

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No.1441 of 2009**

1. Anand Kunwar Wd/o Puniram Kunwar, aged about 37 years.
2. Ku.Lalita D/o Late Puniram Kunwar, aged about 15 years.
3. Ku.Garbari D/o Late Puniram Kunwar, aged about 12 years.
4. Dileshwar S/o Late Puniram Kunwar, aged about 10 years.

Appellants No.2 to 4 are minor and represented through natural guardian and mother Anand Kunwar Wd/o Puniram Kunwar.

All are R/o village Kunkuni, P.S. & Tahsil Kharsiya, District Raigarh (C.G.).

---Appellants**Versus**

Chaitram Behra S/o Shri Kalachand Behra, R/o village Behramar, Tahsil Dharamjaigarh, District Raigarh (C.G.).

---Respondent**AND****MAC No.1439 of 2009**

1. Smt.Tara Bai Wd/o Chamarsingh Yadav, aged about 33 years.
2. Bajrang S/o Late Chamarsingh Yadav.
3. Birju S/o Late Chamarsingh Yadav.
4. Rohit Kumar S/o Late Chamarsingh Yadav.
5. Sukwara Bai Wd/o Bedram @ Bhoklu Yadav, aged about 62 years.

Appellants No. 2 to 4 are Minor and represented through natural guardian and mother Smt.Tara Bai Wd/o Chamarsingh Yadav.

All are R/o village Kunkuni, P.S. & Tahsil Kharsiya, District Raigarh (C.G.).

---Appellants**Versus**

Chaitram Behra S/o Shri Kalachand Behra, R/o village Behramar, Tahsil Dharamjaigarh, District Raigarh (C.G.).

---Respondents

For appellants : Shri Ratan Pusty, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

21/11/2017

1. These the two appeals arises by a common order dated 22/04/2009 passed by the learned Motor Accident Claims Tribunal, Raigarh in Claim Case Nos.32/2007 and 23/2007. Both these appeals have been filed by the claimants where vide the impugned award, their claim applications has been rejected by the Tribunal.
2. MAC No.1441/2009 arises out of the Claim Case No.32/2007 and MAC No.1439/2009 arises out of the Claim Case No.23/2007. The Claim Case No.32/2007 is in respect of death of the deceased Puniram Kunwar and the Claim Case No.23/2007 is in respect of death of the deceased Chamarsingh Yadav.
3. The vehicle involved in the accident is the Tractor and Trolley bearing registration No. CG-13-A-3705 and CG-13-A-3706 which was owned by the respondent-Chaitram.
4. The Tractor at the relevant point of time was not insured. The accident occurred when the Tractor while being driven by the deceased Chamarsingh turned turtle and in the process, both Chamarsingh and the occupant Puniram succumbed to the injuries that they suffered from the said accident.
5. The legal representatives of the two deceased persons filed the respective claim applications under Section 166 of the Motor Vehicles Act and vide the impugned award, the Tribunal has rejected the claim applications.

6. So far as the Claim Case preferred by the legal representatives of the deceased Puniram i.e. Claim Case No.32/2007 is concerned, the same was rejected on the ground, that the claimants have not been able to establish negligence on part of the respondent or for that the matter the driver of the offending vehicle for the maintainability of claim application under Section 166 of Motor Vehicles Act where the proving and establishing of the negligence is required.

7. So far as the claim application filed by the legal representatives of the deceased Chamarsingh i.e. Claim Case No. 23/2007 is concerned, the same was rejected on the ground, that the claimants have failed to establish the accident to have occurred because of any technical or mechanical failure of the Tractor and even if, there was any negligence, it was attributable to the driver of the Tractor i.e. the deceased Chamarsingh himself and under the said circumstances, the claimants would not be entitled for any compensation. In addition, the Claim Case No.23/2007 was also rejected on the ground, that there being no sufficient proof to establish the employer-employee relationship between the respondent and the deceased Chamarsingh.

