

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 1242 of 2009**

1. Kansh Ram, S/o. Salik Ram Kashyap, aged about 55 years, R/o. Jamdi, P.S. and Tahsil Jaijaipur, District Janjgir-Champa, Chhattisgarh
2. Jagdish Prasad, S/o. Dau Ram Kashyap, Aged about 36 years, R/o. Negurdih, P.S. and Tahsil Nawagarh, District Janjgir-Champa, Chhattisgarh

---- Appellants**Versus**

1. Samarin, aged 30 years, Wd/o. Late Bajrang, R/o. Village Kirit, P.O. Kirit, P.S. and Tahsil Nawagarh, District Janjgir-Champa, Chhattisgarh
2. Minor Jitendra Kumar, Aged 15 years, S/o. Late Bajrang,
3. Minor Shatruhan, Aged 13 years, S/o. Late Bajrang,
4. Minor Virendra Kumar, Aged 11 years, S/o. Late Bajrang,
5. Minor Bindiya, Aged 9 years, S/o. Late Bajrang,

Respondents No. 2 to 5 are Minors Through: Natural Guardian Mother, Smt. Samarin Wd/o. Late Bajrang, R/o. Village Kirit, P.O. Kirit, P.S. and Tahsil Nawagarh, District Janjgir-Champa, Chhattisgarh

6. The Oriental Insurance Company Limited, Champa, District Janjgir-Champa, Chhattisgarh

----Respondents

For Appellants	:	Ms. Shivali Dubey, Advocate under instructions of Mr. Shailendra Dubey, Advocate
For Respective Respondents	:	Mr. G.S. Patel, Advocate
	:	Mr. Ratan Pusty, Advocate

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

1. The present is an appeal under Section 173 of the Motor Vehicles Act preferred by the Owner and Driver challenging the award dated 28.07.2009, passed by the 2nd Additional Motor Accident Claims

Tribunal, Janjgir, District Janjgir-Champa, Chhattisgarh, in Motor Accident Claim Case No. 03/2009.

2. The fact of the case is that the deceased Bajrang aged about 35 years was travelling on his Kinetic Luna Moped bearing registration No. CG-11-ZE-7488 on 20.07.2008 was hit by a Tractor bearing registration No. CG-11-A-6648 and Trolley bearing registration No. CG-11-A-6872, as a result of the accident the deceased Bajrang received grievous injuries to which he later succumbed in the hospital. Matter was reported at the Police Station Nawagarh, District Janjgir-Champa. Subsequently, the claimants-the widow and children of the deceased filed a claim petition under Section 166 of the Motor Vehicles Act and the Tribunal vide the impugned award has allowed the application and ordered for payment of amount of Rs.3,93,500/- with interest @ 6% per annum from the date of application.
3. While passing the impugned award the Tribunal exonerated the Insurance Company of its liability and fastened the liability upon the Owner and Driver of the Tractor. It is this award, which is under challenge by the present appellants assailing the liability part which has been fastened upon the appellants-Owner and Driver.
4. The contention of the counsel for the appellants was that the Tribunal has erred in as much as not appreciating the fact that there was no sufficient prove to establish that the vehicle involved in the accident i.e. the Tractor belonging to the appellants was being used for the purpose of other than agriculture for which it was registered and insured. It was also the contention of the counsel for the appellants that the Tribunal below has not properly appreciated the

fact that accident occurred because of the negligence on the part of the deceased. Therefore the Tribunal should have applied the principles of contributory negligence and should have apportioned the compensation accordingly.

5. The counsel for the appellants further contended that there is also insufficient evidence to establish the accident to have occurred from the use of the Tractor belonging to the appellants. According to the appellant on the said date no such accident occurred from the Tractor of the appellants and that the Tractor on that date was not used at all and parked at village Jamdi. It was also contended by the counsel for the appellants that the quantum of compensation awarded by the Tribunal was also on the higher side. It was also the contention of the appellants that the witnesses examined have also not given the concrete and conclusive evidence of the Tractor belonging to the appellants being involved in the accident except for a vague description of the Tractor identifying with its colour.
6. The counsel for the claimants however opposing the appeal submits that the appellants in the instant case is totally misconceived and the findings of the Tribunal is particularly based on the evidence which have come on record and there was not much material to take a different view than that has been taken by the Tribunal and that there is no scope of interfering with the impugned award and the appeal therefore deserves to be rejected.
7. Having heard the contentions put forth on either side and on perusal of the record what is reflected is that to support the case of the claimants. The claimants have examined in addition to the claimant No.1, the widow of the deceased two witnesses namely Ramdhan-

AW/2 and Chandrama Prasad, AW-3 who are said to be the eyewitness and who have supported the case of the claimants and who have also stated that the Tractor which had hit the deceased was loaded with Muroom.

8. The AW/3-Chandrama Prasad in his deposition has categorically stated that the appellant No.2 in the instant case, the Driver of the offending Tractor at the time of the accident, fled away from the scene and the Tractor went towards the village. The witness had followed the Tractor and on enquiry he was informed that the appellant No.2 driving the Tractor at a great speed came and unloaded the Muroom and immediately fled from the area. Thus, this AW/3 has been able to identify the driver and the Tractor involved in the accident.
9. From the examination also the appellants could not extract much from the deposition of the AW/3 and there was nothing to doubt or disbelieve the statement of the said witness proving the case.
10. Thus, for all the aforesaid reasons and evidence, which have come on record, this Court has no hesitation in reaching to the conclusion that the findings of the Tribunal so far as the accident to have occurred with the Tractor belonging to the appellants was proper, legal and justified and the same does not warrant interference.
11. So far as the ground of liability is concerned, the evidence which have come on record clearly shows that the Tractor was being used for transportation of Muroom. It has also come in the evidence that the Muroom was unloaded in the village and not in the agriculture field of the appellant No.1, which further establishes the fact that it was being used for commercial purpose and that the Muroom was not

that of appellant No.1, nor was it for the agriculture use. Thus, applying the analogy laid down by this Court in the case of ***“Dhaniram Sahu vs. Dulichand Sahu” 2011 (4) MPJR 115 CG, 2011 AAC 2940, “United India Insurance Company Limited vs. Triveni Bai Satnami” 2008 (1) CGLJ 307***, the fact that the Tractor was being used for commercial purpose and not for agriculture purpose proves the breach of policy condition. Thus, the liability fastened upon the appellant by the Tribunal is again proper, legal and justified and does not warrant any interference.

12. The appeal thus being devoid of merit deserves to be and is accordingly rejected.

Sd/-

(P. Sam Koshy)
Judge

Ved