HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

**MAC No. 303 of 2020**

- Bajaj Allianz General Insurance Company Limited Through Branch Manager, Local Address 3rd Floor, Gurukripa Towers, Vyapar Vihar Road, Bilaspur, Tahsil And District Bilaspur Chhattisgarh. (Insurer Of Offending Motorcycle No. C.G. 12-AT-0496). (Insurer), District : Bilaspur, Chhattisgarh **---- Appellant**

**Versus**

1. Radheshyam, S/o Harchand Yadav, Aged About 50 Years, R/o Village Kadri, Police Station Ratanpur, Tahsil And District Bilaspur Chhattisgarh.,

2. Mahetarin Bai, W/o Radheshyam Yadav, Aged About 47 Years, R/o Village Kadri, Police Station Ratanpur, Tahsil And District Bilaspur Chhattisgarh. (Claimants),

3. Smt. Surekah Bai Wd/o Late Bedprakash Yadav Aged About 25 Years R/o Village Kadri, Police Station Ratanpur, Tahsil And District Bilaspur Chhattisgarh. (Wife Of Owner Of Deceased Offending Motorcycle No. C.G. 12-AT-0496). **---- Respondents**

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| 05.02.2020 | Shri Raj Awasthi, counsel for the appellant.<br><br>Heard on admission.<br><br>Admit.<br><br>Issue notice to the respondents, on payment of P.F. as per rules.<br><br>Also heard on I.A.No.01/2020, an application for grant of stay.<br><br>Learned counsel for the appellant submits that the vehicle in question was being driven by its driver without possessing any kind of driving license as it was neither produced nor seized in connection with the Crime No.75/2018 registered against him under Section 304-A of IPC by the concerned Station House Officer. While inviting attention to the clause (c) of Section 134 of the Motor Vehicles Act, 1988, it is contended further that the said statutory provision has even not been satisfied by the owner of the vehicle in question, yet the Tribunal, while placing the burden of proof upon the appellant/insurance company, has held that the insurer has failed to establish |

the same while fastening the liability upon the insurance company. According to him, the initial burden was upon the owner, however, he failed completely to establish the same. The Tribunal has, therefore, committed an illegality in fastening the liability upon the insurance company on finding that the insurer has failed to establish the same. In support, he placed his reliance upon the decision rendered in the matter of ***Pappu and others*** vs. ***Vinod Kumar Lamba and another,*** reported in **(2018) 3 SCC 208** and prays for staying the effect and operation of the award impugned, pending decision of this appeal.

Let notice be issued of this application to the respondents, as above.

Meanwhile, purely as an interim measure, it is directed that the effect and operation of the award impugned dated 23.12.2019 passed by the 5$^{th}$ Additional Motor Accident Claims Tribunal, Bilaspur, in Claim Case No.436/2018 shall remain stayed, in so far as the present appellant is concerned, till the next date of hearing, subject to appellant's depositing a sum Rs.5,00,000/- (Rupees five lakhs only) of the award under appeal before the concerned Executing Court, within a period of 45 days from today.

Respondents No.1 & 2/Claimants shall be entitled to withdraw the same as per the terms and conditions mentioned in the award impugned, without furnishing any kind of security before the concerned Executing Court.

It is made clear that if any of the conditions is violated, then this order shall lose its efficacy and the award impugned shall become executable forthwith.

Call for the record of the Claims Tribunal and post this matter after 5 weeks for consideration on I.A.No.01/2020.

Sd/-

(Sanjay S. Agrawal)
**Judge**

Anjani