



2026:CGHC:10351

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1481 of 2019

1 - Choramandalam Ms General Insurance Company Ltd. Through Claim Officer Shriram Hight Building Gandhi, Chowk Shankar Nagar, Infront6 Of Ghandhi, Uddyan C.E. Road Raipur Chhattisgarh, Through Branch Manager, Choramandalam Ms General Insurance Company Ltd. Branch Officer Hinduja Complex 1st Floor No. 22, Near Railway Line Devendra Nagar, Raipur Tehsil And District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

--- Petitioner(s)

versus

1 - Kamdas Barle S/o Phailuram Aged About 67 Years Caste Satnami, R/o Cherkapur, Thana Pallari, District Balodabazar Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh

2 - Chamruram S/o Hemuram Yadav R/o Mudkhusra Thana - Devri, Tehsil Dondilohara District Balod Chhattisgarh. (Driver), District : Balod, Chhattisgarh

3 - Deendayal Thakur S/o Maruram Halba Resident Mudkhusra Thana - Devri Tehsil Dondilohara, District Balod Chhattisgarh. (Owner), District : Balod, Chhattisgarh

4 - Ramkumar S/o Kamdas Aged About 19 Years R/o Cherkapur, Post Cherkapur, Thana - Palari District Balodabazar Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh

5 - Anuj S/o Kamdas Aged About 21 Years R/o Cherkapur, Post Cherkapur, Thana -

Palari District Balodabazar Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh

--- Respondent(s)

MAC No. 855 of 2019

1 - Deendayal Thakur S/o Maaruram Halba Aged About 45 Years R/o Village - Mudkhusra, Police Station / Post Devi, Tahsil Doundilohara, District Balod Chhattisgarh. (Owner), District : Balod, Chhattisgarh

2 - Chamruram S/o Hemuram Yadav Aged About 40 Years R/o Village Mudkhusra, Police Station / Post Devi, Tahsil Doundilohara, District Balod Chhattisgarh. (Driver), District : Balod, Chhattisgarh

---Petitioner(s)

Versus

1 - Kaamdas Barle S/o Failuram Aged About 67 Years Caste Satnami, R/o Village Chherkapur, Post Chherkapur, Police Station Palari, District Baloda Bazar Chhattisgarh. (Claimant), District : Balodabazar-Bhathapara, Chhattisgarh

2 - Chola Mandlam (M.S.), General Insurance Company Ltd. Through Claim Officer, Shriram Heights Building Gandhi Chowk, Shankar Nagar Road, In Front Of Gandhi Garden, G.E. Road, Raipur Chhattisgarh. (Insurer), District : Raipur, Chhattisgarh

3 - Ramkumar S/o Kaamdas Aged About 19 Years R/o Village Chherkapur, Post Chherkapur, Police Station Palari, District Baloda Bazar Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh

4 - Anuj S/o Kaamdas Aged About 21 Years R/o Village Chherkapur, Post Chherkapur, Police Station Palari, District Baloda Bazar Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh

--- Respondent(s)

In MAC No.1481 of 2019:

For Appellant/s	:	Shri Ghanshyam Patel, Advocate holding the brief of Shri D.L. Dewangan, Advocate/ Insurance Company.
For Respondents No.2 & 3	:	Shri Amit Kumar Sahu, Advocate.

For Claimants/
Respondents No.1, 4 & 5 : Ms. Prachi Singh, Advocate holding the brief of Shri Raghvendra Pradhan, Advocate.

In MAC No.855 of 2019:

For Appellant/s : Shri Amit Kumar Sahu, Advocate.
For Insurance Company : Shri Ghanshyam Patel, Advocate holding the brief of Shri D.L. Dewangan, Advocate.

For Claimants/
Respondents No.1, 3 & 4 : Ms. Prachi Singh, Advocate holding the brief of Shri Raghvendra Pradhan, Advocate.

Hon'ble Shri Justice Rakesh Mohan Pandey

Order on Board

27.02.2026

1. Heard on admission.
2. Admit.
3. With the consent of the parties, both the matters are heard finally.
4. These two appeals have been filed against the judgment and award passed by the learned First Additional Motor Accident Claims Tribunal, Balod in Claim Case No.29 of 2018 dated 1.4.2019 whereby the learned Tribunal has granted compensation to the tune of Rs.10,12,800/- alongwith interest @10% per annum on account of death of Rajkumar.
5. **MAC No.1481 of 2019** has been preferred by the Insurance Company inter alia on the ground that there was a breach of the conditions of insurance policy and therefore, learned Tribunal should have directed the owner of the offending vehicle to satisfy the award.
6. **MAC No.855 of 2019** has been preferred by the owner and driver of the vehicle inter alia on the ground that the offending vehicle was insured with the Insurance Company and the deceased was not a

gratuitous passenger thus, the learned Tribunal committed an error in fastening liability with the owner and driver of the offending vehicle.

