

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 301 of 2017**

- State Of Chhattisgarh Through: The Superintendent Of Police, District Police Force, Baldeo Bag, Rajnandgaon, District Rajnandgaon, Chhattisgarh(Non-Applicant No.1)

---- Appellant**Versus**

1. Smt. Fuleshwari Tamrakar Wd/o Late Ramdas, Aged About 35 Years R/o Village/ Post/ Police Station Manpur, District Rajnandgaon, Chhattisgarh(Claimant No.1)
2. Ku. Kiran Tamrakar D/o Late Ramdas, Aged About 18 Years R/o Village/ Post/ Police Station Manpur, District Rajnandgaon, Chhattisgarh(Claimant No.2)
3. Omprakash S/o Late Ramdas, Aged About 15 Years Minor Represented Through Guardian Mother Smt. Fuleshwari Tamrakar Wd/o Late Ramdas, R/o Village/ Post/ Police Station Manpur, District Rajnandgaon, Chhattisgarh(Claimant No.3)
4. Ku. Tikeshwar D/o Late Ramdas, Aged About 9 Years Minor Represented Through Guardian Mother Smt. Fuleshwari Tamrakar Wd/o Late Ramdas, R/o Village/ Post/ Police Station Manpur, District Rajnandgaon, Chhattisgarh(Claimant No.4)
5. Ku. Monika D/o Late Ramdas, Aged About 3 Years Minor Represented Through Guardian Mother Smt. Fuleshwari Tamrakar Wd/o Late Ramdas, R/o Village/ Post/ Police Station Manpur, District Rajnandgaon, Chhattisgarh(Claimant No.5)
6. Pancham Singh Tamrakar S/o Late Ramdhar, Aged About 75 Years R/o Village/ Post/ Police Station Manpur, District Rajnandgaon, Chhattisgarh(Claimant No.6)
7. Varun Kumar Sinha (Constable No.1601) S/o Bhuwan Lal Sinha, R/o Sahid Chowk, Camp-1, Ward No.14, Dalli Rajhara, District Balod, Chhattisgarh(Non-Applicant No.2)

---- Respondents

For Appellant : Shri O.P. Sahu, Government Advocate

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order On Board

02/03/2017

1. Heard.
2. The instant MAC has been preferred after 13 days of its limitation.
3. Heard the matter finally on admission and also on I.A.No.1/2017 for condonation of delay in filing the appeal.
4. It is submitted on behalf of the appellant that as the State is a multi functional body and it has to follow the rules for obtaining sanction etc. for filing the appeal, with this, the appeal has been preferred after 13 days of its limitation. The same is bonafide and unintentional, hence, it may be condoned and the appeal may be heard on its merits.
5. On due consideration of the reasons mentioned in I.A.No.1/2017 and the arguments advanced, this Court is of the considered view that the appellant had satisfactorily explained the delay of 13 days in filing the appeal. Consequently, I.A.No.1/2017 is allowed. Delay in filing the appeal for 13 days is condoned.
6. On admission it is submitted on behalf of the appellant that the LRs. of the deceased were given compensation under the various heads from the department to the tune of about Rs. 10 lacs. Also the incident occurred without any fault of respondent 7 driver of the vehicle. On account of movement of animal, the driver attempted to save them, with this, the tyre of the vehicle came into contact of a pit hole and also anti national element installed big stone in the road for 2 ft height from the surface and the same was not noticeable. With this as there was no rash and negligent act of the driver respondent 7, the appeal may be admitted for hearing as substantial question of law is involved.
7. Perused the award dated 27.10.2016. Para 9 and 13 of the award goes to show that the incident happened during night. There was no other disturbing movement of other vehicles in the road at the time of incident. Respondent 7 was driving the anti land mines vehicle wherein the deceased was also sitting in

course of his official duty of patrolling

8. Upon perusal of the entire award, this Court is not agreed with the arguments advanced on behalf of the appellant that respondent No.7 has not driven the vehicle rashly and negligently and also as he has not noticed the big stone of 2 ft. above the road surfaced at the time of incident especially at night, the driver of the vehicle was supposed to drive the vehicle cautiously also when the said vehicle was being driven in the area where anti national activities are also present against the State owned and controlled institution and vehicle. If there was no other reason then the driver respondent 7 had not noticed those stones and the pet responsible for the alleged incident. Also, as per para 10 of the award, respondent 7 admitted in his cross examination as non-applicant No.1 before the court below that concerned police have registered a criminal case against him under Sections 279, 337 & 304 A IPC for his act.

9. In the entirety the incident happened only on account of rash and negligent act of respondent 7. Also if the deceased is a govt. employee and under various schemes if the LRs of the deceased gets any other compensation amount though description of said amount under the head which the said alleged compensation was granted by the State were not pleaded. On specific terms before the court below also in absence of any such provision with those scheme the provisions of Section 166 of the Motor Vehicles Act does not take away the right of the LRs to get compensation under the relevant provisions of Motor Vehicles Act. Would it have been the case of the appellant that after the compensation under various heads of Rs.10 lacs allowed for the LRs of the deceased and with this, the claimants are not liable for any compensation under the Motor Vehicles Act and neither pleaded specifically nor proved in any way by showing any of the legal or any other provision.

10. In absence of such specific pleading and material in the considered view

of this Court, the Claim Petition under Section 166 of the Motor Vehicles Act is not barred in the present matter.

11. After consideration of the entire facts, the material surfaced in the award dated 27.10.2016 this Court is of the considered view that the appellant had prima facie failed to demonstrate that the instant MAC is worth for admission.

12. The instant MAC is sans substance. Consequently, it is dismissed at the motion stage itself.

13. Registrar (Judl) is directed to send the copy of the order to the concerned Tribunal for information and further action.

Sd/

(Chandra Bhushan Bajpai)
Judge