

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1141 of 2018**

1. Smt. Bhagwati Das W/o Late Mukund Das Aged About 63 Years,
2. Gajanand Das S/o Late Mukund Das, Aged About 33 Years,
3. Sadanand Das S/o Late Mukund Das Aged About 36 Years,
4. Nirakar Das S/o Late Mukund Das, Aged About 41 Years,
5. Naresh Das S/o Late Mukund Das, Aged About 45 Years,

All are R/o Village Salhetarai, P.S. Basna, Tehsil Pithoura,
District Mahasamund (C.G.)

---- Appellants/Claimants**Versus**

1. Vijay Yadav S/o Tuntun Yadav R/o 16/52, Lashkar Road Gwalior (M.P.) (Driver)
2. Mr. Harjinder Singh S/o Bahadur Singh, R/o Maitrikunj Gandhinagar Risali, Bhilai, Tahsil And District Durg (C.G.) (Owner)
3. Manager, National Insurance Company Limited, Branch Office - Near Basant Talkies Bhilai, Tahsil And District Durg (C.G.) (Insurer)

---- Respondents

For Appellants	:	Shri R.R. Patankar, Advocate.
For Respondent No. 3	:	Shri R.N. Pusty, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****10/04/2019**

- 1) This appeal is preferred by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award dated 28/04/2018 passed by the First Additional Motor Accident Claims Tribunal, Mahasamund (C.G.) in Claim Case No. H09/2015 awarding the total compensation of Rs. 7,30,400/- with interest

@ 7% per annum from the date of application till realization, fastening liability upon non-applicant Nos. 1 & 2 jointly and severally. Insurance company has been exonerated on ground of breach of policy and fake licence.

- 2) As per averments in claim petition, on 18/05/2014 at around 11:30 AM deceased Mathamani Das, 22 years of age earning Rs. 6,000/- per month as labour, was travelling in Tractor bearing No. EF 735 attached with Trolley wherein agricultural equipments were loaded. However, on the way at village Khursipar canal, National Highway 53 non-applicant No. 1/Vijay Yadav by driving vehicle Trailer bearing No. CG07 C 7746 (offending vehicle) rashly and negligently dashed the Tractor from behind as a result of which Mathamani Das suffered grievous injury and succumbed to the same. At the time of accident the offending vehicle was owned by non-applicant No. 2 and insured with non-applicant No. 3.
- 3) On the claim petition being filed by the claimants, mother & brothers of the deceased under section 166 of Motor Vehicles Act, 1988, the Tribunal considering the evidence led by the parties passed an award as mentioned above.
- 4) Learned counsel for the appellants/claimants submits that though he has raised various grounds in this memo of appeal, however, he is not pressed all those grounds and is assailing the award on the following grounds only :-
 - i. that accident happened on 18/05/2014 and award is passed on 28/04/2018, near about one year is lapsed, after the award is passed and execution is still continued but no any amount recovered from non-applicant No. 1 and 2.
 - ii. that the claimant is the third party and vehicle is insured with non-applicant No.3, therefore, it may be directed to pay the entire compensation to the claimants and thereafter recover the same from non-applicant No. 1 & 2.

- 5) On the other hand, learned counsel for the respondent/ Insurance Company opposing the contention of the appellant counsel submits that present is a case of specific breach of policy condition on account of which the Insurance Company has been exonerated of its liability and this circumstances it would not be justifiable to pass an order of pay and recover in this case
- 6) No counter appeal has been filed by the respondents as submitted by counsel for the parties.
- 7) Heard, learned counsel for the parties and perused the material available on record.
- 8) Keeping in view the benevolent provisions of the Motor Vehicles Act in the light of the decisions of the Hon'ble supreme Court in ***Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796 and Manager, National Insurance company Limited V/s Saju P. Paul and another (2013) 2 SCC 41***, this Court is of the opinion that the ends of justice would be served if the Insurance Company/non-applicant No. 3 is directed to pay the entire amount of compensation to the claimants and then recover the same form the driver/non-applicant No. 1 and owner/non-applicant No. 2 of the vehicle in question in accordance with law.
- 9) In the result, the appeal is allowed in part with modification in the impugned award to the extent that it is non-applicant No. 3/Insurance Company which shall first pay the entire amount of compensation to the claimants and then recover the same form the non-applicant No.2/owner and non-applicant No.1/driver of the vehicle in accordance with law. However, rest of the conditions of the impugned award shall remain intact

-Sd/-
(Gautam Chourdiya)
Judge