

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No.316 of 2008

1. Smt.Dropati Yadav Wd/o Late Shri Rajendra Yadav, aged about 30 years.
2. Ku.Payal D/o Late Shri Rajendra Yadav, aged about 07 years, minor through mother Smt.Dropati Yadav.
Both are R/o village – Haraha, Tahsil Pamgarh, District Janjgir Champa (C.G).

---Appellants

Versus

1. Must.Urvashi Wd/o Rajendra Kumar Yadav, aged about 30 years.
2. Suraj S/o Rajendra Kumar Yadav, aged about 12 years.
3. Ku.Arati D/o Rajendra Kumar Yadav, aged about 09 years.
4. Ku.Kiran D/o Rajendra Kumar, aged about 06 years.
5. Niraj S/o Rajendra Kumar Yadav, aged about 04 years.
6. Deepak S/o Rajendra Kumar, aged about 02 years.
Respondent Nos. 2 & 6 are minor through – mother and natural guardian Smt.Urvashi Wd/o Rajendra Kumar Yadav.
All are R/o village – Haraha, P.S.Sheorinarayan, Tahsil Pamgarh, District Janjgir Champa (C.G).
7. Johan Lal S/o Nankuram Sidar, aged about 45 years, R/o village Parasapali, P.S.Bilaigarh, District Raipur (C.G)
8. Rohit Kumar Dewangan S/o Jawahar Lal Dewangan, Bilaigarh, District Raipur (C.G)
9. The New India Insurance Company Branch Bilaspur (C.G).

---Respondents

For Appellants	:	Shri Ashok Kumar Swarnakar, Advocate
For respondent No.9/ Insurance Company	:	Shri Deepak Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

04/10/2017

1. Present is an appeal under Section 173 of the Motor Vehicle Act challenging the award dated 26/12/2007 passed by the learned Additional Motor Accident Claims Tribunal, Janjgir, District Janjgir-Champa in Claim Case No.96/2006. Vide the said impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicle Act has awarded compensation of Rs.3,99,400/- along with interest @ 6% per annum. The

award has been passed in favour of the respondent No.1 to 6 who are the first wife and childrens of the deceased Rajendra Kumar Yadav. The appellants herein are claiming themselves to be the second wife and the daughter born to the second wife.

2. The counsel for the appellants submits that, during the pendency of the Claim Case before the Tribunal, they had moved an appropriate application for impleading them as claimants for the reason that, the appellant No.1 was the second wife of the deceased Rajendra Kumar Yadav and the appellant No.2 was born from the relationship that the deceased had with the appellant No.1. He further submits that in support of her contention she had produced before the Tribunal the school related documents of the appellant No.2 as also the voters list of the area whereby the name of the deceased is shown as the husband and the father of the appellant No. 1 & 2 respectively, but the Tribunal has rejected the same.

3. During the course of hearing, the counsel for the appellants also produced the judgment dated 23/06/2016 passed by the Family Court at Janjgir-Champa in CMJC No. 09/2015 whereby the appellant No.2 being the daughter born from the relationship that the deceased had with the appellant No.1 has been held to be entitled for maintenance by the respondent No.1 i.e. the first wife of the deceased in the present appeal.

4. The counsel for the Insurance Company submits that, so far as the dispute between the appellants herein and the claimants who have got the relief before the Tribunal is concerned, none appears for the claimants in spite of notices being served and represented.

5. Considering the factual matrix of the case and the fact that the school related documents as well as the voters list and also the order the Family

Court dated 23/06/2016 granting right of maintenance against the respondent No.1 in favour of the appellant No.2 substantially establishes the fact that, the appellant No.2 was born from the relationship that the deceased had with the appellant No.1. The respondent No.1 was the first wife is not disputed. Hence, the fact that since the first wife was alive, there is no question of having any legality to the relationship which the deceased had with the appellant No.1. Even though if she claims to be the second wife, she does not have any legal right as long as first wife is alive. Thus, she would not be entitled for any relief. However, since the appellant No.2 was born from the relationship that the deceased had with the appellant No.1, she would definitely be entitled for the relief of a portion of share in the award which has been passed by the Tribunal.

6. In view of the aforesaid factual matrix of the case, the appeal of the appellants stands partly allowed and the matter is remitted back to the Tribunal below for apportionment of the share proportionately to the appellant No.2 Ku.Payal who is the daughter of the deceased Rajendra Kumar Yadav.

Sumit

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