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HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 369 of 2018

1 - The New India Assurance Company Limited Through Its Divisional Manager, The New India Assurance Company Limited, Ii Floor, Rama Trade Center, Opposite Rajeev Plaza, Old Bus Stand, Bilaspur, District Bilaspur, Chhattisgarh (Insurer), District : Bilaspur, Chhattisgarh

... Appellant

versus

1 - Smt. Purana Bai Wd/o Kartikram Aged About 37 Years Caste Gond, R/o Mungadih, P.S. And Tahsil Pali, District Korba, Chhattisgarh, District : Korba, Chhattisgarh

2 - Ajay Kumar S/o Kartik Ram Aged About 18 Years Minor Represented Through Mother Smt. Purana Bai, Caste Gond, R/o Mungadih, P.S. And Tahsil Pali, District Korba, Chhattisgarh, District : Korba, Chhattisgarh

3 - Ramkumar S/o Kartik Ram Aged About 15 Years Minor Represented Through Mother Smt. Purana Bai, Caste Gond, R/o Mungadih, P.S. And Tahsil Pali, District Korba, Chhattisgarh, District : Korba, Chhattisgarh

4 - Smt. Itwarabai W/o Late Motiram Aged About 70 Years Caste Gond, R/o Mungadih, P.S. And Tahsil Pali, District Korba, Chhattisgarh (Claimants), District : Korba, Chhattisgarh

5 - Devendra Prasad Gond S/o Ramhoshila Prasad R/o C/o Dharmendra Gond, Village Tivarata, P.S. Dipka, District Korba, Chhattisgarh (Driver), District : Korba, Chhattisgarh

6 - Birendra Tiwari S/o Rambadal Tiwari R/o A/13, Chandela Nagar Ring Road No.2, Bilaspur, Presently R/o Nature City, District Bilaspur, Chhattisgarh (Owner), District : Bilaspur, Chhattisgarh

... Respondent(s)

(Cause-title is taken from Case Information System)

For Appellant	:	Ms. Harneet Kaur, Advocate appearing on behalf of Mr. Sourabh Sharma, Advocate
For Resp. No. 1 to 4	:	Mr. Praveen Tulsyan, Advocate

SB- Hon'ble Shri Justice Amitendra Kishore Prasad

Order on Board

06/01/2026

1. The present appeal is being preferred under Section 173 of the Motor Vehicles Act, 1988, being aggrieved by the award dated 25.11.2017 passed by the learned Additional Motor Accident Claims Tribunal, Katghora, District Korba (C.G.), in Claim Case No. 126/2016, titled Smt. Puranabai and others vs. Devendra Prasad Gond and others, whereby the learned Tribunal has passed the impugned award. The appellant, being dissatisfied with the said award, prefers the instant appeal.

2. The facts of the case, in brief, are that the respondents No. 1 to 4, namely the widow, children and mother of deceased Kartik Ram, filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, before the learned Motor Accident Claims Tribunal. It was pleaded that on 15.05.2016, respondent No. 5, while driving the offending truck bearing registration No. C.G.10 C 5617, dashed against the motorcycle of deceased Kartik Ram. As a result of the said accident, the deceased sustained grievous injuries and subsequently succumbed to the same. The claimants further pleaded that the deceased was working as a truck driver and was earning Rs. 12,000/- per month. On the basis of the said averments, the claimants claimed compensation to the tune of Rs. 29,80,000/- under various heads, jointly and severally, from the driver, owner and the insurance company. During the

proceedings before the learned Claims Tribunal, respondents No. 5 and 6, namely the driver and owner of the offending vehicle, failed to appear and contest the case and were proceeded ex parte. They also did not file any written statement in response to the claim petition. The appellant–insurance company, however, filed its written statement and specifically denied its liability to indemnify the claim. It was pleaded that the offending vehicle was being driven in breach of the terms and conditions of the insurance policy. It was further contended that at the time of the accident, the vehicle did not possess a valid permit and fitness certificate. Reliance was placed upon the criminal records to demonstrate that offences under Sections 66/192 and 56/190 of the Motor Vehicles Act had been registered against the owner and driver of the vehicle for not having a valid permit and fitness certificate at the relevant time. On the said grounds, the appellant contended that it was not liable to satisfy the award. It was further submitted that the appellant–insurance company had filed an application under Section 151 of the Code of Civil Procedure seeking summoning of the Investigating Officer of the criminal case in order to substantiate its defence regarding absence of permit and fitness certificate. However, vide order dated 07.09.2017, the learned Claims Tribunal rejected the said application, holding that it was not necessary to summon the Investigating Officer as a witness. The appellant–insurance company led evidence before the learned Tribunal and produced documents to establish that the offending vehicle was a heavy goods vehicle meant for commercial use and that, for operating such a vehicle, a valid permit and fitness certificate were mandatory. It was also contended that the driver and owner did not contest the proceedings since they had not obtained the requisite permit and fitness certificate, and the police records clearly reflected registration of offences against them for the said violations.

3. After considering the pleadings and evidence, the learned Claims Tribunal, by the impugned award dated 25.11.2017, partly allowed the claim petition filed under Section 166 of the Motor Vehicles Act. The Tribunal recorded findings, inter alia, that on the date of the accident the driver was not holding a valid driving licence, that the offending vehicle was duly insured on the date of the accident, and that the accident occurred due to the rash and negligent driving of respondent No. 5, resulting in the death of Kartik Ram. Aggrieved by the aforesaid award, the appellant–insurance company has preferred the present appeal, contending that the impugned award is per se illegal, contrary to law and facts on record, and therefore liable to be set aside.

