NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No.929 of 2007

National Insurance Company Limited, through its Branch Manager, Branch Office Jagdalpur, District Bastar, Chhattisgarh

---- Appellant

versus

1. Mainuram Kavdo, S/o Bisruram Kavdo, aged 35 years,
2. Duleshveri Kavdo, D/o Mainuram Kavdo, aged 12 years,
3. Mineshvary Kavdo, D/o Mainu Ram Kavdo, aged 12 years,
   (Respondents No.2 & 3 are minor, through their natural Guardian Mainuram Kavdo – Respondent No.1, father)
   All are R/o Village Astra, Post Hatkerka, Tahsil Bhanupratappur, District Kanker, Chhattisgarh
4. Gopal, S/o Surajuram, Caste Halba, aged 38 years, R/o Village Chilhati, P.S. Korar, Tahsil Bhanupratappur, District Kanker, Chhattisgarh
5. Ramsvarup Pandey, S/o Ramsundar Pandey, R/o Village Korar, Tahsil Bhanupratappur, District Kanker, Chhattisgarh

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate
For Respondents No.1 to 3	:	Shri Pravin Kumar Tulsyan, Advocate

---

Hon'ble Shri Deepak Gupta, Chief Justice

Judgment on Board

2.12.2016

1. This appeal by the insurance company is directed against the award dated 29.12.2006 passed by the Motor Accidents Claims Tribunal, North Bastar Kanker in Claim Case No.73 of 2006, whereby the Claims Tribunal has awarded compensation of Rs.2,17,000/- in favour of the claimants and held the insurance company liable to pay the same.

2. The only ground raised by the insurance company in this appeal is that the deceased was travelling as a gratuitous passenger in a goods vehicle and as such the insurance company is not liable to pay the compensation. In the claim petition, the case of the claimants was that the deceased was walking to the market and while she was walking she was hit by the offending vehicle bearing registration

No.CG 04 ZB 2348. It was alleged that this vehicle was loaded with paddy and going towards Kanker. It was being driven at a high speed and overturned and Hiraibai (deceased) who was walking to the market was hit by the vehicle and died. The stand of the insurance company is that the deceased was also travelling in the vehicle. However, one of the witnesses, namely, Kailash, whose name has also been mentioned in the First Information Report, has clearly stated that he was travelling in the vehicle in question and Hiraibai (deceased) was not travelling in the same. The driver of the offending vehicle has also denied that the deceased was travelling in the vehicle. The insurance company has led no evidence to prove that the deceased was travelling in the vehicle. The learned Claims Tribunal on appreciation of the facts has come to the conclusion that Hiraibai (deceased) was a pedestrian. The deceased was a third party and was not travelling in the vehicle. This is a pure finding of fact which is based on evidence. True, there is variation between the statements of the witnesses, but majority of the witnesses have stated that the deceased was not travelling in the vehicle.

3. Therefore, I find no merit in the appeal, which is accordingly dismissed.

Sd/-

(**Deepak Gupta**)
CHIEF JUSTICE

Gopal