



2026:CGHC:17786

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HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 2159 of 2019**

The New India Assurance Company Limited, Through Its Branch Manager, Branch Office- Beside SBI (Main Branch), Near Kewda Badi Bus Stand, Raigarh, Tah. And District Raigarh Chhattisgarh.....
(Non-Applicant No. 3).

--- Appellant**versus**

1 - Smt. Surato Bai, Wd/o. Late Mangal Rathiya, Aged About 43 Years, Occupation Housewife, R/o. Village Gadhkurri, P.S. Bhupdevpur, Tahsil And District Raipur Chhattisgarh.....(Applicant No. 1)

2 - Sushila Rathiya, D/o. Late Mangal Rathiya, Aged About 18 Years, Occupation Student, R/o. Village Gadhkurri, P.S. Bhupdevpur, Tahsil And District Raipur Chhattisgarh.....(Applicant No. 2)

3 - Jai Ram Rathiya, S/o. Late Mangal Rathiya, Aged About 16 Years, Occupation Student, Minor- Through His Mother- Smt. Surato Bai Rathiya, Wd/o. Late Mangal Rathiya (Respondent No. 1), R/o Village Gadhkurri, P.S. Bhupdevpur, Tahsil And District Raipur Chhattisgarh.....(Applicant No. 3)



4 - Anand Ram Rathiya, S/o. Late Mangal Rathiya, Aged About 11 Years, Occupation Student, Minor- Through His Mother- Smt. Surato Bai Rathiya, Wd/o. Late Mangal Rathiya (Respondent No. 1), R/o Village Gadhkurri, P.S. Bhupdevpur, Tahsil And District Raipur Chhattisgarh.....(Applicant No. 4)

5 - Shobha Ram Rathiya, S/o. Late Mangal Rathiya, Aged About 6 Years, Minor- Through His Mother- Smt. Surato Bai Rathiya, Wd/o. Late Mangal Rathiya (Respondent No. 1), R/o Village Gadhkurri, P.S. Bhupdevpur, Tahsil And District Raipur Chhattisgarh..... (Applicant No. 5)

6 - Faruk Ansari, S/o. Mubarak Ansari, Aged About 27 Years, R/o. Manpur, P.S. Ranka And District Gadhwa (Jharkhand) (Driver)..... (Non-Applicant No. 1)

7 - Arun Gupta, S/o. Ramnath Gupta, Address- Gatpati Road Carrier, Jindal Road, Raigarh, Tah. And District Raigarh Chhattisgarh. (Owner).....(Non-Applicant No. 2)

--- Respondents

For Appellant	: Mr. Dashrath Gupta, Advocate
For Respondents No.1 to 5	: Mr. Manoj Kumar Jaiswal, Advocate
For Respondent No.7	: Mr. Abhishek Saraf, Advocate

&

MAC No. 1936 of 2019

1 - Surato Bai Rathiya, W/o. Late Mangal Rathiya, Aged About 43 Years, R/o. Gadhkurri, P.S. Bhupdeopur, Tahsil And District Raigarh Chhattisgarh.



2 - Sushila Rathiya, D/o. Late Mangal Rathiya, Aged About 18 Years, R/o. Gadhkurri, P.S. Bhupdeopur, Tahsil And District Raigarh Chhattisgarh

3 - Jai Ram Rathiya (Minor) S/o. Late Mangal Rathiya, Aged About 11 Years, Minor Through The Legal Guardian Mother Appellant No. 01 Surato Bai, R/o. Gadhkurri, P.S. Bhupdeopur, Tahsil And District Raigarh Chhattisgarh

4 - Aanand Ran Rathiya (Minor), S/o. Late Mangal Rathiya, Aged About 11 Years, Minor Through The Legal Guardian Mother Appellant No. 01 Surato Bai, R/o. Gadhkurri, P.S. Bhupdeopur, Tahsil And District Raigarh Chhattisgarh

5 - Shobha Ram Rathiya, S/o. Late Mangal Rathiya, Aged About 6 Years, Minor Through The Legal Guardian Mother Appellant No. 01, Surato Bai, R/o. Gadhkurri, P.S. Bhupdeopur, Tahsil And District Raigarh Chhattisgarh

---Appellants

Versus

1 - Faruk Ansari, S/o. Mubarak Anasari, Aged About 27 Years, R/o. Manpur, P.S. Ranka, District Gadhwa, Jharkhand.

