

**HIGH COURT OF CHHATTISGARH, BILASPUR****M.A. (C) No. 1097 of 2016**

Bhomraj Burad, S/o. Kajmal Burad, aged about 50 years, R/o  
Harampara Main Road, Geedam District South Bastar,  
Dantewada (C.G.) (Employer)

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

1. Shivcharan, S/o. Anantram, aged about 45 years;
2. Smt. Phoolmati, W/o. Shivcharan, aged about 43 years;

Both are R/o. Bhogam Kalarpara, Post Kawalnar, Tahsil  
Dantewada, District South Bastar, Dantewada (C.G.)

(Claimants)

3. The United India Insurance Co. Ltd. Through Branch Manager,  
Branch Office Opposite Anupama Talkies, Jagdalpur, District  
Bastar (C.G.). (Insurance Co).

4. The State of Chhattisgarh, Through Collector Dantewada,  
Collector Office South Bastar, Dantewada, District South Bastar,  
Dantewada (C.G.) (Vehicle Acquirer)

**---- Respondents**


---

|                      |                                        |
|----------------------|----------------------------------------|
| For Appellant        | : Mr. Pravin Kumar Tulsyan, Advocate.  |
| For Respondent No.3  | : Mr. Dashrath Gupta, Advocate.        |
| For Respondent No. 4 | : Mr. R.R. Singh, Dy. Advocate General |

---

**Hon'ble Shri Justice Gautam Chourdiya****Order On Board****14/03/2019**

(1) Instant appeal has been preferred by appellant/employer of  
deceased – Rameshwar Jaiswal under Section 30 of the Employees'

Compensation Act, 1923, (henceforth 'the Act, 1923') against the order dated 26.05.2016 passed by Commissioner for Employees' Compensation-cum-Labour Court, Jagdalpur (hereinafter referred to as the "Commissioner"), in case No. 49/2010/W.C. Act/Fatal.

(2) This appeal was admitted for hearing on the following substantial question of law for determination:-

“Whether, the Commissioner, Workmen Compensation, Labour Court was justified to exonerate the State/Insurance Company from their liability to pay compensation to the claimant ?

(3) The claimants, who are unfortunate parents of deceased/employee- Rameshwar Jaiswal, filed an application under Section 22 of the Act, 1923 before Commissioner claiming compensation to the tune of Rs.7,79,485 along with interest for death of their son Rameshwar Jaiswal during the course of employment i.e. on 04.08.2010.

(4) Learned Commissioner, after considering the material placed on record, awarded a total sum of Rs.4,01,935/- in favour of the claimants and against the appellant/employer with a condition that if the aforesaid awarded amount is not paid within a period of 45 days from the date of passing of this order, then interest @ 12% per annum on the awarded amount shall be paid to the claimants from the date of accident till the date of its actual payment.

(5) Being aggrieved and dissatisfied with the part of the impugned order, by which liability fastened upon the appellant/employer to pay compensation to the claimants, instant appeal has been preferred by the appellant/employer under Section 30 of the Act, 1923.

(6) Facts of the case leading to filing of the claim petition are that Deceased –Rameshwar Jaiswal was under the employment of appellant as driver to drive Mahindra Bolero jeep bearing registration No. CG 18/D/0669 (henceforth, “questioned vehicle”) owned by appellant/employer. The said Mahindra Bolero jeep was insured with Respondent No. 2- i.e. United India Insurance Company Limited. On the date of accident i.e. 4.8.2010, while Rameshwar Jaiswal (since deceased) was driving the questioned vehicle from Dantewada to Jagdalpur, he lost his control over the questioned vehicle and due to which, the said vehicle dashed to the railing of the pool and fell down from there, as a result of which, all the passengers sitting in the said vehicle got injured and the driver of the said vehicle i.e. deceased – Rameshwer Jaiswal was injured and admitted to the Maharani Hospital, Jagdalpur, thereafter, he shifted to the Ramkrishna Hospital, Raipur where on 20.08.2010 he died during the course of treatment. Therefore, claimants, who are parents of deceased, filed an application under Section 22 of the Act, 1923 before the Commissioner claiming compensation as aforesaid.

(7) As per application, the deceased was aged about 21 years and

was earning Rs. 7,000/- per month as a driver at the time of accident; at the relevant point of time, the questioned vehicle, which was being driven by deceased Rameshwar Jaiswal, was acquired by the State Government through Collector, Dantewada for security purposes of the then MLA Shri Bhema Mandavi. Thus, the vehicle was not under the control of appellant/owner at the time of accident; and as per the documents i.e. Exs. NA/11, NA/12 NA/13 NA/14 and NA/15, the vehicle was under requisition of State Government through Collector, Dantewada under the authority of police department for the period from 01.07.2010 to 05.08.2010 and the alleged accident occurred on 4.8.2010, therefore, at the time of accident the questioned vehicle was under requisition of State Government and appellant/owner of the questioned vehicle has no control over the questioned vehicle on the date of accident.

