late Pardesi Ram Gond Aged About 26 Years (Claimant No. 1)
2. Santu Ram S/o Late Daulat Singh Aged About 50 Years, (Claimant No. 2)
3. Ku. Anita Dhruv S/o Santu Ram Aged About 25 Years (Claimant No. 3)
4. Ku. Sukrita Dhurv S/o Santu Ram Aged About 19 Years (Claimant No. 4),

All are respondent/claimant No. 1 to 4 R/o Village Bhansajhal, Post Chapora, Thana Ratanpur, Tahsil- Kota, District Bilaspur (C.G.)

5. Masatram S/o Ramhe Singh Agariya Aged About 40 Years R/o Village Batra Katelipara, Thana And Tahsil- Pali, District Korba (C.G.) (Claimant No. 5 Owner Of Motor Cycle C. G. 12 AK 8145)

**---- Respondents**


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| For Appellant   | : | Shri Vaibhav Shukla, Advocate. |
| For Respondents | : | None.                          |

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**Hon'ble Shri Gautam Chourdiya, J****Judgment On Board****10/05/2019**

- 1) This appeal is preferred by the IFFCO-TOKIO General Insurance Company Ltd./non-applicant No. 2 under Section 173 of the Motor Vehicles Act, 1988 against the award dated 31/01/2019 passed

by Seventh Additional Motor Accident Claims Tribunal Bilaspur (C.G.) in Claim Case No. 296/2016 awarding total compensation of Rs. 5,25,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on the appellant/non-applicant No. 2.

- 2) As per averments in the claim petition, deceased Pardesi Ram Gond on 22/03/2015 at around 05:00 PM, earning Rs. 40,000 per annum as Labour, was sitting as a pillion rider alongwith his friends in Motorcycle Hero Honda bearing No. CG12 AK 8145 ridden by Shivram Markam. They were going towards his village Basajhal from Bilaspur near village Bharari one unknown vehicle rashly and negligently dashed the motorcycle of deceased. As a result of this accident deceased sustained grievous injury and died during treatment. The said motorcycle is owned by non-applicant No. 1/respondent No. 5 and insured with non-applicant No.2/appellant IFFCO-TOKIO General Insurance Company Ltd.
- 3) On claim petition being filed by the claimants' wife, father and sisters of the deceased under Section 163A of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.
- 4) Learned counsel for the appellant/Insurance Company submits as though he 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 policy does not cover the risk of the pillion rider.
  - ii. that driver, owner of unknown offending vehicle was not incorporated as a party and it is a case of hit and run, hence petition is not tenable. Therefore, learned Tribunal wrongly awarded compensation and fastened liability upon the Insurance Company.
- 5) I have heard learned counsel for the appellant and perused the material available on award impugned.
- 6) As regards income of the deceased, the claimants have pleaded that the deceased was earning Rs. 40,000/- per annum as labour. Looking to the income of deceased upto 40,000/- per annum the claim petition under section 163(A) of the Motor Vehicles Act, 1988 is tenable. It is not disputed by the counsel for the appellant that policy issued in favour of owner of the vehicle is package policy as per Ex. A-3 and deceased was a pillion rider and his death arises from use of motorcycle.

The argument that the driver, owner of unknown offending vehicle was not incorporated as a party raised by the counsel for the appellant has no substance as application is filed by claimants under section 163A of Motor Vehicles Act and deceased was a pillion rider and death of Pardesi Ram was due to use of motorcycle.

Considering the facts, circumstances and evidence of the case, the nature and quality of evidence adduced by the

claimants as reflected from the impugned award and not disputed by the appellant counsel, thus Court finds no illegality or infirmity in the impugned award.

- 7) Resultantly, the appeal being without any substance is liable to be dismissed at the admission stage itself and is, accordingly, dismissed.

**-Sd/-  
(Gautam Chourdiya)  
Judge**

Chandrakant