



IN THE HIGH COURT OF JUDICATURE AT BILASPUR

MISC. APPEAL [C] NO. 484 /2010

Single Bench

APPELLANT:

(Non-applicant No.2
/owner of vehicle)

Balkrishna Pandey, son of
Shri Arjun Prasad Pandey,
aged 52 years, resident of
P.R.T. Colony, Amleshwar,
Police Station Kumhari,
District Durg.

Vs

RESPONDENTS

(Claimants)

1. Smt. Sunanda Singh,
widow of Late Laxman
Singh, aged 44 years.

2. Kum. Rashmi Singh,
daughter of Late Laxman
Singh, aged 20 years.

3. Ritesh Singh, son of Late
Laxman Singh, aged 18
years.

All residents of EWS
1896-97, Industrial Area,
Housing Board, Near P.S.
Jamul, Tehsil and District
Durg.

Non-applicant No.1
/ Driver of vehicle

4. Ramkumar Verma, son of
Shri A.R. Verma, aged 48
years, resident of
Devaada, Police Station
Patan, District Durg.

Non-applicant No.3

5. The Manager, Reliance
General Insurance
Company, Ravi Bhawan,

R.R. No. 1293/2010
Presented by Smt. Shashi Banti
Dated. 27/11/2010

Administrative

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Jai Stambh Chowk,
Raipur.

Non-applicant No.4

6. Rakesh Singh, son of Late
Laxman Singh, aged 22
years, resident of EWS
1896-97, Industrial Area,
Housing Board, Near P.S.
Jamul, Tehsil and
District Durg

MISCELLEANOUS APPEAL UNDER SECTION 173 OF
MOTOR VEHICLES ACT, 1988

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HIGH COURT OF CHHATTISGARH : BILASPUR

M. A. (C) No. 420 of 2010

Appellants Smt. Sunanda Singh & others
Versus
Respondents Ram Kumar Verma & others

And

M. A. (C) No. 484 of 2010

Appellant Balkishan Pandey
Versus
Respondents Smt. Sunanda Singh & others

DB: Hon'ble Mr. Justice I. M. Quddusi
& Hon'ble Mr. Justice G. Minhajuddin

Shri B. S. Khanuja for the appellants/claimants.

Shri Malay Shrivastava, Advocate for the Owner (Balkrishna Pandey).

Shri S. S. Rajput, Advocate for the Insurance Company in M.A.(C)
No. 420/2010.

Shri Sourabh Sharma, Advocate for the Insurance Company in M.A.(C)
No. 484/2010.

None for the other respondents (Ram Kumar Verma/Driver and Rakesh
Singh).

ORDER (Oral)

(Passed on this 31st day of October, 2011)

Per I. M. Quddusi, J.

1. The aforementioned both the appeals (M.A. (C) Nos. 420 and 484 of 2010) are being decided by this common order as they arise out of the one and the same award dated 22.1.2010 passed by the 12th Additional Motor Accident Claims Tribunal, Durg in Claim Case No. 130/2009.
2. Brief facts, in nutshell are that on 6.2.2008 at about 11 a.m. in the morning deceased Laxman Singh, who was posted as Head Constable



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in the police station – Rani Tarai, was going on his motorcycle from village – Kharra. At that time, on the way, he was dashed by the Bus, bearing registration No. C.G. 04-E/0737, which was being driven in a rash and negligent manner by the non-applicant No.1. In that accident Laxman Singh received grievous injuries and succumbed to those injuries.

3. The legal heirs/dependents of the deceased (wife, daughter and son) filed Claim Case No. 130/2009 under Section 166 of the Motor Vehicles Act, 1988 for award of a total compensation of Rs. 24,40,000/-, wherein learned Claims Tribunal, by the impugned award dated 22.1.2010 has directed the non-applicants No. 1 and 2/Driver and Owner of the Bus to pay a sum of Rs. 2,25,500/- as compensation to the claimants, deducting 50% of the total award of compensation, assessed by the Tribunal, holding that the deceased was responsible for contributory negligence. Hence, the claimants have filed the M.A.(C) No. 420/2010 for enhancement of the award, whereas the owner (Balkishana Pandey) has filed M.A.(C) No. 484/2010 challenging the impugned award on both counts i.e. fastening liability upon the owner as well as quantum.
4. We have heard learned counsel appearing for the parties and perused the lower Court record.
5. It is evident that, although the application might have been filed by the owner of the Bus on 5th February, 2008 for grant of permit but the permit was effective from 7th February, 2008, whereas the accident had taken place on 6th February, 2008. Therefore, it cannot be said that the owner of the vehicle was having the permit to ply the vehicle and there was no violation of the conditions of the insurance policy. In this view of the matter we are of the opinion that the Claims Tribunal

has rightly exonerated the insurance company from the liability to satisfy the award.

6. However, on the question of quantum, we have found that the settled principles of law laid down in **Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another¹** have not been followed by the Claims Tribunal. The deceased was a Head Constable in the Police Department. The recommendations of the Sixth Pay Commission were made applicable w.e.f. January, 2006 and this fact has not been taken care of in calculating the income of the deceased. Similarly, the income tax was also liable to be deducted from the annual income. The challenge to the findings of the Tribunal regarding contributory negligence on the part of the deceased should also be raised before the Tribunal and the same shall be considered and decided on its own merits.
7. In view of the foregoing, we allow both the appeals in part, set aside the impugned award dated 22.1.2010 and remit back the matter to the Claims Tribunal to consider and decide afresh in the light of the observations made herein above. No order as to costs.
8. Learned counsel appearing for the appellant/owner in M.A.(C) No. 484/2010 has referred two decisions of Hon'ble Apex Court in **National Insurance Company Limited Vs. Nitin Khandelwal** (2008) 11 SCC 259 and **Amalendu Sahoo Vs. Oriental Insurance Company Limited** (2010) 4 SCC 536. It will be open for the appellant/owner to refer these case laws before learned Claims Tribunal, as we have already remitted back the matter to the Claims Tribunal for a fresh decision.

¹ (2009)6 SCC 121

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9. Needless to mention that the parties shall be allowed to amend their pleadings, adduce further evidence again in support of their pleadings and may file further documents and get the documents verified etc. Thereafter, the decision shall be made by the Tribunal on merits.
10. Further, needless to mention that the Claims Tribunal shall make an endeavor to decide the Claim Petitions afresh, as early as possible, preferably within a period of three months from the date of appearance of the parties.
11. Parties shall appear before the Claims Tribunal on 7th December, 2011.
12. The amount, if any, deposited with the Tribunal shall remain in fixed deposit scheme of any nationalized bank, if not already disbursed, till fresh decision is taken by the Tribunal.
13. The lower Court records shall be sent back forthwith.

Sd/-
I.M. Quddusi
Judge

Sd/-
G. Minhajuddin
Judge