2 - Arun Gupta, S/o. Ram Nath, R/o. Ganpati Road Cariar Jindal Road, Tahsil And District Raigarh, Chhattisgarh.

3 - New Indian Insurance Com. Ltd, SBI Bank Ke Bangal Me Kevada Badi Bus Stand Ke Pass Raigarh, Tahsil And District Raigarh Chhattisgarh

--- Respondents



For Appellants	:	Mr. Manoj Kumar Jaiswal, Advocate
For Respondent No.2	:	Mr. Abhishek Saraf, Advocate
For Respondent No.3	:	Mr. Dashrath Gupta, Advocate

(Single Bench)

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

20.04.2026

1. Against the impugned award dated 19.07.2019 passed by the learned First Additional Motor Accident Claims Tribunal, Raigarh in Claim Case No.04/2019, the insurance company has preferred MAC No.2159/2019 seeking exoneration from the liability to pay the compensation, whereas the claimants have preferred MAC No.1936/2019 seeking enhancement of the amount under award.
2. Since common question of law and facts are involved in both the appeals, they are clubbed together, heard together and disposed of by this common order.
3. Mr. Dashrath Gupta, learned counsel for the insurance company, would submit that the offending vehicle was heavy motor vehicle (trailer) whereas the driver did have licence to drive the light motor vehicle, as the driving licence has been filed along-with the application under Order 41 Rule 27 of C.P.C.



4. Mr. Manoj Kumar Jaiswal, learned counsel for the claimants and Mr. Abhishek Saraf, learned counsel for the owner of the vehicle, would submit that no evidence has been led by the insurance company and no specific plea was taken in the written statement that the driver of the offending vehicle only have driving licence to drive the light motor vehicle and he did not have a driving licence to drive the heavy goods vehicle. As such, the application under Order 41 Rule 27 of C.P.C. cannot be allowed and the appeal of the insurance company deserves to be dismissed.
5. Mr. Manoj Kumar Jaiswal, learned counsel for the claimants, would submit that the deceased was forest guard and future prospect has not been awarded, therefore, the claimants are entitled for 30% additional amount on annual income as per the decision of the Supreme Court in the matter of **National Insurance Company Ltd. v. Pranay Sethi & Others**¹.
6. I have heard learned counsel for the parties, considered their rival submissions made herein-above and gone through the records meticulously.
7. So far as the appeal of insurance company is concerned, the only plea has been taken by the insurance company that the driver did not have valid and effective driving licence to drive the offending

¹ (2017) 16 SCC 680



vehicle but no specific pleading was raised that the offending vehicle was heavy motor vehicle and it was driven by the driver who have only licence to drive the light motor vehicle. However, in the present appeal, an application under Order 41 Rule 27 of C.P.C. along-with the driving licence of the driver has been filed stating that the driver of the offending vehicle had only licence to drive the light motor vehicle.

8. The Supreme Court in the matter of **Iqbal Ahmed (dead) by Lrs., and another v. Abdul Shukoor**² has held that the Court while considering application under Order 41 Rule 27 of C.P.C. is required to consider if the case sought to be set up pleaded so as to support the additional evidence that is proposed to be brought on record and observed as under:-

“8. In our opinion, before undertaking the exercise of considering whether a party is entitled to lead additional evidence under Order XLI Rule 27(1) of the Code, it would be first necessary to examine the pleadings of such party to gather if the case sought to be set up is pleaded so as to support the additional evidence that is proposed to be brought on record. In absence of necessary pleadings in that regard, permitting a party to lead additional evidence would result in an unnecessary exercise and such evidence, if led, would be of no consequence as it may not be permissible to take such



evidence into consideration. Useful reference in this regard can be made to the decisions in *Bachhaj Nahar v. Nilima Mandal*, (2008) 17 SCC 491 : AIR 2009 SC 1103 and *Union of India v. Ibrahim Uddin*, (2012) 8 SCC 148. Thus, besides the requirements prescribed by Order XLI Rule 27(1) of the Code being fulfilled, it would also be necessary for the Appellate Court to consider the pleadings of the party seeking to lead such additional evidence. It is only thereafter on being satisfied that a case as contemplated by the provisions of Order XLI Rule 27(1) of the Code has been made out that such permission can be granted. In absence of such exercise being undertaken by the High Court in the present case, we are of the view that it committed an error in allowing the application moved by the defendant for leading additional evidence.