7. The facts, in brief, are that on 3.1.2018 at about 6:45 pm, deceased – Rajkumar was traveling as an occupant of the offending Tractor bearing registration No.C.G.08P 7552 and Trolley C.G. 08P 7549. The said vehicle was driven rashly and negligently by its driver resultantly, the deceased fell down and sustained injuries and subsequently, succumbed to death. Respondent No.1/ Claimant, father of the deceased filed a claim case under Section 166 of the Motor Vehicles Act wherein he pleaded that the age of the deceased was 20 years and was earning Rs.16,000/- per month. The Insurance Company filed its reply and took a plea that the offending vehicle was insured for agricultural purposes only and was being used in contravention to the conditions of the Insurance Policy. The Insurance Company further pleaded that the Tractor is designed to carry only the driver, and anyone else would be considered a gratuitous passenger. Learned Tribunal framed the issues, the parties led their evidence and thereafter, an award was passed.
8. **In MAC No.1481 of 2019:** Learned counsel for the Insurance Company would submit that the deceased was traveling on the Tractor, which is designed to carry only the driver and that was the reason the learned Tribunal has fastened liability with the owner and driver of the vehicle. He would contend that there was a breach of conditions of the insurance policy and the owner and driver failed to prove contrary. He would contend that the learned Tribunal though fastened liability with the driver and owner of the offending vehicle but directed the Insurance Company to first indemnify the award and recover the same

from them. He would pray to set aside the award.

9. **In MAC No.855 of 2019:** Learned counsel for the appellants/ owner and driver would submit that the vehicle was insured and adequate premium was paid to cover the risk of the driver and third party. He would contend that the vehicle was being used for agricultural purposes, therefore, the learned Tribunal should have fastened liability with the Insurance Company. He would further submit that the rate of interest applied by the learned Tribunal i.e. 10% is at higher side and it ought to have been awarded according to the provisions of Section 34 of CPC.
10. Learned counsel appearing for the claimants would submit that the learned Tribunal has granted just and proper compensation and both the appeals deserve to be dismissed.
11. I have heard learned counsel for the parties and perused the documents present on record.
12. An FIR was registered on 3.1.2018 vide Ex.P/2. It was lodged by one Rajkumar. In FIR, it is categorically stated that the deceased was an occupant of Tractor and it was being used for transportation of bricks and sugarcane. Kamdas (AW-1) has deposed that the owner of the offending Tractor was transporting sugarcane and his son was travelling on the said Tractor. In cross-examination, this witness remained consistent. The Insurance Company examined Sagar Soni, Law Officer, who admitted that the offending vehicle was insured for a period from 29.1.2017 to 28.1.2018. Thus, on the date of the accident, the vehicle was insured. Chamru Ram (NAW-2) in examination-in-chief stated that he was alone on the tractor. He denied the factum of the accident.

13. In the present case, the driver and owner of the offending vehicle failed to prove that the deceased was not an occupant of the Tractor. Thus, the learned Tribunal rightly recorded a finding that the deceased was a gratuitous passenger.
14. With regard to contention made by counsel for the Insurance Company, it is evident that the driver of the offending vehicle had valid and effective driving license and vehicle was insured with the Insurance Company but the deceased was a gratuitous passenger, therefore, in my opinion, the learned Tribunal has rightly fastened the liability with the owner and driver of the vehicle and directed the Insurance Company to satisfy the award first and thereafter, recover the same from them.
15. Recently, the Hon'ble Supreme Court in the matter of **Kaminiben and Ors., vs. The Oriental Insurance Company Limited and Ors.,** passed in **SLP (Civil) No. 21802 of 2023** held that where the victim was a gratuitous passenger, the Insurance Company should satisfy the award and then recover the same from the insured. Relevant paras 11 & 12 are reproduced herein below:

“11. Thus, in *Manuara Khatun & Ors. (supra)*, this Court has referred and approved *Saju P. Paul (supra)* case to hold that when the victim was a gratuitous passenger, this Court issued directions against the insurer of the offending vehicle to first satisfy the awarded sum, and then to recover the same from the insured in the same proceedings.

12. In the case of *Amudhavalli & Ors. (supra)*, referred by learned counsel for the respondent Insurance Company, the deceased hired a goods vehicle for travelling and thus, it was not a case where the goods vehicle was taken on rent for carrying the goods, and travelling was incidental as gratuitous passenger. Thus, the said case of *Amudhavalli &*

Ors. (supra), is distinguishable on facts; and the facts of the present case is similar and closer to the one in the case of Saju P. Paul (supra) and Manuara Khatun & Ors. (supra).”

16. Taking into consideration the facts discussed above and the law laid down by the Hon’ble Supreme Court, in my opinion, the learned Tribunal has rightly fastened the liability with the owner and driver of the vehicle and directed the Insurance Company to indemnify the award first and recover it from the owner.
17. With regard to rate of interest, learned Tribunal has granted compensation alongwith interest rate of 10%, which appears to be at higher side.
18. Section 34 of the CPC reads as under:

“34. Interest.—(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent. per annum as the Court deems reasonable on such principal sum], from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit :

Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent. per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

Explanation 1.—In this Sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).

Explanation II.-- For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.

(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie."

19. The learned Tribunal has not assigned any specific reason while applying interest @ 10%, therefore, the interest rate is reduced from 10% to 6% according to provisions of Section 34 of CPC.
20. Accordingly, the appeal preferred by the Insurance Company is dismissed and the appeal preferred by the owner and driver is partly allowed.

Sd/-

(Rakesh Mohan Pandey)
Judge