

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 1393 of 2017**

Vindyanchal Jaiswal S/o Late Shri Ramkewal Sai, aged about 60 years, R/o Village Kochli, PS Pasta District Balrampur Ramanujganj, Chhattisgarh (Owner of the Vehicle)

---- Appellant**Versus**

1. Chanda Devi W/o Late Shri Mahendra Kashyap, aged about 25 years, Occupation House Wife, R/o Village Nagar Ramanujganj, Police Station Ramanujganj, District Balrampur-Ramanujganj, Chhattisgarh
2. Neeraj S/o Late Shri Mahendra Kashyap, aged about 6 years, Occupation Student, minor through his natural guardian mother Chanda Devi W/o Late Shri Mahendra Kashyap, aged about 25 years, Occupation House Wife, R/o Village Nagar Ramanujganj, Police Station Ramanujganj, District Balrampur Ramanujganj, Chhattisgarh
3. Jiya D/o Late Shri Mahendra Kashyap, aged about 4 years, minor through her natural guardian mother Chanda Devi W/o Late Shri Mahendra Kashyap aged about 25 years, Occupation House Wife, R/o Village Nagar Ramanujganj, Police Station Ramanujganj, District Balrampur Ramanujganj, Chhattisgarh
4. Jeera Devi W/o Ganeshi, aged about 60 years, R/o Village Nagar Ramanujganj, Police Station Ramanujganj, District Balrampur Ramanujganj, Chhattisgarh
5. Ganeshi Kashypa S/o Late Shri Tobri aged about 65 years, R/o Village Nagar Ramanujganj, Police Station Ramanujganj, District Balrampur Ramanujganj, Chhattisgarh
6. Khelsai S/o Satan Panika aged about 25 years, (Driver of the Vehicle)
7. Tata AIG General Insurance Company Limited Regd. Off. 15th Floor, Tower APNISULA, Jinesh Park Ganpat Rao Kadam GANPATRAO, Kedam Marg Of Senapati Bapat Marg Lower Parel, Mumbai 400013

---- Respondents

For Appellant : Shri A. L. Singroul under instruction of Shri Jitendra Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****11/10/2017**

Heard on I.A. No.01/2017 for condonation of delay in filing the instant appeal.

2. For the reasons assigned in the said application and finding them to be satisfactory, I.A. No.01 is allowed and the delay of 33 days in filing the appeal stands condoned.

3. Also heard the appeal on admission.

4. Present is an appeal by the owner under Section 173 of the Motor Vehicles Act assailing the award dated 19.05.2017 passed by the Additional Motor Accident Claims Tribunal, Ramanujganj (CG) in Claim Case No. 19/2016. Vide the impugned award the Tribunal in a proceeding under Section 166 of the MV Act has awarded compensation of Rs. 8,23,000/- to the claimants with interest @ 6% per annum from the date of award.

5. While passing the impugned award, the Tribunal has exonerated the Insurance Company of its liability and saddled the liability of payment of compensation upon the owner and the driver of the vehicle involved in the accident. It is a case where the deceased Mahendra Kashyap aged around 32 years met with an accidental death on 29.10.2015 while travelling on the tractor belonging to the present appellant. The said tractor turned turtle as a result of which the deceased got crushed under it. The Insurance Company has been exonerated of its liability for the reason that the deceased was not engaged for any agricultural work by the appellant. It was found that the tractor though was insured for agricultural purposes, it was being used for other than that of the agricultural purposes. It was also found that at the time of accident, the tractor was loaded with bricks with no proof that the same was being used for the agricultural purpose or for any personal use of the present appellant.

6. Counsel for the appellant submits that the liability ought to have been fastened upon the Insurance Company since the tractor was duly insured with respondent no.7 Insurance Company.

7. However, on perusal of the record would show that there is no evidence substantively led by the appellant to establish the fact that the vehicle was being used for agricultural purpose alone and that it was duly insured and there was no breach of policy conditions. On the contrary, there is evidence which has come on record particularly that of the claimants who have not stated that the deceased was working for the present appellant and was engaged for his agricultural work. In the absence of any sufficient evidence, this Court does not find any strong case made out by the appellant calling for an interference with the impugned award.

8. The present appeal thus being devoid of merit deserves to be and is accordingly dismissed.

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