9. As we have found that the application for leading additional evidence has been considered by the Appellate Court without examining the aspect as to whether the additional evidence proposed to be led was in consonance with the pleadings of the defendant and whether such case had been set up by him coupled with the fact that the additional evidence taken on record has weighed with it while reversing the decree, the matter requires reconsideration by the High Court. Since we find that the matter requires re-consideration at the hands of the High Court afresh, we have not gone into the aspect of delay in deciding the appeal by the High Court as was urged on behalf of the appellants.”



9. In the instant case, neither a specific plea that the driver of the offending vehicle did not have valid & effective driving licence to drive the heavy motor vehicle has been taken in the written statement nor any evidence has been led in this behalf and for the first time it has been raised by filing the application under Order 41 Rule 27 of C.P.C. The Supreme Court in the matter of **Gobind Singh and Other v. Union of India and others**³ has held that the parties do not possess any vested or automatic right to seek admission of additional evidence at the appellate stage and the provision has no application where the appellate court is in a position to render a satisfactory and reasoned judgment on the basis of the evidence already available on record and observed as under:-

“11.4Thus, a holistic reading of the aforesaid decision makes it clear that the appellate court's inquiry, while considering an application for leading additional evidence, is confined to examining whether such evidence is necessary to remove a lacuna in the case. More importantly, the appellate court may permit additional evidence only upon being satisfied that the conditions expressly stipulated under Order XLI Rule 27 CPC are fulfilled. The parties do not possess any vested or automatic right to seek admission of additional evidence at the appellate stage. Consequently, the provision has no application where the appellate court is in a position to render a



satisfactory and reasoned judgment on the basis of the evidence already available on record.”

10. A careful perusal of the written statement filed by the insurance company would show that neither the appellant/insurance company has taken a specific plea that the driver of the offending vehicle did not have valid and effective driving licence to drive the heavy motor vehicle nor any evidence has been led in this regard. In absence of specific plea in the written statement in light of the decision of the Supreme Court in **Iqbal Ahmed** (supra), the application under Order 41 Rule 27 of C.P.C. cannot be entertained. Furthermore, filing of an application under Order 41 Rule 27 of C.P.C. is not vested right of the appellant herein/ insurance company, as this Court is able to decide on the basis of material available on record, as per the law laid down in **Gobind Singh** (supra); therefore, the application under Order 41 Rule 27 of C.P.C. deserves to be and hereby rejected.
11. In view of the above, I do not find any merit in the appeal filed by the insurance company and accordingly, the same deserves to be and hereby dismissed.
12. So far as the appeal of the claimants is concerned, in light of the decision of the Supreme Court in the matter of **Pranay Sethi** (supra), as per paragraph 59.3, since the deceased was between the



age of 40 to 50 years and he was employed as forest guard, 30% additional amount on the annual income has been awarded for future prospects. Accordingly, this Court is recomputing the compensation as below:-

Heads	Compensation awarded by the Tribunal	Compensation awarded by this Court
Income as per minimum wages	Rs. 2,65,380/- per annum	Rs. 2,65,380/- per annum
Add future prospects @30%	Nil	Rs. 2,65,380 + 79,614 = Rs. 3,44,994/-
Deduction of 1/4 towards personal expenses	Rs. 2,65,380 – 66,345 = Rs. 1,99,035/-	Rs. 3,44,994 – 86,248 = Rs. 2,58,746/-
Multiplier of 13	Rs. 1,99,035 x 13 = Rs. 25,87,455/-	Rs. 2,58,746 x 13 = Rs. 33,63,698/-
Other Heads	Rs. 70,000/-	Rs. 70,000/-
Total	Rs. 26,57,455/-	Rs. 34,33,698/-

13. In view of the aforesaid analysis, the amount of compensation of **Rs. 26,57,455/-** awarded by the Claims Tribunal is enhanced to **Rs. 34,33,698/-**. Hence, after deducting the amount of **Rs. 26,57,455/-**, the claimants are entitled for an additional amount of **Rs. 7,76,243/-**. The concerned respondent is directed to deposit the amount of compensation as enhanced by this Court within a period of 45 days. The additional amount of compensation shall carry interest @ 9% per annum from the date of filing of claim



application before the Tribunal till its realization. Rest of the conditions of the impugned award shall remain intact.

14. Accordingly, the appeal of the insurance company is dismissed and the appeal of the claimants is partly allowed. The impugned award is modified to the extent as indicated herein-above.

Sd/-
(Sanjay K. Agrawal)
Judge

Ashok