CGHC010428412024 2026:CGHC:45871

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HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 2363 of 2024

1 - Branch Manager The Oriental Insurance Company Limited, Branch Office-Jhamkot Para Mainroad Kondgaon, District Kondagaon (C.G.)…… (**Insurer** Of Bus No CG-07-E-8090)

... Appellant

versus

1 - Smt. Sharda W/o Late Tapsi Marai Aged About 47 Years R/o Village Baniyagaon, Sargipara, P.S. And Tahsil Kondagaon, District Kondagaon (C.G.)

2 - Ku. Chandrika D/o Late Tapsi Marai Aged About 47 Years R/o Village Baniyagaon, Sargipara, P.S. And Tahsil Kondagaon , District Kondagaon (C.G.)

3 - Vikram S/o Late Tapsi Marai Aged About 23 Years R/o Village Baniyagaon, Sargipara, P.S. And Tahsil Kondagaon , District Kondagaon (C.G.)

4 - Vinay S/o Late Tapsi Marai Aged About 14 Years (Through Natural Guardian Mother Smt. Sharda W/o Late Tapsi Marai) R/o Village Bajniyagaon, Sargipara, P.S. And Tahsil Kondagaon , District Kondagaon (C.G.)

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5 - Ku. Poonam D/o Late Tapsi Marai, Aged About 12 Years (Through Natural Guardian Mother Smt. Sharda W/o Late Tapsi Marai) R/o Village Bajniyagaon, Sargipara, P.S. And Tahsil Kondagaon , District Kondagaon (C.G.)

6 - Mahturam Poyam S/o Arjun Poyam Aged About 32 Years R/o Vill. Bade Banjoda Pakhnapara, Post Dahikonga, P.S. And Tahsil Kondagaon, District Kondagaon (C.G.)

... Respondents

For Appellant	:	Mr. Raj Awasthi, Advocate.
For Respondents	:	None

Hon'ble Shri Justice Sanjay Kumar Jaiswal
Order on Board

(29.10.2026)

1. This appeal under Section 173 of the Motor Vehicles Act, 1988 (for short the "Act of 1988") has been preferred by the appellant/Insurance company challenging the impugned award dated 10.10.2024 passed in Motor Accident Claims Case No.140/2023, whereby the learned Claims Tribunal has awarded a total sum of Rs.14,96,317/- along with interest @ 6% per annum as compensation under Section 166 of the Act of 1988 to the claimants No. 1 to 5, who are the wife and children of deceased Tapsi Marai, who died in a road accident which took place on 24.05.2023, and directed the appellant/Insurance company to first pay the award

amount within 30 days and then to recover the same from respondent No. 6, and in default @ 9% per annum from the date of application till its realization.

2. Learned counsel for the appellant/Insurance Company submits that the learned Tribunal, having recorded a categorical finding that the driver of the offending motorcycle was not holding a valid and effective driving license at the time of accident and that there was a breach of the terms and conditions of the insurance policy, erred in directing the Appellant/Insurance Company to first satisfy the award and thereafter recover the amount from the owner and driver. He further submits that once the breach of the policy conditions stood established, the Appellant was liable to be completely exonerated from its liability to pay compensation, and the entire liability ought to have been fastened upon the owner and driver of the offending vehicle. Thus, the direction of "pay and recover" in the facts of the present case is contrary to law and, therefore, deserves to be set aside. Learned counsel further submits that the Claims Tribunal has fallen in error in awarding penal interest @ 9% per annum to respondent Nos. 1 to 5/claimants, as there is no provision to award penal interest in default of depositing of amount by

the insurer or insured in pursuance of the award passed by the Claims Tribunal within stipulated time. Hence, the same is liable to be set aside. In support of his submission, learned counsel placed reliance on the decision of Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Keshav Bahadur and Other***[1].

3. None appeared for respondent Nos. 1 to 6.

4. I have heard learned counsel for the appellant, considered his rival submissions made herein-above and went through the records with utmost circumspection.

5. In the case at hand, it is true that the learned Claims Tribunal recorded a finding regarding breach of the policy conditions on the ground that at the time of the accident, the driver, namely, Mehtu Ram Poyam, was not in possession of a valid and effective driving license to drive the offending vehicle. However, while considering the said breach, the learned Tribunal has rightly found that the offending vehicle was insured with the Appellant/Insurance Company and directed the Insurance Company to satisfy the award amount at the first instance with liberty to recover the same from the owner and driver of the offending vehicle. In view of

1 2004 (2) SCC 370

the settled legal position laid down by the Hon'ble Supreme Court in the cases of ***Rama Bai Vs. Amit Minerals through Incharge Officer/Competent Officer and Another***[2] ***Sunita and Ors. vs. United India Insurance Co. Ltd and Ors.***[3] and ***Manuara Khatun and Others Vs. Rajesh Kumar Singh and Others***[4] and ***Amrit Paul Singh & Anr. Vs. Tata AIG General Insurance Company Limited & Ors.***[5], the direction of "pay and recover" issued by the learned Claims Tribunal does not call for any interference. The Insurance Company has failed to make out any ground warranting interference with the impugned award with respect to 'Pay and Recover'.

6. Secondly, so far as argument of learned counsel for the appellant/Insurance Company that there is no provision under the Act of 1988 for awarding penal interest, the Hon'ble Supreme Court in ***Keshav Bahadur (supra)*** held in para 13 as under :-

> *"13. Though Section 110-CC of the Act (corresponding to Section 171) of the New Act) confers a discretion on the Tribunal to award interest, the same is meant to be*

2 (2025) SCC OnLine SC 2067

3 2025 SCC OnLine SC 1464

4 (2017) 4 SCC 796

5 (2018) 7 SCC 558

exercised in cases where the claimant can claim the same as a matter of right. IN the above background, it is to be judged whether a stipulation for higher rate of interest in case of default can be imposed by the Tribunal. Once the discretion has been exercised by the Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is no scope for retrospective enhancement for default in payment of compensation. No express or implied power in this regard can be culled out from Section 110-CC of the Act or Section 171 of the new Act. Such a direction in the award for retrospective enhancement of interest for default in payment of the compensation together with interest payable thereon virtually amounts to imposition of penalty which is not statutorily envisaged and prescribed. It is, therefore directed that the rate of interest as awarded by the High Court shall alone be applicable till payment, without the stipulation for higher rate of interest being enforced, in the manner directed by the Tribunal."

7. In view of above discussion and above referred judgment of Hon'ble Supreme Court in ***Keshav Bahadur (supra),*** it is apparent that since there is no specific provisions under the

Act of 1988 for awarding penal interest, this Court finds that Claims Tribunal has erred in awarding penal interest @ 9% per annum on the amount of compensation awarded by the Claims Tribunal, if the appellant/Insurance Company fails to deposit the same within 30 days. Accordingly, the award of penal interest @ 9% per annum on the amount of compensation is unsustainable and, therefore, the same deserves to be and is hereby **set aside**.

8. Thus, it is held that aforementioned amount of compensation of Rs.14,96,317/- shall carry interest @ 6% per annum from the date of filing of claim petition, till its actual payment. Rest of the conditions mentioned in the impugned award shall remain intact.

9. In the result, the appeal filed by the appellant/Insurance is **partly allowed**.

10. Records of the Tribunal along with a copy of this judgment be sent forthwith for compliance and necessary action, if any.

Sd/-

(Sanjay Kumar Jaiswal)
Judge

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