

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal (C) No. 1261 of 2007**

Smt. Ruby Jaiswal, W/o Diwakar Jaiswal, aged about 35 years, R/o village Dhur, Post Odgi, PS Odgi, Tehsil Surajpur, District Surguja, Chhattisgarh.

---- Appellant**Versus**

1. Shiv Sanjay S/o Manohar Gond, aged 14 years, Minor through his father Manohar S/o Tulsi, R/o village Indarpur, PS Odgi, Tehsil Surajpur, District Surguja, Chhattisgarh.
2. Dinesh Kumar S/o Subhash Jaiswal, aged 28 years, R/o village Gangoti, Police Chowki Basdei, PS Surajpur, Tehsil Surajpur, District Surguja, Chattisgarh.
3. The Oriental Insurance Company Limited, Branch Office Dr. Ambedkar Chowk, Manendragarh Road, Ambikapur, Surguja, Chhattisgarh.

---- Respondents**Miscellaneous Appeal (C) No. 1391 of 2007**

Smt. Ruby Jaiswal, W/o Diwakar Jaiswal, aged about 35 years, R/o village Dhur, Post Odgi, PS Odgi, Tehsil Surajpur, District Surguja, Chhattisgarh.

---- Appellant**Versus**

1. Narendra S/o Ram Govind, aged about 13 years, Minor Through his father Ram Govind S/o aged about 40 years, R/o village Endarpur, PS. Odgi, Tehsil Surajpur, District Surguja, Chhattisgarh.
2. Dinesh Kumar S/o Subhash Jaiswal, aged 28 years, R/o village Gangoti, Police Chowki Basdei, PS Surajpur, Tehsil Surajpur, District Surguja, Chattisgarh.
3. The Oriental Insurance Company Limited, Branch Office Dr. Ambedkar Chowk, Manendragarh Road, Ambikapur, Surguja, Chhattisgarh.

---- Respondents

For Appellant : Ms. Sharmila Singhai, Advocate.

For Respondent No. 3 : Shri T.K.Tiwari, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice

C A V Judgment

05.08.2016

1. These two appeals are being disposed of by a common judgment since they both arise out of the same accident.
2. The Claimants/Respondent No. 1 filed claim petitions before the 3rd Additional Motor Accident Claims Tribunal (FTC) Surajpur, District Surguja (hereinafter called 'the Tribunal') alleging that on 23.04.2004, when they were returning from the marriage of Shiv Kumar in a tractor trolley bearing registration No. CG-15A 2285 and CG-15A 2179, the said tractor-trolley turned turtle and as a result of which both the Claimants suffered injuries. Before the Tribunal, the stand of the Appellant, who is the owner of the tractor-trolley, was that these two Claimants who were part of marriage procession were dancing in front of the tractor-trolley and therefore, they were third parties and liability, if any, to pay compensation was of the Insurance Company with whom the tractor-trolley were insured.
3. The stand of the Insurance Company before the Tribunal was that the injured Claimants were travelling in the vehicle as unauthorised passengers in violation of the provisions of the Motor Vehicles Act and the conditions of the insurance policy, and as such, the Insurance Company could not be held liable to pay compensation. The learned Tribunal came to the conclusion that the injured were travelling in the trolley of the tractor and held the owner liable to pay compensation.
4. MA(C) No. 1261 of 2007 arises of the award dated 30.08.2007 passed by the Tribunal in Claim Case No. 138 of 2007, filed by Claimant-Shiv Sanjay who was a minor at that time, in which the learned Tribunal awarded an amount of Rs. 2,58,782/- as compensation. MA(C) No. 1391 of 2007 arises of the award dated 30.08.2007 passed by the Tribunal in Claim Case No. 144 of 2007 filed by Claimant-Narendra,

who was minor at that time, in which the learned Tribunal awarded an amount of Rs. 31,695/- as compensation.

5. Ms. Sharmila Singhai, learned counsel for the Appellant/Owner vehemently argued that the injured Claimants were not travelling in the trolley but were in fact dancing in front of the tractor-trolley and were injured when the tractor-trolley toppled over them.

6. The first information report was filed within a couple of hours of the accident in Police Station, Odgi, District Surguja. In this first information report, it is stated that the marriage party of Shiv Kumar was travelling in the tractor-trolley. The tractor was being driven at a high speed and the driver lost control on a turn and as a result of which the tractor-trolley over turned and the members of the marriage procession (*Baratis*) suffered injuries. They were 27 persons who suffered injuries and had been taken to the hospital.

7. Reliance has been placed by Ms. Singhai, learned counsel for the Appellant on the statements of the injured Claimants allegedly recorded under Section 161 CrPC, exhibited as Exhibit NA1-2-1, Exhibit NA1-2-2 and Exhibit NA1-2-3 in which these two injured Claimants have stated that they were on foot and not travelling in the tractor-trolley when the accident took place. She submits that in view of this version, the learned Tribunal gravely erred in holding that the injured were travelling in the tractor-trolley.

8. In the claim petitions filed on behalf of the Claimants by their guardians, it is clearly mentioned that the injured persons were sitting in the tractor trolley as a part of marriage procession of Shiv Kumar and were returning from village Indarpur to village Savarava and near the bridge at Girjapur, the driver of the tractor-trolley lost control of the vehicle and the tractor-trolley over turned. The Claimants both have stated that they were travelling in the tractor-trolley when the accident took place. They denied the suggestion that they alongwith other *Baratis* were dancing and the tractor driver

applied the brake and then the tractor turned turtle. It would be pertinent to mention that attention of these witnesses was not drawn to the statements allegedly made by them under Section 164 CrPC exhibited as Exhibit NA1-2-1, Exhibit NA1-2-2 and Exhibit NA1-2-3. Other than the Claimants, some other witnesses have also been examined. They have stated that the injured persons were travelling in the tractor-trolley. In addition to the Claimants, as many as three other witnesses were examined in this regard. The Appellant/Owner led no evidence and therefore, this finding of fact arrived at by the Tribunal cannot be said to be erroneous.

9. As far as quantum of compensation is concerned, keeping in view the nature of injuries sustained by the Claimants, I feel that the award is in fact on the lower side. Therefore, I find no merit in these appeals.

10. The appeals are dismissed accordingly.

Sd/-

(Deepak Gupta)
Chief Justice