

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 557 OF 2010

1. Ramkumar Nishad, S/o Shri Banasram Nishad, aged about 38 years, R/o Village- Barbhata, Post Basin, Tahsil Rajim, District Raipur (C.G.) (Owner of Tractor No. CG04-D-6630)
2. Khojuram, S/o Shri Laxminarayan Patel, aged about 37 years, R/o Chhura, Tahsil and Thana Chhura, District Raipur (C.G.) (Driver of Tractor No. CG04-D-6630)

... Appellants

versus

1. Smt. Gouri Bai, Wd/o Late Maniram Markam, aged about 22 years
2. Hemlal, S/o Late Maniram Markam, aged about 3 years
3. Bhuvanlal, S/o Late Maniram Markam, aged about 1.5 years
4. Hariram, S/o Jagalsai, aged about 45 years
5. Smt. Leela Bai, W/o Hariram, aged about 45 years
R/o 2 & 3 are minor represented through natural guardian mother Smt. Gouri Bai, Respondent No.1, all R/o Village Boriajhar, Post- Dulla, Thana Chhura, District Raipur (C.G.) (Claimants)
6. Smt. Fuleshwari Bai Sahu, W/o Shri Rupram Sahu, R/o Pateva, Thana Abhanpur, District Raipur (C.G.) (owner of Trolley No. CG05-A-6149)
7. Rukhram Nishad, S/o Shri Panchu Nishad, R/o opposite of Gram Janpad Chhura, Chhura, District Raipur (C.G.) (occupier of Trolley No. CG05-A-6149)
8. The New India Assurance Company Limited, through Divisional Manager, Divisional Office, R.D.A. Building, Raipur, District Raipur (C.G.) (insurer of Tractor No. CG04-D-6630)
9. National Insurance Company Limited, Divisional Office, Mobin Mahal, Rapur (C.G.) (insurer of Trolley No. CG05-A-6149)

... Respondents

For Appellants	:	Mr. Sachin Singh Rajput, Advocate.
For Respondent No.8	:	Mr. Deepak Gupta, Advocate.
For Respondent No.9	:	Mr. Qamrul Aziz, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06/11/2017

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, preferred by the owner-cum-driver of the vehicle involved in the accident.
2. Challenge in the present appeal is to the award dated 15.2.2010 passed by the Additional Motor Accident Claims Tribunal, Gariaband, District Raipur, in Claim Case No. 95/2008.

3. Vide the impugned award, the learned Tribunal, in a death case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs. 2,05,700/- to the claimants with interest thereon at the rate of 7.5% per annum from the date of presentation of the claim case, in default of which penal interest at the rate of 9.5% per annum from the date of award was also ordered.

4. It is a case where the deceased-Maniram met with an accidental death on 8.12.2008 while he was travelling on Tractor-Trolley bearing registration No. CG04-D-6630 and CG05-A-6149 respectively. The trolley was owned and occupied by respondent no.6 and respondent no.7 respectively.

5. The legal representatives of deceased-Maniram had moved an application under Section 166 of the Motor Vehicles Act which stood allowed vide the impugned award and the liability of payment of compensation has been fastened upon the present appellants, exonerating the insurance companies i.e. respondent no.8 and respondent no.9.

6. The reason for exonerating the insurance companies was that the offending vehicle at the relevant of time was being used for carrying gratuitous passenger whereas it was registered and insured for agriculture purposes.

7. Respondents no. 6 and 7 in the instant case have not yet been served with the notice and the appellants on 9.1.2013 on an application under Order V Rule 20 of the Code of Civil Procedure had sought permission to serve notice through publication, however, till date though more than four years have lapsed the appellants have not taken any steps for the publication to be made as regards the service on respondents no. 6 and 7 is concerned. No steps for renewal of the said publication also have been taken.

8. Perusal of record would show that there was sufficient evidence produced before the Tribunal which would show that the offending vehicle at the relevant point of time was being used for carrying gratuitous passenger which was otherwise not permissible under the policy which was issued and therefore the Tribunal has rightly exonerated the insurance companies and fastened the liability upon the present appellants.

9. In the given facts and circumstances of the case, this Court does not find any strong case made out by the appellants calling for an interference with the impugned award or the finding of liability being fastened upon the appellants.

10. The appeal being devoid of merit thus fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge