

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 882 of 2014**

1. State of Chhattisgarh, Through : Office of Superintendent of Police, South Bastar, Dantewada, District- Dantewada (CG).
2. State of Chhattisgarh, Through: Office of Collector, South Bastar, District- Dantewada (CG).

---- Appellants**Versus**

1. Rajesh Kuar Kashyap, S/o Ghasiram Kashyap, aged about 25 years, R/o- Budhpadar, School para, Thana- Gidam, P.O.- Goomadgunda, District- Dantewada (CG).
2. Bhomraj Burad, S/o Kajmat Burad, R/o- Harampara, Main Road, Gidam, Dist.- Dantewada (CG) (Owner)
3. The United India Insurance Company Ltd., Through: Branch Manager, Branch Office- Infront of Anupama Talkies, Jagdalpur, District- Dantewada (CG).

---- Respondents

For Appellant/State	:Shri R. R. Singh. Dy. Govt. Advocate
For Respondent No. 2/employer	:Shri P. K. Tulsyan, counsel for

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****14/03/2019:**

- (1) This appeal is filed by the appellants/State of Chhattisgarh against the award dated 28.06.2014 passed by First Additional Claims Tribunal Bastar at Jagdalpur in claim case No. 95/2015.
- (2) As against the compensation of Rs. 31,30,000/- claimed by the respondent No. 1/claimant by filing claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'MV Act') for the injuries sustained by him

in the motor accident occurred on 4.8.2010, the Tribunal awarded a total sum of Rs. 7,37,755.00/- as compensation along with interest @ 6 percent per annum from the date of application till its actual payment, fastening liability upon the State Government/respondents No. 3 & 4 to pay compensation to the claimants, who are acquired the offending vehicle from the owner/respondent No. 1 of the vehicle.

(3) Being aggrieved and dissatisfied with the award passed by the Tribunal fastening liability upon the State Government, appellants herein, appellants/State Authorities filed the instant appeal under Section 173 of the Motor Vehicles Act, 1988 challenging liability fastened upon it.

(4) Facts of the case leading to filing of the claim petition is that on 04.08.2010, when respondent No. 1/claimant i.e. Rajesh Kashyap was coming to jagdalpur from Dantewada sitting on Bolero Jeep bearing registration No. CG 18 D/0669, near Main road, Bada Pulia, Dilmili, the respondent No. 2 – Bomraj Burad, owner of the aforesaid vehicle, by driving the said vehicle rashly and negligently, hit the side of the Pulia and dashed the vehicle side of the *pulia* and met with an accident, as a result thereof, the respondent No. 1/claimant sustained grievous injuries on his head, on the elbow of right hand, on both the knees and on other parts of the body.

(5) Learned counsel for the appellant submits that at the time of accident vehicle was owned by respondent No. 2- Bhomraj Burad and insured with respondent No. 3 – The United India Insurance Company Ltd, therefore, the State authorities are not liable to pay compensation to respondent No. 1 and learned Tribunal has erred in fastening the liability upon the appellants/State authorities.

(6) Learned counsel for the respondent No. 2 supported the impugned award and submits that vehicle was acquired by the State Government as per documents Ex. D11/c and D12/c for the official purposes, therefore, the

learned Tribunal has rightly fastened the liability upon the appellants/State Authorities in view of the judgment of the Supreme Court in the matter of **National Insurance Company Limited Vs. Deepa Devi** and others reported in **AIR 2008 SC 735.**

(7) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(8) It is submitted by both the parties that no counter appeal is filed by the respondent in this case.

(9) It is not in dispute that accident occurred on 4.8.2010 and the offending vehicle was owned by Bhomraj at the time of accident. The appellants/State Authorities have only challenged the liability fastened upon it. Nijjam Anwar (NAW-2), posted in the police department, Reserve Line of Dantewada has admitted the fact that offending vehicle was acquired by the State Government through its Police Department forcefully from the owner of the vehicle and there is no any amount regarding that vehicle was given as per any agreement. As per document proved by the non-applicant witness No. 2 in para 5 & 6 of his statement the offending vehicle was acquired as per document Ex. D-11/c and as per Government scheme only some rent is paid to the owner of the vehicle there is no contract between owner and the State Government because the vehicle is forcefully acquired by the State Government by the owner. The vehicle was under control from 01.7.2010 to 04.08.2010 as admitted by Nijjam Anwar (NAW-2) and that statement was unchallenged and uncontroverted, therefore, at the time of accident i.e. 04.8.2010 vehicle was in possession of the non-applicant No. 3 & 4 who are the appellant in this case.

(10) The Supreme Court in the matter of **Deepa Devi and others** (Supra), has held that once possession is handed over, owner cannot exercise any

control thereupon- State shall be, therefore, liable to pay compensation and not registered owner of the concerned vehicle.

(11) Applying the principle of law laid down by the Supreme Court in the matter of **Deepa Devi (supra)** in the present case, it is clear that the in the facts & circumstances, the Tribunal has not committed any illegality in fastening the liability upon the appellants/State Authorities to pay compensation to the claimant, which does not call for any interference.

(12) Accordingly, the appeal, being devoid of merit, is liable to be and is hereby dismissed.

Sd/-

(Gautam Chourdiya)
Judge