8. The contention of the counsel for the appellants assailing the two awards is that, so far as the Claim Case No.32/2007 is concerned, since undisputedly, the Tractor at the relevant point of time was being used for agricultural purpose and that he was not the driver of the Tractor and the claim application was one under Section 166 of the Motor Vehicles Act, even if, it was the specific pleading of the claimants, that the accident arose because of the

negligence on part of the driver Chamarsingh and therefore for the act of negligence and rash driving on part of Chamarsingh, the owner of the said vehicle shall be vicariously liable for any liability which would occur.

9. He further contended, that as far as the Claim Case of the legal representatives of the driver Chamarsingh is concerned, even if, there may not be any evidence of mechanical failure of the Tractor or even if, there is no evidence or there is some evidence of negligence on part of the deceased Chamarsingh in the accident to occur, the claim application would had been definitely maintainable under Section 163-A of the Motor Vehicles Act and since, it is the liberal legislation, the Tribunal ought to have got the claim application converted into one under Section 163-A and proceed further instead of rejecting it on the technical ground of the application being one under Section 166 hence not maintainable.

10. So far as the evidence which have come on record, the owner in the instant case has led an evidence of a person namely Sadhram-NAW/1 and Vindhyachal Behra-NAW/2-the son of the owner Chaitram. Sadhram has deposed before the Tribunal of being the driver of the Tractor and that the vehicle on the fateful day was stolen by Chamarsingh and was being operated by Chamarsingh unauthorizedly when the accident occurred and therefore, the respondent-owner would not be liable for payment of any compensation for the said act which has been done by the Chamarsingh without any knowledge, instructions or consent of the owner. Sadhram further tried to project the case of there being

no employer-employee relationship between the owner Chaitram and the deceased Chamarsingh. Further, perusal of record show, that no criminal case initiated against the owner or so called driver-Sadhram-NAW/1. Neither does the record show, any report of the Tractor being stolen by Chamarsingh on the date of the accident to have been made by either the owner or by any other person. The statement of Sadhram was being recorded during the course of evidence before the Tribunal and no such statement have been made before any civil or police authorities so far as the accident to have occurred without the knowledge of the owner or authorized driver i.e. NAW/1-Sadhram, in the absence of which the story which was being projected by the owner seems to be very much unrealistic and hard to accept.

11. In any case, taking into consideration the division bench decision of this Court in the case of ***Santoshi Khunte Vs. Kanwaljeet Kaur [2011 AAC 412 (CHH)]*** wherein in similar factual matrix of the case, the division bench had set aside the award of dismissal of the claim application and had remitted the matter back to the Tribunal to consider the claim application afresh treating it to be a matter under Section 163-A of the Motor Vehicles Act. It would be relevant at this juncture to refer to paragraph 11 of the said judgment wherein the division bench of this Court has also taking note of the decision of the Supreme Court in the case of ***Deepal Girishbhai Soni Vs. United India Insurance Co.Ltd. [2004 {5} SCC 385]*** has held as under:-

“11. The above provision has also been analysed by the Supreme Court in the case of Deepal Girishbhai

Soni Vs. United India Insurance Co.Ltd. reported in 2004 (5) SCC 385 : (AIR 2004 SC 2017), wherein it was held as under:

“42. Section 163-A was, thus, enacted for grant of immediate relief to a section of the people whose annual income is not more than Rs.40,000/- having regard to the fact that in terms of Section 163-A of the Act read with the Second Schedule appended thereto; compensation is to be paid on a structured formula not only having regard to the age of the victim and his income but also the other factors relevant therefor. An award made thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule appended to the Act. The same is not interim in nature. The note appended to column 1 which deals with fatal accidents makes the position furthermore clear stating that from the total amount of compensation one-third thereof is to be reduced in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. This together with the other heads of compensation as contained in column Nos. 2 to 6 thereof leaves no manner of doubt that the Parliament intended to lay a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims who would require the amount of

compensation without fighting any protracted litigation for proving that the accident occurred owing to negligence on the part of the driver of the motor vehicle or any other fault arising out of use of a motor vehicle.