4. Learned counsel for the appellant–insurance company submits that the appellant has duly discharged the burden cast upon it by leading cogent and reliable evidence before the learned Claims Tribunal. A witness examined on behalf of the appellant has categorically deposed that the offending vehicle was a goods-

carrying commercial truck and that for plying such a vehicle, a valid permit and fitness certificate are mandatorily required. It is further submitted that the owner and driver of the vehicle, for reasons best known to them, chose not to contest the proceedings before the Tribunal and were proceeded ex parte. The criminal records clearly reveal that offences relating to absence of a valid driving licence, permit and fitness certificate were registered against them. Despite the appellant having moved an application under Section 151 of the Code of Criminal Procedure for summoning the Investigating Officer to substantiate its defence, the said application was rejected. However, while deciding Issue No. 4, the learned Tribunal, in paragraph 9 of the impugned award, recorded a finding that breach of the terms and conditions of the insurance policy was not established and held the insurance company liable. The said finding is perverse, contrary to the evidence on record and liable to be set aside, particularly when the appellant had discharged its onus and the owner and driver remained ex parte, though the burden of proving the existence of a valid permit and fitness squarely lay upon them. It is further submitted that the award of Rs. 3,25,000/- granted under other conventional heads is wholly arbitrary and unsustainable in law. The impugned award was passed on 25.11.2017, whereas prior thereto, on 31.10.2017, the Constitution Bench of the Hon’ble Supreme Court in **National Insurance Company Ltd. vs. Pranay Sethi** had clearly laid down that in cases of death, the total amount payable under conventional heads should be restricted to Rs. 70,000/- only. Grant of a higher amount in utter disregard of the settled law renders the award illegal. Learned counsel further submits that the overall compensation awarded by the learned Claims Tribunal is on the higher side and deserves to be suitably reduced. The assessment of income of the deceased at Rs. 4,000/- per month has been made without any documentary or reliable oral evidence and, therefore, the same is perverse and unsustainable. It is also contended that the learned Claims Tribunal has committed a grave legal error in holding that the accident occurred solely due to the rash and negligent act of respondent No. 5. According to the appellant, the evidence on record clearly suggests that the accident occurred due to the negligence of the deceased himself, and therefore, the claim petition under Section 166 of the Motor Vehicles Act was not maintainable. The finding recorded by the Tribunal on the aspect of negligence is thus erroneous and liable to be interfered with. In view of the aforesaid submissions, it is prayed that this Court may be pleased to set aside the impugned award dated 25.11.2017 passed by the Additional Motor Accident Claims Tribunal, Katghora, District Korba (C.G.), in Claim Case No. 126/2016, in the interest of justice.

5. Learned counsel for respondents No. 1 to 4 / claimants submits that the impugned award passed by the learned Claims Tribunal is just, proper and based on a correct appreciation of the pleadings

and evidence available on record and does not warrant any interference by this Court. It is contended that the Tribunal has rightly held the accident to have occurred due to the rash and negligent driving of the offending vehicle and has correctly fastened liability upon the insurance company, as the vehicle was admittedly insured on the date of accident. Therefore, the appeal preferred by the insurance company deserves to be dismissed.

6. I have heard learned counsel for the parties and have also perused the documents enclosed along with the appeal.

7. The facts giving rise to the appeal are not in serious dispute. It is established on record that on 15.05.2016 the offending truck bearing registration No. C.G.10 C 5617, driven by respondent No. 5, met with an accident in which Kartik Ram sustained grievous injuries and succumbed to the same. Respondents No. 1 to 4, being the widow, children and mother of the deceased, filed a claim petition under Section 166 of the Motor Vehicles Act claiming compensation. The learned Claims Tribunal, upon appreciation of the pleadings and evidence, recorded a categorical finding that the accident occurred due to the rash and negligent driving of the offending vehicle and that the vehicle was insured with the appellant on the date of the accident.

8. It is argued by the appellant–insurance company that the offending vehicle was a commercial goods vehicle and, therefore, a valid permit and fitness certificate were mandatory for plying the same. It was contended that in absence of such permit and

fitness, there was a clear breach of the terms and conditions of the insurance policy and, as such, the insurance company could not have been fastened with liability. Reliance was placed upon the criminal records and the oral evidence adduced on behalf of the insurer. However, on careful perusal of the entire record as well as the evidence led before the learned Claims Tribunal, this Court finds that the appellant–insurance company has failed to substantiate its defence regarding absence of valid permit and fitness certificate in accordance with law.

9. Mere registration of offences under the Motor Vehicles Act or bald assertions by the insurer's witness, without production of cogent and reliable documentary evidence to conclusively establish the alleged breach, is not sufficient to absolve the insurer of its statutory liability. The burden to prove such fundamental breach squarely lies upon the insurance company, which, in the present case, has not been satisfactorily discharged. The learned Claims Tribunal has elaborately considered this aspect and has rightly held that breach of policy conditions relating to permit and fitness was not proved. Consequently, the Tribunal was justified in fastening liability upon the insurance company, particularly when the vehicle was admittedly insured on the date of the accident. No perversity, illegality or material irregularity is found in the findings recorded by the learned Tribunal on this issue.

10. In view of the foregoing discussion, this Court is of the considered opinion that the appeal preferred by the appellant–insurance

company is devoid of merits. Accordingly, the appeal is liable to be and is hereby **dismissed**.

11. The award dated 25.11.2017 passed by the learned Additional Motor Accident Claims Tribunal, Katghora, District Korba (C.G.) in Claim Case No. 126/2016 is affirmed.

No order as to costs.

Sd/-

(**Amitendra Kishore Prasad**)

Shayna **JUDGE**