

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 631 of 2010**

1. Lukeshwar Prasad Gupta S/o late Sudama Prasad Gupta, aged about 30 years, R/o village Patradih, Police Station & Tahsil – Lundra, District – Surguja (CG) (Registered owner of Tractor No. CG/15/A/5106 & Trolley No. CG/15/A/5107)
2. Satish Kumar Gupta S/o Sudama Prasad Gupta, aged about 28 years, R/o old bus stand, Ambikapur, District Surguja (CG) (Driver of Tractor No. CG/15/A/5106 & Trolley No. CG/15/A/5107)

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1. Smt. Rodhi Wd/o Fundur, aged about 35 years
2. Ku. Kanti D/o Fundur, aged about 16 years
3. Ramlal S/o Fundur, aged about 5 years,
4. Mangla Gond D/o Pujeri, aged about 55 years

Respondents 2 & 3 are minor through their guardian i.e. mother Smt. Rodhi

All above are resident of village Gersa (Gresa), PS & Tahsil – Lundra, District Surguja (CG)

5. Oriental Insurance Co. Ltd. through Branch Manager, Oriental Insurance Co. Ltd. Branch Manendragarh Road, Ambikapur, District Surguja (CG)

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For Appellant : Shri Manoj Paranjpe along with Shri Anurag Singh, Advocates

Hon'ble Shri Justice P. Sam Koshy**Order On Board****20/11/2017**

Present is an owner's appeal under Section 173 of the Motor Vehicles Act assailing the award dated 06.05.2010 passed by the 4th Additional Motor Accident Claims Tribunal (FTC) Ambikapur, District Surguja (CG) in Claim

Case No.63/2009. Vide the impugned award the Tribunal in a claim case under Section 166 of MV Act has awarded a compensation of Rs.2,77,000/- with interest at the rate of 9% per annum from the date of application.

2. While passing the impugned award the Tribunal has exonerated the Insurance Company of its liability on the ground that the Tractor was being used for a purpose of other than agricultural purpose for which it was registered and insured.

3. Counsel for the appellant assailing this finding of the Tribunal questioned the liability which has been fastened upon the owner. According to the counsel for the appellant, the said finding of the Tribunal was based only on the statement of AW-1 Parshuram Singh who is supposed to be the so called eye witness. The said eye witness has not conclusively proved the fact that the tractor was being used for a purpose other than agricultural purpose and that from his statement it is clear that at the time of accident the trolley was empty, therefore, the finding arrived at by the Tribunal is erroneous and prayed for setting aside of the impugned award.

4. Having considered the contention put forth by the counsel for the appellant and on perusal of the record it reflects that the deposition of AW-1 has been corroborated by the statement of AW-2 Bhojraj who has specifically given the details of the fact that on the date of accident the tractor was loaded with stones which was being taken to a school for construction work and while returning after unloading the stones, the accident occurred. There is not much rebuttal in the cross-examination of the said witness so far as this averment is concerned. Thus, it gives sufficient strength to the statement of AW-1 Parshuram Singh. Moreover, the finding of the Tribunal is also on the fact that though the owner was examined but he has not averred or established before the Tribunal that he had his agricultural field or farm on the same road where the accident occurred so as to establish the fact that the

tractor was being operated for some agricultural work in the agricultural field which was located on the same direction. Thus, the finding so arrived at by the Tribunal in the opinion of this Court is based upon the overall evidences which have come on record and there is not much which has been brought by the appellant in this appeal or anything before the Tribunal with which it could be said that the finding of the Tribunal is either perverse or contrary to the evidence which has come on record.

5. The appeal thus being devoid of merit deserves to be and is accordingly dismissed.

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