

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Appeal (C) No.1365 of 2016**

- Chief Municipal Officer Nager Panchayat Kasdol Thana & Tahsil- Kasdol Distt. Balaoda Bazar Bhatapara, Chhattisgarh
(Owner Of Offending Vehicle Tractor No. C.G./D.T./9170 And Water Tanker Chechis No.13031)

---- Appellant**Versus**

1. Smt. Sharmila Rai Wd/o Late Virendra Rai @ Tappu, Aged About 45 Years R/o Village- Darra, Thana And Tahsil Kasdol, District Balaoda Bazar Bhatapara, Chhattisgarh
2. Ku. Sonam D/o Late Virendra Rai @ Tappu, Aged About 22 Years R/o Village- Darra, Thana And Tahsil Kasdol, District Balaoda Bazar Bhatapara, Chhattisgarh
3. Aashu Rai S/o Late Virendra Rai @ Tappu, Aged About 19 Years R/o Village- Darra, Thana And Tahsil Kasdol, District Balaoda Bazar Bhatapara, Chhattisgarh
4. Ku. Ruchi Rai D/o Late Virendra Rai @ Tappu, Aged About 18 Years R/o Village- Darra, Thana And Tahsil Kasdol, District Balaoda Bazar Bhatapara, Chhattisgarh
5. Minor Vivek Rai S/o Late Virendra Rai @ Tappu, Aged About 11 Years Through Natural Guardian Smt. Sharmila Rai Wd/o Late Virendra Rai @ Tappu, R/o Village- Darra, Thana And Tahsil Kasdol, District Balaoda Bazar Bhatapara, Chhattisgarh(Claimants)

---- Respondents

For appellant	: Shri AL Singroul and Shri Goutam Khetrapal, Advocates
For respondents	: Shri Deepak Jain, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****14.12.2016**

Heard on IA No.03/16 for exemption from impleading Legal representatives of deceased driver and for hearing the case in absence of legal representative of the deceased driver.

2. It is prayed that driver Gijuraam Yadav – non-applicant No.1 before the trial Court has died on 12.7.2016 after award dated

25.01.2016. The said driver was under the employment of the appellant and under law of torts for any act done by employee the appellant employer is liable vicariously.

3. On due consideration, the application is allowed. The appellant is directed to dispense with impleadment of legal representatives of deceased driver Gijuraam Yadav in the instant appeal.

4. Also heard on IA No.01/16 for condonation of delay in filing the appeal as the instant appeal has been preferred after 158 days of its limitation.

5. Learned counsel for the appellant would submit that after receiving the file, the counsel asked for mandatory deposit which was provided on 17.8.2015, thereafter the lower Court counsel was consulted on legal grounds for preferring the appeal. Due to this, the appeal has been filed after 158 days of its limitation. He further submits that the appellant has good prima facie case and balance of convenience in his favour, hence, the delay caused in filing the appeal may be condoned and the appeal may be admitted for consideration. Learned counsel further draws attention of the Court that the Court below awarded Rs.5,00,000/- under the head of loss of consortium/loss of state, the same is beyond the scope provided for the said head, hence, even on the merits of the instant appeal, the appellant has a good case, hence the delay may be condoned.

6. Perused the impugned award dated 21.01.2016. It appears that this is a true copy provided from the Office of District and Sessions Judge, Baloda Bazar signed by Head Copyist of the

Copying section. There is no disclosure of the facts whether the appellant ever received copy of the award under the provisions of 168(2) of the Motor Vehicles Act. Even otherwise in the entire application (IA No.01/16) facts mentioned only regarding receipt of the file and the mandatory deposit asked by the counsel and also regarding consultation with the counsel for lower court in the matter. In the present matter the appellant as Chief Municipal Officer, Nagar Panchayat, is required to give reasons for delay satisfactorily. Act of the counsel need not required to be explained in the IA No.01/16 and no satisfactorily reason for delay of 158 days was explained by the appellant.

7. If the appellant has submitted that he has a good case on merits regarding excessive compensation granted on the head of loss of consortium/loss of state, the appellant was required to file an appeal within limitation as the appellant as institution required more cautious for filing the appeal against any award.

8. On due consideration, IA No.01/16 is hereby dismissed as not maintainable.

9. As a consequence, the appeal too is dismissed as being barred by time.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE