**AFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 2009 of 2018**

- ICICI Lumbard General Insurance Company Limited, Through : its Legal Manager, Vanijya Bhawan, Ground Floor, Devendra Nagar, Raipur (C.G.).

**---- Appellant**

**Versus**

1. Ramesh Tiwari S/o Late Ramdayal Tiwari, aged about 76 years, R/o Ward No. 04, Bramhan Para, Bemetara, District- Bemetara (C.G.).
2. Nawal Kishore Verma S/o Bholaram Verma, aged about 22 years R/o Village Chourenga, P.S. Simga, District- Baloudabazar (C.G.).
3. Nandkishore Verma S/o Bholaram Verma, aged about 20 years, R/o Village Chourenga, P.S. Simga, District- Baloudabazar (C.G.).

**---- Respondents**

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For Appellant :Shri Saurabh Sharma, Advocate
For Respondents : None

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**Hon'ble Shri Justice Gautam Chourdiya**
**Judgment on Board**

**04.01.2019**

(1). Heard on admission.

(2) This appeal has been filed by the appellant/ICICI Lumbard General Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (in short "the Act") against the award dated 30.10.2018, passed by Motor Accident Claims Tribunal, District- Bemetara, in Claim Case No.

99/2017 whereby in injury case, the Tribunal has awarded Rs.1,00000/- along with interest @ 9% p.a. from the date of application till realization in favour of the claimant, fastening liability upon the Non-applicant Nos. 1 & 2/ owner & driver to satisfy the award, further exonerating Non-applicant No. 3/Insurance Company from its liability but to pay compensation to the claimants, directing the Insurance Company to first pay the awarded amount to the claimants and then to recover it from owner of the offending vehicle.

(3) As per averments made in the claim petition, on 31.12.2016, at about 6,30 pm, Non-applicant No. 1-Naval Kishore Verma was driving offending vehicle Motor Cycle bearing CG22-G-3078 in a rash and negligent manner, dashed of injured- Ramesh Kumar Tiwari, as a result of which injured/claimant suffered fracture in his left leg and also in other parts of the body. The Vehicle is owned by Non-applicant No. 2 and insured with non-applicant No. 3.

(4) On claim petition being filed by the claimant under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties by the impugned award granted compensation in favour of the claimant as mentioned above.

(5) Learned counsel for the appellant/Insurance Company submits that learned Claims Tribunal has fallen in error in directing the appellant/Insurance Company to first pay the awarded amount to the claimants and then to recover it from the owner of the offending vehicle as claims Tribunal has already exonerated the Insurance Company to pay compensation to the claimant. At the time of accident, the respondent no. 2 was not having any driving licence therefore, the

learned Tribunal wrongly recorded a finding to pay compensation to the claimant and then recover it from the owner is liable to be set aside. He also submits that interest awarded on the amount of compensation @ 9% also appears to be on the higher side, which deserves to be reduced suitably.

(6) Heard learned counsel for the appellant/Insurance Company and perused the award impugned.

(7) It is not in dispute that the at the time of accident, offending vehicle was insured with the appellant/Insurance Company. The injured claimant/respondent No. 1 is the third party.

(8) In the matter of ***Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796***, the Hon'ble Supreme Court has held as under:

> "13. The only question, which arises for consideration in these appeals, is whether the appellants are entitled for an order against the Insurer of the offending vehicle, i.e., (respondent No. 3) to pay the awarded sum to the appellants and then to recover the said amount from the insured (owner of the offending vehicle-Tata Sumo)-respondent No.1 in the same proceedings.
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> 14. The aforesaid question, in our opinion, remains no more res integra. As we notice, it was subject matter of several decisions of this Court rendered by three Judge Bench and two Judge Bench in past, viz., National Insurance Co. Ltd. vs. Baljit Kaur & Ors., (2004) 2 SCC 1, National Insurance Co. Ltd. vs. Challa Upendra Rao & Ors., (2004) 8 SCC 517, National Insurance Co. Ltd. vs. Kaushalaya Devi & Ors., (2008) 8 SCC 246, National Insurance Co. Ltd. vs. Roshan Lal, (2017) 4 SCC 803 and National Insurance Co. Ltd. vs. Parvathneni & Anr.,

(2009) 8 SCC 785.

15. This question also fell for consideration recently in Manager, National Insurance Company Limited vs. Saju P. Paul & Anr., (2013) 2 SCC 41 wherein this Court took note of entire previous case law on the subject mentioned above and examined the question in the context of Section 147 of the Act. While allowing the appeal filed by the Insurance Company by reversing the judgment of the High Court, it was held on facts that since the victim was travelling in offending vehicle as "gratuitous passenger" and hence, the Insurance Company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, this Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the Insurance Company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of “pay and recover”.

16. R.M. Lodha, J. (as His Lordship then was and later became CJI) speaking for the Bench held in paras 20 and 26 as under: (Saju P. Paul Case)

> *“20. The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the Insurance Company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle (Respondent 2 herein).*
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> *26. The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in Baljit Kaur, (2004) 2 SCC 1 and Challa Upendra Rao, (2004) 8 SCC 517 should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, the claimant was 28 years old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been*

> *rendered permanently disabled. He has not been able to get compensation so far due to the stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The Insurance Company has already deposited the entire awarded amount pursuant to the order of this Court passed on 1-8-2011 (National Insurance Co. Ltd. vs. Saju P. Paul, and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent 1) may be allowed to withdraw the amount deposited by the Insurance Company before this Court along with accrued interest. The Insurance Company (the appellant) thereafter may recover the amount so paid from the owner (Respondent 2 herein). The recovery of the amount by the Insurance Company from the owner shall be made by following the procedure as laid down by this Court in Challa Upendra Rao(supra)."*

19. We find no merit in any of the submissions. Firstly, as mentioned above, we find marked similarity in the facts of this case and the one involved in Saju P. Paul's Case (supra). Secondly, merely because the compensation has not yet been paid to the claimants though the case is quite old (16 years) like the one in Saju P. Paul's Case (supra), it cannot be a ground to deny the claimants the relief claimed in these appeals. Thirdly, this Court has already considered and rejected the argument regarding not granting of the relief of the nature claimed herein due to pendency of the reference to a larger Bench as would be clear from Para 26 of the judgment in Saju P. Paul's case (supra). That apart, learned counsel for the appellants stated at the bar that the reference made to the larger Bench has since been disposed of by keeping the issue undecided. It is for this reason also, the argument does not survive any more.

20. It is for all these reasons, we find no good ground to take a different view than the one consistently being taken by this Court in all previous decisions, which are referred supra, in this regard.

> 21. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Company (respondent No. 3) - they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Company-respondent No.3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo)-respondent No.1 in execution proceedings arising in this very case as per the law laid down in Para 26 of Saju P. Paul's case quoted supra."

(9) Keeping in view the facts and circumstances of the present case and the judgment of the Apex Court in **Manuara Khatun** (supra), this Court feels it proper to affirm order for "pay and recover" in this case as directed by the Claims Tribunal. Hence, appellant/National Insurance Company Ltd. is directed to pay the awarded sum to the claimants and then recover the same from the owner. So far as the interest part is concerned, the accident occurred on 31.12.2016 and therefore, the interest awarded by the Tribunal @ 9% on the compensation can not be said to be excessive and as such it does not call for any reduction.

(10) For the reasons mentioned hereinabove, the appeal being devoid of merit is liable to be and is hereby dismissed at admission stage. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

Amita