66. We may notice that Section 167 of the Act provides that where death of or bodily injury to, any person gives rise to claim of compensation under the Act and also under the Workmen's Compensation Act, 1923, he cannot claim compensation under both the Acts. The Motor Vehicles Act contains different expressions as, for example, “under the provision of the Act”, “provisions of this Act”, “under any other provisions of this Act” or “any other law or otherwise”. In Section 163-A, the expression “notwithstanding anything contained in this Act or in any other law for the time being in force” has been used, which goes to show that the Parliament intended to insert a non-obstante clause of wide nature which would mean that the provisions of Section 163-A would apply despite the contrary provisions existing in the said Act or any other law for the time being in force. Section 163-A of the Act covers cases where even negligence is on the part of the victim. It is by way of an exception to Section 166 and the concept of social justice has been duly taken care off.”

12. Therefore, this Court does find sufficient force on the argument of the counsel for the appellants in respect of finding of the Tractor being stolen on the date of the accident to be without any basis, as there is no evidence whatsoever with which it could be said that there was a complaint of the Tractor having being stolen when the accident occurred. Moreover, no report has been lodged by the owner. The legal representatives of the deceased-Puniram have not made any such statement either before the Tribunal or before any authorities earlier in respect of the Chamarsingh not being employed with the owner-Chaitram or the vehicle being unauthorizedly operated by Chamarsingh. Likewise, the owner also has not made any such complaint or given any statement to any of the authorities in this regard. Further, the statement of the said Sadhram-NAW/1 also has been for the first time recorded before the Tribunal. All these facts falsify the theory of the vehicle being stolen by Chamarsingh.

13. Another fact which cannot be lost sight is that, though the case was registered against Chamarsingh for the accident to occur in the instant case, the allegation of theft has not come up either at the behest of the owner or at the behest of Sadhram or by any other person. This theory of accident to have occurred while Chamarsingh had stolen the Tractor and using it unauthorizedly stands disproved and is liable to be set aside.

14. Under the said circumstances this court is of the opinion, that the finding of the Tribunal so far as the Claim Case No.23/2007 in the case of legal representatives of the deceased Chamarsingh is concerned, the award in the light of the division bench of this

court deserves to be and is accordingly set aside and the matter is remitted back for fresh consideration treating it to be the application one under Section 163-A of the Motor Vehicles Act.

15. As regards the Claim Case of the legal representatives of the deceased-Puniram is concerned, undisputedly, there was an occupant in the Tractor and that the family members of Puniram have alleged specific pleadings of negligence on part of Chamarsingh, the driver of the Tractor. Chamarsingh also was charged for the offence by the police authorities under Section 304-A and since, he himself died from the said accident, the case was ultimately closed by a closure report submitted by the police authorities. This closure report of the police authorities after charging Chamarsingh for the offence under Section 304-A is sufficient to prove the negligence on part of the driver of the Truck at the time of the accident and on this ground, the claim application under Section 166 of the legal representatives of Puniram was maintainable and the owner Chaitram under the said circumstances would be vicariously liable for any act which have been done by the deceased-Chamarsingh being the driver.

16. The said finding of the Tribunal under the said circumstances rejecting the claim application was not sustainable and the same therefore deserves to be and is accordingly set aside and it is directed, that the Tribunal shall reconsider the claim application afresh and pass a fresh order taking into consideration the evidence which have come on record. The parties to the dispute would also have the liberty to adducing any fresh evidence if any. Considering the fact, that the claim application is of the year

2005, the Tribunal shall decide the claim application on priority basis and disposed of the matter as expeditiously as possible. While deciding the claim application afresh, the Tribunal will take into account the observations made by this court so far as the issue of negligence and the finding of theft and also that of the employer-employee relationship made by this court in the present judgment.

**Sd/-
(P. Sam Koshy)
Judge**

Sumit