

HIGH COURT OF CHHATTISGARH AT BILASPUR**MA No.74 of 2004**

1. Bihari Lal Yadav S/o Late Dhannu Lal Yadav, aged about 42 years.
 2. Sunil Yadav S/o Late Dhannu Lal Yadav, aged about 26 years.
- Both are R/o Takhatpur, District Bilaspur (C.G.).

---Appellants**Versus**

1. Smt.Lachchhan Bai W/o Late Dhannu Lal Yadav, aged about 40 years.
 2. Ku.Draupadi Yadav, aged about 17 years.
 3. Ku.Kaushilya Yadav, aged about 14 years.
- Respondent Nos.2 & 3 are D/o Late Dhannu Lal Yadav, Minor through guardian mother Smt.Lachchhan Bai W/o Late Dhannu Lal Yadav.
All are R/o Block Colony, Takhatpur, near Tahsil Office, Tah.Takhatpur, District Bilaspur (C.G.).
4. Govt. of Chhattisgarh, Through – Collector, Bilaspur (C.G.).
 5. Jagdish Bareth (Driver) S/o Pulak Bareth, Add. Through – Block Development Office, Takhatpur, Tah.Takhatpur, District Bilaspur (C.G.).

---Respondents

For appellants	:	Dr.S.K.Shrivastava on behalf of Shri Ravish Verma, Advocate.
For respondent No.4/State	:	Shri D.R.Minj, Dy.G.A.
For respondent No.5	:	Shri Sanjay Patel, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****23/10/2017**

1. Present is an appeal under Section 173 of the Motor Vehicle Act assailing the award dated 20/11/2003 passed by the 4th Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No.05/2001. Vide the said impugned award, the Tribunal in a Claim Case under Section 166 of the Motor Vehicle Act has awarded the compensation of Rs.3,40,000/- along with interest @ 9% per annum from the date of application.
2. The appellants in the present appeal were the appellant Nos. 1 to 3 before the Tribunal. The appellant No.1 is said to be the first wife of the deceased - Late Dhannu Lal Yadav and appellant Nos.2 & 3 are the sons of the deceased who are born from his first wife-appellant No.1.

3. During the pendency of the appeal, the appellant No.1 had died and her name was deleted. Subsequently, the appellant No.2 has also expired. However, no application for substituting the legal heirs were brought on record in spite of sufficient opportunity being granted. Accordingly, the appeal so far as appellant No.2 also stands abated.

4. The appeal now survives only so far as claim of the appellant No.3 is concerned. The finding of the Tribunal in paragraph 24 is as explicit as it can be in as much as it has given a categorical finding to the effect that the appellant No.3 – Sunil Yadav is one of the son of the deceased – Late Dhannu Lal Yadav. Once when this being the finding of the Tribunal that of the appellant No.3 being declared as the son of the deceased, under no circumstances can the son be denied the compensation from the Claim Case that was filed before the Tribunal under Section 166 of the Motor Vehicle Act on the accidental death of his father.

5. It is also not a case where the appellant No.3 was not a party before the Tribunal. They were duly made respondents before the Tribunal and who were also effectively repeated before the Tribunal. The only issue which could have been adjudicated upon before the Tribunal was whether the second wife would had been entitled for the compensation or not during the lifetime of the first wife?

6. So far as the appellant No.3 – Sunil Yadav and the respondent Nos.2 & 3 being the children of the deceased is concerned, this court has no hesitation in reaching to the conclusion that, all the children's born to the deceased were entitled for equal share in the compensation which would be payable on the accidental death of the deceased.

7. Under these circumstances this court is of the opinion that, the appellant No.3 – Sunil Yadav i.e. the sole surviving appellant would also be entitled for an equal share in the compensation awarded by the Tribunal. The Tribunal

has granted only a compensation of Rs.10,000/- to the surviving appellant towards loss of love and affection of the father.

8. Giving the factual matrix and the finding of the fact of the appellant No.3 being the son of the deceased this court is of the opinion that, he shall also be entitled for an equal share in the total compensation payable to the legal representative of the deceased – Dhannu Lal Yadav.

9. Thus, it is ordered that of the total amount assessed by the Tribunal, shall have to be divided into four i.e. respondent No.1, 2 & 3 i.e. the second wife and the two childrens and the present appellant – Sunil Yadav making the total claimants to be four and when Rs.3,40,000/- is divided by 4, the share that would fall on each of the claimant would be of Rs.85,000/-.

10. It is ordered that, the appellant shall also be entitled for an amount of Rs.85,000/- from the compensation awarded by the Tribunal along with interest at the same rate as quantified by the Tribunal.

11. The impugned award dated 20/11/2003 stands modified to the aforesaid extent.

12. The appeal stands allowed in part and stands disposed off.

Sd/-
(P. Sam Koshy)
Judge

Sumit