

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No.43 of 2008**

Sharad Kumar Jain S/o Mangilal Jain, aged about 27 years, R/o Diwan Bada, Ward No.7, Khairagarh, District Rajnandgaon.

---Appellant

Versus

1. Minor Kumari Roja Hussain, aged about 6 years, through Natural Guardian her father Jakir Hussain S/o Shri Mustaf Hussain, aged about 34 years, By caste Musalman, R/o Ward No.11, Turkaripara, Tahsil Khairagarh, District Rajnandgaon.
2. Kamal Kumar Pal S/o Shesh Narayan Pal, aged about 30 years, R/o village Kukurmunda, Tahsil Khairagarh, District Rajnandgaon.
3. Bajaj Allianz General Insurance Company Limited, Rajkumar College, In front of Main Gate, Near ICICI Bank, G.E.Road, Raipur.

---Respondents

For the appellant	:	Shri R.S.Baghel, Advocate.
For respondent No.3/Insurance Company	:	Shri S.S.Rajput, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board**

31/10/2017

1. Present is an appeal under Section 173 of the Motor Vehicle Act by the driver assailing the award dated 08/10/2007 passed by the Additional Motor Accidents Claims Tribunal, Khairagarh in Motor Accident Claim Case No.09/2007.
2. Vide the said impugned award, the Tribunal in an injury Case under Section 166 of the Motor Vehicles Act has awarded the compensation of Rs.33,300/- with interest @ 9% per annum from the date of application.
3. The challenge in the present appeal by the driver is that, the only ground of exoneration of the Insurance Company is the driver of the offending vehicle having only a learner's license at the time of the accident and since it is a breach of policy condition, the Insurance Company has been exonerated of its liability. The counsel for the appellant relies upon the decision of the Hon'ble Supreme Court in the case of ***National Insurance Co.Ltd. Vs. Swaran Singh***

& Ors.[{2004} 3 SCC 297] in support of his contention wherein the Supreme Court in paragraph 110.VIII has held, that “if a vehicle at the time of accident was driven by a person having a learner license, the insurance companies would be liable to satisfy the decree”.

4. The counsel for the Insurance Company however opposing the appeal submits, that it is a case where admittedly, the offending vehicle was being driven by a person with only a learner license and that the statutory requirements under the Motor Vehicles Act has not been complied with nor ensured when the driver was driving the vehicle and thus prayed, that the finding of the Tribunal being proper, legal and justified does not warrant any interference.

5. Having heard the rival contentions put forth on either side and on perusal of record taking into consideration the observation made by the Supreme Court in the judgment of National Insurance Co.Ltd (Supra) this court is of the opinion, that finding of the Tribunal so far as exonerating the Insurance Company is not proper and same deserves to be and is accordingly modified to the extent, that the liability shall be jointly and severally upon the owner, the driver and the Insurance Company and the liability of payment of compensation shall be upon the Insurance Company i.e. respondent No.3.

6. The compensation amount deposited by the present appellant before the Tribunal shall be refunded to the appellant by the Insurance Company and the balance amount of compensation shall be deposited by the Insurance Company before the Tribunal.

7. The appeal stands allowed and disposed off.

**Sd/-
(P. Sam Koshy)
Judge**