

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 265 of 2010**

1. Sukh Singh, S/o. Mohitram Sarthi, Aged about 28 years,
 2. Ghasiram, S/o. Padum Kunwar, Aged about 28 years,
- Both resident of Village Chotiguda, Tahsil Gharghoda, District Raigarh, Chhattisgarh

---- Appellants**Versus**

1. Dev Singh Rathiya, S/o. Samaru Rathiya, Aged about 45 years,
 2. Smt. Sukmet, W/o. Dev Singh Rathoya, aged about 42 years,
- Both residents of village Chotiguda, Tahsil Gharghoda, District Raigarh, Chhattisgarh

----Respondents

For Appellants	:	Mr. M.K. Sinha, Advocate
For Claimants/Respondents	:	Mr. R.N. Pusty, Advocate (Amicus appointed by the Court)

Hon'ble Shri Justice P. Sam Koshy**Order on Board****23/10/2017**

1. None for the respondents/Claimants though served.
2. Since the claimants were not being represented, this Court took assistance of Mr. R.N. Pusty, Advocate to assist the Court on behalf of the claimants.
3. The present is an appeal by the owner of Tractor bearing registration No. MP-26-EA-0126. The fact of the case is that the deceased Sanat Ram Rathiya met with an accidental death on 23.05.2008. As a result of a collision between the motorcycle which he was driving and the Tractor belonging to the appellant No.2, driven by the appellant No.1. The claimants are the legal representatives/parents of the deceased and they had filed a claim case under Section 166 of the Motor Vehicles Act, wherein the Tribunal i.e. Motor Accident Claims

Tribunal, Raigarh in Claim Case No. 98/2008 vide award dated 14.12.2009 has awarded a compensation of Rs.80,000/- with interest @ 8% per annum from the date of application.

4. The counsel for the appellants challenges the impugned award on two grounds, firstly there is no evidence whatsoever to establish the accident to have occurred from the Tractor belonging to the present appellant. Second, if at all the accident has occurred it was because of the negligence on the part of the deceased, who was driving the motorcycle under strong influence of Alcohol that he had consumed. It was also argued that the appellant No.1, the driver of the offending vehicle has also been acquitted of the criminal charges that were leveled against him, which almost is in favour of the appellants.
5. Mr. Ratan Pusty, Advocate assisting the Court on behalf of the claimants submits that it is a case where the postmortem report marked as Ex.P/4 before the Tribunal clearly reflects the large number of injuries and most of them being fracture injuries was sustained by the deceased. According to Mr. Pusty, such injuries cannot happen, if it had been a normal fall from motor bike. According to Mr. Pusty, such injuries could only occur on there being collision between two vehicles. Thus, the nature of injuries forces us to draw a strong inference of there being a collision between the Tractor driven by appellant No.1 and owned by the appellant No.2, which caused the accident resulting in the death of the deceased. He further submits that the fact that the appellant No.1 was prosecuted for a criminal offence also is sufficient proof of an accident to have occurred from the vehicle belonging to the appellant No.2. Counsel for the claimants also submitted that only because the

accused has been acquitted in the criminal case by itself cannot be a ground for challenging the award in a proceeding under Section 166 of the Motor Vehicles Act.

6. Having considered the rival contentions on either side and on perusal of the record what is undisputed is the date of accident to be 23.05.2008. On the date of accident, the deceased received severe injuries, to which he latter succumbed. Further, a criminal case having being lodged against the appellant No.1 for the said offence for rash and negligent driving.
7. From the aforesaid factual matrix what is now to be seen is whether the accident had occurred from the Tractor or not. Though there is no eyewitness to the accident, but the fact that a criminal case was lodged against the present appellant No.1 is a sufficient evidence to show that an accident did occur involving the vehicle belonging to the appellant No.2, driven by the appellant No.1. Further, the fact that the appellant No.1 was prosecuted for a criminal case; itself is sufficient proof of an accident to have arisen from the use of Tractor. Only because the appellant No.1 has been acquitted by itself cannot be a ground for holding that no accident had in fact occurred from the Tractor or to reach to a conclusion that the entire claim of the claimants is false. Further, this Court is also of the opinion that the Tribunal has also given sufficient reasons to draw an adverse inference against the present appellant in as much as there is no strong evidence so far as the deceased being in a condition where he was not able to drive the vehicle properly. That the postmortem report only suggest of smell of Alcohol that by itself cannot be construed as the deceased to be in a highly intoxicated condition,

not even able to drive the motorcycle. For all these reasons, this Court is of the opinion that no sufficient ground has been made out for interfering with the impugned award.

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

Sd/-

(P. Sam Koshy)
Judge

Ved