

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 765 of 2013**

1. Suraj S/o Late Banshi Nayak, aged about 32 years R/o Kayaghat, near Durga Temple, Raigarh, Tah. and Distt. Raigarh C.G.
2. Minor Suman S/o Late Banshi Nayak, aged about 17 years, through guardian brother Suraj S/o Late Banshi Nayak, R/o Kayaghat, near Durga Temple, Raigarh, Tah. and Distt. Raigarh C.G.

---- Appellants**Versus**

1. Ghanshyam S/o Rajkishore Singh R/o Kabir Chowk, Raigarh, Tah. and Distt. Raigarh C.G. (Owner)
2. Santanu Prasad S/o Ramnath Chandra, aged about 30 years, R/o Village & Distt. Korba C.G. (Driver)
3. The Oriental Insurance Company Limited through Branch Manager, Itwari Bazar, Raigarh C.G.

---- Respondents

For Appellants	:	Shri R. K. Pali, Advocate
For Respondent no.3	:	Shri P. Dutta under instruction of Shri Sudhir Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****14/07/2017**

This is the claimants appeal under section 173 of the Motor Vehicles Act challenging the award dated 23.02.2013 passed by the Motor Accident Claim Tribunal, Raigarh in Claim Case No.03 of 2010 whereby the Tribunal has rejected the claim application of the claimants leading to the filing of the present appeal.

2. The relevant fact in the present case is that on 09.12.2009, the deceased Ritesh aged about 25 years while going on his motor cycle was dashed by the bus bearing registration No. CG.13 A 2196 belonging to respondent no.1 and was being driven by respondent no.2. As a result of the said accident, Ritesh

received multiple injuries to which he later on succumbed. The Claimants who are the brother and sister of the deceased filed a claim application under Section 166 of the Motor Vehicles Act.

3. Taking into consideration the evidences and the pleadings which have come on record, the Tribunal reached to the conclusion that the claimants are entitled for compensation to the tune of Rs. 3,22,040. However, after holding the aforesaid determined compensation, the Tribunal, in the operative part of the impugned judgment dated 23.02.2013 held that it was not proved that the death of the deceased was on account of the rash and negligent driving of the non-applicant no.2 and therefore, rejected the claim application of the claimants.

4. It is this award which is under challenge.

5. Counsel for the appellant took the Court through the finding of the Tribunal and also referred to the finding arrived at each of the issues that were framed. He submits that perusal of the award would reveal that the Tribunal has taken into consideration the evidence which has come on record particularly the eye witness Munna who was also examined before the Tribunal and reached to the conclusion that it could not be ascertained in the course of evidence as to whether there was a rash and negligent driving on the part of the driver of the offending vehicle or not. It was also a finding of the Tribunal that there was no evidence in respect of any contributory negligence on the part of the deceased while driving the motor cycle. The Tribunal, however, found that the claimants were in fact dependent upon the deceased and were entitled for the compensation which was quantified at Rs.3,22,040. The Tribunal further in paragraph-9 & 10 after quantifying the compensation had ordered for distribution of compensation in equal share between the two claimants as has been reflected from paragraph-10 of the said judgment. However, in the operative part of the judgment, the Tribunal has rejected the claim application holding that the negligence on the part of the driver of the offending vehicle could not be established by the claimants.

6. Counsel for the appellants further submits that it is a case where the Court below has committed an error of law while rejecting the claim application. According to the counsel for the appellant, the respondents before the Tribunal had not led any evidence to rebut the contentions put forth by the claimants to substantiate the objections which were raised in their written statement. In the absence of any evidence on the part of the non-applicants, the contentions of the claimants ought to have been accepted by the Tribunal and should have awarded the compensation. He further submits that once when the Tribunal in paragraph- 9 & 10 of its judgment has held that the claimants are entitled for compensation and the distribution of the same was also determined, there was no reason why the claim application should have been rejected ultimately. Thus, prayed that the impugned award be set aside and the appellant may be held to be entitled for the compensation as has been quantified by the Tribunal in its judgment.

7. Counsel for the Insurance Company however, opposes the appeal and submits that the finding of the Tribunal does not warrant any interference as it is based upon the evidences which have come on record and prayed for rejection of the appeal.

8. Having considered the rival contention put forth on either side and on perusal of the record, the admitted position as the fact stands that the deceased Ritesh did met with an accident on 09.12.2009. The deceased was hit by the vehicle belonging to respondent no.1 and was being driven by respondent no. 2 and which was insured with respondent no.3. So far as the accident is concerned, the vehicle involved in the accident and the vehicle belonging to the respondent no.1 and also the fact that the vehicle was duly insured with respondent no.3 are all undisputed facts. There is no evidence or finding of the accident arising on the fault of the deceased. There is also no evidence of contributory negligence.

9. In the given factual circumstances what has to be seen is the evidences which have come before the Tribunal on the part of the respondents to deny the

claim of the claimants for the compensation that was sought for. The non-applicants before the Court below have not adduced any evidence to rebut the contentions of the claimants nor did they examine anybody to substantiate the averments that they had made in their written statement. In the said factual matrix of the case, this Court is of the opinion that the denial of compensation to the claimants appears to be bad in law and harsh and unjustified.

10. In the aforesaid factual matrix of the case, this Court is of the opinion that the impugned award deserves to be set aside and the same is accordingly set aside. The claim application of the claimants is allowed to the extent of the compensation as has been quantified by the Tribunal in paragraph-9 & 10 in the impugned judgment. This Court holds that the appellants would be entitled for an amount of Rs.3,22,040/- as compensation and the amount shall be distributed between the appellants as has been ordered by the Tribunal in Paragraph-10 of its judgment. It is further directed that the said amount shall carry interest @ 9% per annum from the date of application till the date of realization. The amount shall be deposited within a period of two months from today.

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