

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A.(C) No. ...113 OF 2007

(APPEAL VALUED AT Rs.3,10,000 /-)

Digitala Branch

APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLES ACT, 1988.

APPELLANT

(NON-APPLICANT NO.3) : United India Insurance Company Limited, Through: Its Branch Manager, Branch-Office, Transport Nagar, Korba, Distt.- Korba (CG).

VERSUS

RESPONDENTS

(APPLICANT NO.1) :1. Mst.Shruti Bai Wd/o-Late Bhagatram Satnami, aged-30 years,

(APPLICANT NO.2) :2. Thankumar S/O- Late Bhagatram Satnami, aged -08 years,

(APPLICANT NO.3) :3. Dhanram S/o-Late Bhagatram Satnami, aged -04 years,

(APPLICANT NO.4) :4. Dipak Kumar S/o-Late Bhagatram Satnami, aged-2 years,

Respondent no.2 to 4 are Minor, through their Mother (natural guardian), respondent no.1 (Mst.Shruti Bai)

All are R/O-Vill.-Amartal Post-Tilai, P.S.-Akaltara, Distt.-Janjgir-Champa, (CG)

Hall Mukam-vill.-Kahraud P.S.Masturi. Tah. & Distt.- Bilaspur(CG).

(NON-APPLICANT NO-1) :5. Chhabilal Sahu S/O-Hetram Sahu, aged-29 years,(Driver of motorcycle T.V.S. Max 100, registrationno. CG 12/ZE-4039)

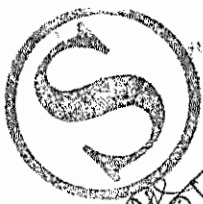
Note : (NON-APPLICANT-NO.2) :6. Hetram Sahu S/o-Late Bisahuram Sahu , Aged About-52 Years,

(Dead- respondent no.5 is the son

and being legal representative
is already on the record)

Both are R/O-Qr. No.19, SECL,
Balgi Project Korba, Distt.-Korba
(CG)

(NON-APPLICANTNO-4) 7. Mst. Budhwara Bai Wd/O-Late
+ 5 Ramakumar @ Ramakanth
Satnami, Aged About-65
years, R/O - Village- Nariara
(Hasaud), P.O.-Malkharauda,
Tah.- Sakti, Distt - Janjgir-
Champa (CG)



APR

HIGH COURT OF CHHATTISGARH AT BILASPUR

**DIVISION BENCH: HON'BLE MR. I.M.QUDDUSI &
HON'BLE MR. G. MINHAJUDDIN, JJ.**

M.A. [c] No. 113/2008

**Appellant
Non-Applicant No.3**

United India Insurance Company Limited,
Korba (CG)

Vs

**Respondents/
Applicant No.1**

Mst. Shruti Bai and others



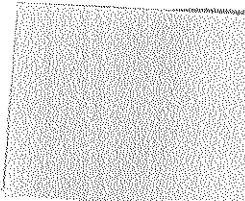
Present:


Mr. Dashrath Gupta, counsel for the appellant/insurance company.
Mr. Ravindra Agrawal, counsel for respondent No. 5.

ORDER (Oral)
(30th August, 2011)

Per I.M. Quddusi, J:

1. This appeal has been filed by the appellant/insurance company against the award of the Additional Motor Accident Claims Tribunal, Bilaspur (in short "the Tribunal") dated 7th May, 2007 passed in Claim Case No.25/2006 insofar as it relates to the direction to the appellant/insurance company to pay and recover the amount of compensation from the owner and driver of the vehicle, though the appellant/insurance company was exonerated from its liability to pay compensation.
2. Brief facts of the case are that on 18.4.2006 while deceased Bhagatram was standing by the side of the road for proceeding to Village : Amartal, respondent No.5/driver by driving vehicle i.e. TV Max 100 bearing registration No. CG 12/ZE-4039 in a rash and negligent manner dashed Bhagatram from behind, as a result of which he sustained grievous injuries. The persons present on the spot took Bhagatram to CIMS, Bilaspur for treatment, where he died. Report of the accident was lodged in Police Station : Akaltara, whereupon Cr.No.135/06 was registered against respondent No.5/driver for the offence punishable under Section 304A of the IPC.

