

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 318 OF 2017

1. Smt. Anisha Khatun, aged about 25 years (now 27 years), Wd/o Late Naeem Khan
 2. Mohammad Arsh, aged about 04 years (now 6 years), S/o Late Naeem Khan
 3. Aahid, aged about 07 years (now 9 years), S/o Late Naeem Khan
- The appellant no. 2 & 3 are minor, through their mother Smt. Anisha Khatun.

All R/o of Village Salba Isaipara, Tahsil Baikunthpur, District- Korea (C.G.), at present R/o Village Bahrapara, Tanakhal, Tahsil- Podiuproda, District Korba (C.G.)

... Appellants

Versus

1. K.K. Yadav, aged about 50 years (now 52 years), S/o F. Yadav, R/o North Chirmiri, District- Korea (C.G.)
2. The Oriental Insurance Company Limited, through Branch Manager, Main Road Korba, District Korba (C.G.)

... Respondents

For Appellants	:	Mr. F.S. Khare, Advocate.
For Respondent No.1	:	Mr. Sanjeev Verma, Advocate.
For Respondent No.2	:	Mr. Hanuman Prasad Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

04/09/2017

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, by the claimants, assailing the award dated 29.11.2016 passed by the Additional Motor Accident Claims Tribunal, Katghora, District Korba, in Motor Accident Claim Case No. 148/2014.
2. Vide the said impugned award, the Tribunal, in a proceeding under Section 163(A) of the Motor Vehicles Act initiated by the claimants, has rejected the claim of the claimants. The finding which has come on record is that the deceased-Naeem Khan was in fact the actual owner of the vehicle involved in the instant case at the time of accident and that he had purchased the said vehicle from the original registered owner i.e. Respondent No.1- K.K. Yadav, on 22.7.2013.

3. The claim application under Section 163(A) of the Motor Vehicles Act was put up projecting the deceased-Naeem Khan as the driver engaged by the registered owner i.e. K.K. Yadav. However, during the course of evidence and pleadings which have come on record, the finding of the Tribunal is that the deceased-Naeem Khan himself was the actual owner of the vehicle and K.K. Yadav was the registered owner. It has also come on record that certain documents were duly signed by K.K. Yadav granting NOC for the registration of the vehicle to be transferred in the name of the deceased-Naeem Khan and for which the deceased-Naeem Khan had to take further steps in the office of the RTO and an application in this regard is pending consideration before the RTO.

4. Be that as it may, this Court does not intend to go into the merits of the challenge being made by the appellants-claimants at this juncture except the fact that since there is a finding of the deceased-Naeem Khan being the actual owner and K.K. Yadav being the registered owner and, if at all, if the claimants are able to amend the pleadings and establish before the Tribunal that there was a sale which has been materialized between K.K. Yadav and the deceased-Naeem Khan and if the sale is complete then the claimants would be entitled for a claim for compensation under the policy towards the owner's risk on personal accident under Section 163-A of the Motor Vehicles Act.

5. This Court is of the opinion that on a wrong advice or on a wrong pleading, the family members of the deceased-Naeem Khan, i.e., the widow and the minor child, should not be deprived of their rightful claim of compensation which they may otherwise be entitled.

6. Accordingly, this Court is of the opinion that ends of justice would meet if the matter is remitted back to the Tribunal with a permission to the claimants to amend their pleadings suitably and further directing the

Tribunal to grant further opportunity to the parties before the Tribunal to lead suitable evidence in this regard so as to establish their respective stand on the basis of which the claim for owner's risk on personal accident can be settled. In the event of the claimants making suitable amendment of the pleadings, the respondents shall also be entitled for consequential amendments including production of documents by leading evidence in their support. It is ordered accordingly.

7. The appeal thus is partly allowed and disposed of accordingly.

8. Parties are directed to enter their appearance before the Tribunal on 30th October, 2017.

9. Registry is directed to forthwith send back the records to the Tribunal concerned.

Sd/-
(P. Sam Koshy)
Judge