

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 55 of 2009**

1. Smt. Manmait wife of late Cherangu, aged about 40 years, caste Routiya, resident of village Pandripani, Police Station and Tahsil Kunkuri, District Jashpur, Chhattisgarh
2. Dilip Kumar son of late Cherangu, aged about 18 years, R/o village Pandripani, Police Station and Tahsil Kunkuri, District Jashpur, Chhattisgarh
3. Minor Yashoda D/o late Cherangu, aged about 15 years through natural guardian Smt. Manmait, wife of Cherangu, aged about 40 years, caste Routiya, resident of village Pandripani, Police Station and Tahsil Kunkuri, District Jashpur, Chhattisgarh
4. Minor Ravishankar S/o late Cherangu through natural guardian Smt. Manmait W/o Cherangu, aged about 40 years, caste Routiya, resident of village Pandripani, Police Station and Tahsil Kunkuri, District Jashpur, Chhattisgarh

---- Appellants**Versus**

1. Dhaneshwar son of Aaklu Ram, age not known, caste Routiya, R/o village Pandripani, Police Station and Tahsil Kunkuri, District Jashpur, Chhattisgarh
2. Hasildhar Yadav S/o Hunduba Ram Yadav, caste Mahkool R/o Village Sendrimunda, Police Station Narayanpur, Tahsil Kunkuri, District Jashpur, Chhattisgarh

---- Respondents

For Appellants	:	Shri J. K. Saxena, Advocate
For Respondent no.2	:	Smt. Indira Tripathi, Advocate

Misc. Appeal (C) No. 233 of 2009

Hasildhar Yadav S/o Hunduwa Ram Yadav, caste Mahkul R/o Village Sendrimunda, Police Station Narayanpur, Tahsil Kunkuri, District Jashpur, Chhattisgarh

---- Appellant**Vs**

1. Mu. Manmait W/o late Cherangu, aged about 40 years, caste Routiya, resident of village Pandripani, Police Station and Tahsil Kunkuri, District Jashpur, Chhattisgarh
 2. Dilip Kumar son of late Cherangu, aged about 18 years, R/o village Pandripani, Police Station and Tahsil Kunkuri, District Jashpur, Chhattisgarh
 3. Minor Yashoda D/o late Cherangu, aged about 15 years through her natural guardian Mu. Manmait, Wd/o Cherangu, R/o village Pandripani, Police Station and Tahsil Kunkuri, District Jashpur, Chhattisgarh
 4. Minor Ravishankar S/o late Cherangu through her natural guardian Mu.. Manmait Wd/o Cherangu, R/o village Pandripani, Police Station and Tahsil Kunkuri, District Jashpur, Chhattisgarh
 5. Dhaneshwar son of Aaklu Ram, caste Routiya, R/o village Pandripani, Police Station and Tahsil Kunkuri, District Jashpur, Chhattisgarh
 6. Insurance Company-unknown (As mentioned in the judgment impugned)
- Respondents**

For Appellant	:	Smt. Indira Tripathi, Advocate
For Respondents 1 to 4	:	Shri J. K. Saxena, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

15/09/2017

These are two appeals arising out of the same award dated 24.10.2008 passed by the Additional Motor Accident Claims Tribunal, Camp Court, Kunkuri, District Jashpur (CG) in Claim Case No. 53/2007. It is a case where the Tribunal in a claim case under the provisions of Motor Vehicles Act has awarded an amount of Rs.50,000/- to the claimants.

2. MAC No. 55/2009 is an appeal preferred by the claimants seeking for enhancement of the award and MAC No. 233/2009 is an appeal preferred by the owner challenging the liability which has been fastened upon him.

3. So far as the appeal of the owner is concerned, contention of the counsel for the owner is that the finding of the Tribunal clearly stipulates that the vehicle involved in the accident belonged to the appellant in MAC No.233/2009 which was taken by the deceased and the respondent Dhaneshwar without knowledge or any permission of the owner. They had taken the vehicle illegally at an odd hour i.e. at 2.30 a.m. It is also reflected from the proceedings that the deceased along with respondent Dhaneshwar had started the vehicle without even having a proper key, directly attaching ignition wire to the battery and that it was the deceased who was driving the vehicle at the time of accident. Therefore, there is no connection of the owner in the use of the vehicle by the deceased at the time of accident. It was further contended by the counsel for the owner that once when there is a clear finding of the Tribunal that the deceased was illegally and unauthorizedly using the vehicle, the Tribunal has rightly reached to the conclusion that the claimants were not entitled for the compensation. However, the Tribunal has wrongly invoking the provisions of Section 140 of the MV Act, granted compensation of Rs.50,000/- under no fault liability. Thus, prayed for setting aside of the impugned award.

4. Considering the entirety of the facts and circumstances of the case more particularly the fact that the entire amount of compensation has already been deposited by the owner and the fact that it is only a no fault liability which has been awarded, this Court at this juncture after about 9 years from the date of passing of the award is not inclined to entertain the appeal of the owner and the same deserves to be and is accordingly dismissed. The claimants shall be entitled for withdrawing the amount deposited in the Trial Court.

5. So far as the appeal of the claimants is concerned, this Court is not inclined to entertain the same on the ground that once when there is a categorical finding that the owner was not responsible in taking of the vehicle

by the deceased and that the deceased along with respondent Dhaneshwar having illegally and unauthorizedly started the vehicle and taken it for their personal use without knowledge, consent or authority of the owner, the owner cannot be saddled with the responsibility of payment of compensation. Further, the deceased met with an accident in the course of his own driving of the tractor disentitling the claimants for compensation.

6. Thus, the appeal filed by the claimants also deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE