

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No.1379 of 2009**

1. Smt.Padmini Bai @ Pora Bai W/o Late Deepak Gaiakwad, aged about 22 years.
2. Doman Kumar S/o Late Deepak Gaiakwad, aged about 4 months.
3. Smt.Santra Bai W/o Shri Paras Ram @ Parsu Ram Gaiakwad, aged about 48 years.
4. Paras Ram @ Parsu Ram Gaikwad S/o Sunder Lal Gaikwad, aged about 50 years.

Appellant No.2 is the mother and natural Guardian Smt.Padmini Bai @ Pora Bai W/o Late Deepak Gaikwad, All R/o village Chat, Tahsil & P.S.Krurd, District Dhamtari (C.G.) presently residing at Dewangan Mandir Murra Bhatti, Gudhiyari Raipur (C.G.).

---Appellants

Versus

1. Suraj Kumar S/o Shri Kamal Narayan Markandey, aged about 20 years, R/o Village Chatti, Thsil & P.S.Kurud, District Dhamtari (C.G.).
2. Manoj Kumar Markandey S/o Dashrath Lal Markandey, aged about 22 years, R/o village Chatt, Tahsil & P.S.Kurud, District Dhamtari (C.G.).
3. The Oriental Insurance Company Limited, Branch Office at Adarsh Bal Mandir, Main Road, Tahsil P.S. & District Dhamtari (C.G.).

Division Office : Oriental Insurance Company Limited, Madira Building Jail Road Raipur.

---Respondents

For appellants	:	Shri Rakesh Pandey, Advocate (Appointed by the court).
For respondent Nos.1 & 2	:	Shri Jitendra Shukla, Advocate.
For respondent No.3/ Insurance Company	:	Shri Ghanshyam Patel, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

03/11/2017

1. Present is an appeal under Section 173 of the Motor Vehicles Act assailing the award dated 24/07/2009 passed by the 1st Additional Motor Accident Claims Tribunal, Raipur, District Raipur (C.G.) in Motor Accident Claim Case No.57/2008.
2. Vide the said impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicle Act has rejected the Claim Case.
3. The facts of the case is that, the deceased Deepak Gaikwad was travelling on a Motorcycle bearing registration No.CG-07-4LK-2971 when the Motorcycle

skidded on the road and fell. As a result of the said fall, the deceased received grievous injuries to which he later succumbed. The legal representatives of the deceased filed a Claim application under Section 166 and 140 of the Motor Vehicle Act.

4. Since there was no representation on behalf of the claimants, this court took the assistance of Shri Rakesh Pandey, Advocate present in the court for the disposal of the appeal.

5. In the Claim Case it was alleged by the claimants, that the Motorcycle at the relevant point of time was being driven by respondent No.1/Suraj Kumar and the deceased was a pillion rider. However, the said Suraj Kumar had entered the witness box before the Tribunal and have stated, that he was infact the pillion rider and the Motorcycle was being driven by the deceased Deepak Gaikwad himself.

6. The contention of the counsel for the appellants is that, it is a case where the Criminal Case has been lodged by the Tribunal and the application should have been alleged and the Insurance Company which had insured the Motorcycle should have been held responsible for the payment of compensation. He further refer to the statement of Madhaiya – AW/2 who is stated to be an eye-witness and Smt.Padmini Bai to be the wife of the deceased and thus prayed for setting aside of the award and for awarding suitable enhanced compensation to the claimants.

7. Perusal of the record would reflects, that the accident did take place on 25/01/2008 when the deceased-Deepak Gaikwad was driving the Motorcycle which was owned by the respondent No.2 and on which the respondent No.1 was also sitting as a pillion rider. As a result of the said accident, the deceased-Deepak Gaikwad received grievous injuries to which he later succumbed and respondent No.1 & 2 namely Suraj Kumar and Manoj Kumar respectively received minor injuries.

8. The F.I.R. in the instant case was lodged at Police Station Kurud, District Dhamtari on 24/07/2008 . Thus, there appears to be a delay in lodging of the F.I.R. of about six months.

9. Further the statement of Suraj Kumar – NAW/1 has not been controverted in any manner when he says, that he was infact the pillion rider and the Motorcycle was being driven by the deceased himself.

10. Further, the Court has disbelieved the statement of the alleged eye-witness Madhaiya on the ground, that from the spot map the place where Madhaiya standing, he would not in a position to witness the place of accident and thus there were a great element of doubt in his statement.

11. In the given factual matrix of the case this court is of the opinion, that no substantial material has been produced by the claimants to convince this court, that the finding arrived at by the Tribunal is either perverse or contrary to the evidence which have come on record.

12. Be that as it may, since admittedly, the Motorcycle was duly insured with the respondent No.3/Insurance Company and from the evidence which have come on record, the factum of accident stands established.

13. In the given circumstances even if the accident would have occurred with the deceased driving the Motorcycle, the legal representatives cannot be denied from the benefits under the provision of Section 140 of the Motor Vehicle Act i.e. the compensation under no fault liability.

14. Accordingly, the claimants shall be entitled for the compensation of Rs.50,000/- under the provision of Section 140 of the Motor Vehicle Act i.e. the compensation under no fault liability. The said amount shall also carry interest @ 9% per annum from the date of application.

15. From the perusal of the record it appears, that the Tribunal has not considered the application for compensation under the no fault liability. The Tribunal are duty bound to decide the application under Section 140 at the earliest and at the first instance and then proceed to decide the matter on merits.

16. It is been reported, that many of the Tribunals do not show any keen interest in deciding the application under Section 140 and proceed to decide the Claim Case itself on merits and as such the claimants are deprived the timely grant of compensation under no fault.

17. It is expected, that the Tribunal would be more cautious in this regard and shall make all endeavors in deciding the application under Section 140 immediately on the application being filed and then decide the matter on its merits.

18. This Court will like to render a word of appreciation to Mr.Rakesh Pandey, Advocate for providing legal assistance in the disposal of the appeal.

19. The registry is directed to ensure, that a copy if this judgment is sent to the Secretary, District Legal Services Authority, Dhamtari who in turn shall make all efforts in serving this judgment to the appellants in the present case. The Secretary, District Legal Services Authority, Dhamtari may also take the assistance of the para legal volunteers available in the district for tracking the appellants and for serving of the judgment.

20. A copy of this judgment be placed before the Registrar General who in turn shall circulate this copy to all the District Headquarters where the District Judges in turn shall apprise this order to the respective Court hearing the Motor Accident Claim Cases.

21. The appeal thus stands allowed and disposed off.

Sumit

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