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3. At the time of accident, the deceased was 37 years and was earning Rs.9000/- per month by driving his own tractor. He was also getting 25,000/- to 30,000/- per year from agriculture. Thus, the yearly income of the deceased was about Rs.1,33,000/-. The claimants were the dependents upon the deceased. Therefore, the claimants, who are widow and minor children of the deceased, filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (in short "the Act, 1988") claiming compensation c Rs.19,29,666/- for the death of Bhagatram under various heads.
 4. However, learned Tribunal, after close scrutiny of the evidence, oral and documentary, led by the parties, awarded a total compensation of Rs.3,10,000/- by fastening the liability upon the owner and driver of the vehicle, exonerating the appellant/insurance company. However, the appellant/insurance company has been directed to pay the amount of compensation to the claimants at the first instance and thereafter recover the same from the owner and driver of the vehicle.
 5. Heard learned counsel for the parties, perused the lower court record (LCR) as well as the impugned award.
 6. In the instant case, it is not in dispute that driver of the motor vehicle concerned was not having a valid and effective driving licence on the date of accident.
 7. Learned counsel for the appellant/insurance company has submitted that it is not the obligation of the insurance company to pay the amount of compensation when the driver was not having a valid and effective driving licence and as such, there was clear breach of conditions of the insurance policy.
 8. Reliance has been placed by learned counsel for the appellant/insurance company upon the judgment of the Single Judge of the Madurai Bench of the Madras High Court in the matter of **Divisional Manager, New India Assurance Co. Ltd. Dindigul Vs. V. Chandran and another**, reported in **2010 (1) TAC 765 (Mad.)**, wherein discussing the case law laid down by the Hon'ble Apex Court in the case of **National Insurance Co. Ltd. Vs. Swaran Singh and others, AIR 2004 SC 1531**, it has been mentioned that
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the direction given to the concerned Insurance Company in *Swaran Singh* (supra) case cannot be considered as a precedent, as has been observed by the Larger Bench of the Hon'ble Supreme Court.

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9. In the case of ***Oriental Insurance Co. Ltd. Vs. Zaharulnisha and others***, reported in (2008) 12 SCC 385, the Hon'ble Apex Court has exercised the jurisdiction conferred under Article 142 of the Constitution. Therefore, this Court and the learned Court below have no jurisdiction to issue a direction to the insurance company to pay and recover the amount of compensation from the owner/driver where it was a case of 'no licence'.
10. In the matter of *Zaharulnisha* (supra), in paras 21 & 22, the observations of the Hon'ble Supreme Court are liable to be perused, which are reproduced below:

"21. In the light of the above settled proposition of law, the appellant Insurance Company cannot be held liable to pay the amount of compensation to the claimants for the cause of death of Shukurullah in road accident which had occurred due to rash and negligent driving of the scooter by Ram Surat who admittedly had no valid and effective licence to drive the vehicle on the day of accident. The scooterist was possessing a driving licence of driving HMV and he was driving a totally different class of vehicle, which act of his is in violation of Section 10(2) of the MV Act.

22. In the result, the appeal is allowed to the limited extent and it is directed that the appellant Insurance Company though not liable to pay the amount of compensation, but in the nature of this case, it shall satisfy the award and shall have the right to recover the amount deposited by it along with interest from the owner of the vehicle viz. Respondent 8, particularly in view of the fact that no appeal was preferred by him nor has he chosen to appear before this Court to contest this

appeal. This direction is given in the light of the judgments of this Court in *National Insurance Co. Ltd. V. Baljit Kaur* and *Deddappa V. National Insurance Co. Ltd.*"

11. That in the case of *National Insurance Co. Ltd. Vs. Parvathneni and another*, reported in (2009) 8 SCC 785, the above question regarding "pay and recover" has been referred to the larger bench of the Hon'ble Apex Court for decision.
12. In view of the above discussion, we are of the opinion that the direction contained in the impugned award to the appellant/insurance company to pay the amount of compensation to the claimants and recover it later on from the owner and driver of the vehicle is not sustainable in the eye of law and deserves to be set aside.
13. In the result, the appeal is allowed. The impugned award so far as it relates to the direction to the appellant/insurance company to pay and recover the amount of compensation from the owner and driver of the vehicle in question, is hereby set aside. The appellant/insurance company is exonerated from its liability to pay and recover the amount of compensation from the owner and driver of the vehicle. It will be open for the claimants to recover the amount of compensation from the owner and driver of the vehicle.
14. The amount deposited by the appellant/insurance company shall be allowed to be withdrawn by it. However, if the same has been disbursed to the claimants, then it will be open for the appellant/insurance company to recover the same from the owner and driver of the vehicle.
15. No order as to costs.
16. Certified copy as per rules.

Sd/-
Dr. I.M. Quddusi
Judge

Sd/-
G. Minhajuddin
Judge