

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 2019 of 2018**

- National Insurance Company Limited Through Its Divisional Manager, Divisional Office- Vyapar Vihar Road, Taha Complex, Bilaspur, District Bilaspur, Chhattisgarh.

----Appellant**Versus**

1. Kailasho Wd/o Budhram, Aged About 26 Years
2. Jeet Sai, S/o Late Budhram, Aged About 26 Years
3. Chandan, S/o Late Budhram, Aged About 21 Years
4. Ku. Samalo, D/o Late Budhram, Aged About 14 Years
5. Ku. Mangali, D/o Late Budhram, Aged About 11 Years

Respondent nos. 4 & 5 are minor through their mother Kailasho (Res. No. 1)

All are R/o Village Jilibandh P.S. And Tah. Kahdgawan, District Korea Chhattisgarh.

6. Phurman Singh, S/o Shri Satiram Singh, R/o Vill.- Jilibandh, P.S. And Tah. Khadgawan, District Korea (Chhattisgarh)

---- Respondents

For Appellant
For Respondents

Shri Dashrath Gupta, Advocate.
None.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board****06/02/2019**

1. Heard on IA No.01, application for condonation of delay of 18 days in filing the appeal.
2. For the reasons mentioned in the said application, which is duly supported by affidavit, delay in filing the appeal is

hereby condoned.

3. Heard on admission.
4. This appeal is by the insurance company under Section 173 of the Motor Vehicles Act, 1988 against the award 06.08.2018 passed by 2nd Additional Motor Accident Claims Tribunal, Manendragrah, District Korea, C.G. in Claim Case No. 33/16 awarding total compensation of Rs.7,25,000/- with interest @ 8% per annum from the date of application till realization, fastening liability on the non-applicant No. 1 driver/owner, while exonerating the insurance company of its liability on the ground of breach of policy conditions. However, the Tribunal has ordered for pay and recover in this case.
5. As per claim petition, on 06.04.2013, when Phurman Singh was riding his motorcycle on which Budhram was sitting as a pillion rider, non-applicant No.1 Phurman Singh by riding the motorcycle in a rash and negligent manner dashed his motorcycle. As a result thereof, Budhram sustained grievous injuries and during treatment he died. At the time of accident, the offending vehicle was owned by non-applicant No.1 and insured with non-applicant No.2.
6. Learned counsel for the appellant has assailed the award of the Tribunal on the sole ground that on account of there being specific breach of policy conditions when the insurance company has been exonerated of its liability, the Tribunal should not have ordered for pay and recover. Therefore, he prays for setting aside of the order of the Tribunal with respect to pay and recover.
7. Heard learned counsel for the appellant and perused the impugned award.

8. So far as order of pay and recovery is concerned, admittedly on the date of accident the offending vehicle was duly insured with non-applicant No.2 and the deceased was a third party. Therefore, keeping in view the decisions of the Hon'ble Supreme Court in ***Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796*** and ***Shivawwa and another Vs. Branch Manager, National India Insurance Company Limited and another, (2018) 5 SCC 762***, this Court is of the opinion that the Tribunal has not committed any illegality in passing the order of pay and recover in this case.
9. In the result, the appeal filed by the insurance company being without any substance deserves to be dismissed at the admission stage itself and is, accordingly, dismissed.

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

Akhilesh