(8) Learned counsel appearing for the appellant/owner submits that the appellant/employer, by way of filing all the relevant documents i.e. Exs. NA/11, NA/12 NA/13, NA/14 and NA/15, has proved the fact that questioned vehicle was forcefully taken by the State Government by acquisition and there is no agreement or contract for the vehicle regarding any hire or reward between the owner of the vehicle and State Government therefore, the Commissioner has committed illegality in fastening the liability upon the appellant/employer, whereas it ought to have been fastened upon the State Government.

(9) As per order Ex. NA-16, one claim petition, which was filed by one of the injured person namely Rajesh Kumar Kashyap, has been decided by the learned First Additional Motor Accident Claims Tribunal Bastar by award dated 28.06.2014 in Claim Case No. 95/2014 awarding amount of compensation in favour of the claimant and against the State Government. Thus, in that view of the matter, it has duly been proved that the questioned vehicle was acquired by the State Government at the relevant point of time and during course of acquisition by the State Government, accident had occurred, therefore, liability ought to have been fastened upon the respondent No. 4/State Government in view of the judgment of the Supreme Court in the matter of **National Insurance Company Vs. Deepa Devi** reported in **2008 (1) SCC 414** and **Purnya Kala Devi Vs. State of Assam and other** reported in **2014 ACJ 1269**.

(10) On the other hand, counsel for the respondents No. 1 to 3 supported the impugned order.

(11) Learned Counsel for the respondent No. 4/State submits that at the time of accident, deceased was under the employment of the appellant/owner of the offending vehicle and there was no specific contract between the State Government and owner of the vehicle in this regard and, therefore, learned Commissioner has rightly exonerated the Insurance Company and the State Government from their liability to pay compensation to the claimants, which does not call for any

interference in the instant appeal.

(12) I have heard learned counsel appearing for the parties and perused the matter available on record & the order impugned.

(13) It is not disputed by both the parties that deceased- Rameshwar Jaiswal working as driver was under the employment of the appellant and during the course of employment deceased died and vehicle was under requisition of State Government as per documents Exs. NA/11, NA/12 NA/13 NA/14 and NA/15, therefore, it is also not disputed that the said vehicle was acquired by the State Government through Collector, Dantewada under the authority of police department and at the time of accident vehicle was in possession and under the control of the State authorities.

(14) It is further undisputed fact that one award was passed in favour of one of the injured persons namely – Rajesh Kumar Kashyap, under the Motor Vehicles Act, 1988 on 28.06.2014 as per Ex. NA/16 and, in which, liability fastened upon Non-applicant No. 3 and 4 who are the officials of State Government whereas at the time of accident definitely deceased – Rameshwar Jaiswal was under the employment of appellant.

(15) Thus, looking to the overall facts & circumstances of the case and in view of the law laid down by the Supreme Court in the aforecited cases i.e. Deepa Devi and Purnya Kala Devi (supra), it is quite apparent that the questioned vehicle was requisitioned by the State

Authorities for the purpose of deploying the same for security duty of the then MLA – Shri Bhema Mandavi and the questioned vehicle was requisitioned according to the statutory rules and regulations and appellant/employer of the vehicle has no option to refuse the compliance of that order, therefore, the entire control over the driver & questioned vehicle is handed over to the State Authority and, thus, appellant/owner cannot be exercised any control thereupon, therefore, the State Authority shall be held liable to pay compensation to the claimants in place of registered owner as ordered by the Commissioner.

(16) So far as Insurance Policy of the questioned vehicle is concerned, the said vehicle was insured under the private car policy and that the vehicle was requisitioned by the State Officials as the statutory provisions of law and taken the complete control over the questioned vehicle and used for security purposes, therefore, it is held that Insurance Company is not liable to pay compensation to the claimants.

(17) Thus, the State authority/respondent No. 4 shall be held liable to pay compensation to the claimants. Accordingly, the question of law framed in this appeal is answered in negative with regard to the appellant/owner and insurer of the questioned vehicle whereas the same is answered in positive with regard to the State authority. Rest of the conditions mentioned in the order shall remain intact.

(18) The misc. appeal is allowed to the extent indicated hereinabove.

Sd/-

(Gautam Chourdiya)  
Judge