

NAFR**HIGH COURT of CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 777 of 2015**

1. Smt. Shati Devi Rathod W/o late Heerendra Rathod, aged about 26 years, R/o Village : Limtara, Police Station - Masturi, District - Revenue and Civil Bilaspur, Chhattisgarh
2. Bhupendar Rathod S/o late Heerendra Rathod aged about 4 years, minor through mother Smt. Shanti Devi Rathod W/o late Heerendra Rathod, R/o Village : Limtara, Police Station - Masturi, District - Revenue and Civil Bilaspur, Chhattisgarh
3. Aditya Rathod S/o Late Heerendra Rathod, aged about 6 years, minor through mother Smt. Shanti Devi Rathod W/o late Heerendra Rathod, R/o Village : Limtara, Police Station - Masturi, District - Revenue and Civil Bilaspur, Chhattisgarh
4. Smt. Savitri Devi W/o late Hulasram Rathod, aged about 55 years, R/o Village : Limtara, Police Station - Masturi, District - Revenue and Civil Bilaspur, Chhattisgarh

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1. Santosh Kumar God S/o Sahoran Lal God R/o Village : Vyasnagar Nandeli Police Station – Pamgarh, District (Revenue and Civil) – Janjgir-Champa, Chhattisgarh (Driver of the Bus No. CG 10 G-0465)
2. Neeraj Rai S/o Markandey Rai R/o Ganesh Apartment, Mannu Chowk Tikarapara, Bilaspur, Tahsil & District (Revenue and Civil) Bilaspur, Chhattisgarh (Owner of the Bus No. CG 10 G-0465)
3. The Oriental Insurance Company Limited, through : Branch Manager Branch Office Opposite Rajiv Palaza, Old Bus Stand Bilaspur, Tahsil & District (Revenue and Civil) Bilaspur, Chhattisgarh (Insurer of the Bus No. CG 10 G-0465)

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For Appellants	:	Shri Anand Kesharwani, Advocate
For Respondent No.3	:	Shri Sudhir Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****04/09/2017**

The present is an appeal under Section 173 of the Motor Vehicles Act assailing the order dated 25.06.2015 passed in Claim Case No. 46/2015 whereby the Motor Accident Claim Tribunal, Bilaspur (CG) has rejected the claim of the claimants filed under Section 166 of the Motor Vehicles Act.

2. The solitary ground of rejecting the claim case of the claimants is the finding given by the Tribunal while deciding issue No.4 i.e. the appellants having failed to prove that the deceased Heerendra Rathod died in an accident caused by respondent no.1 while driving the bus bearing registration No. CG 10 G-0465.

3. Counsel for the appellants draws the attention of this Court towards the statement of one Ramkhilawan Vaishnav PW-3 as also the FIR and other records which were seized by the Police Authorities after the accident was reported to them by which it is established that the accident occurred from the bus bearing registration No. CG 10 G-0465. What is also reflected from the record is that the driver and the owner have categorically admitted in their written statement so far as the accident is concerned. Likewise, the Insurance Company also in its written statement in paragraph-4 has admitted the accident.

4. In view of the aforesaid facts, without further entering into the merits of the case, this Court is of the opinion that there are sufficient materials adduced by the claimants before the Tribunal as also the pleadings clearly establish the accident to have occurred from the bus owned by respondent no.2, driven by respondent no.1 and insured by respondent no.3.

5. In view of the same, the finding of the Tribunal deserves to be and is accordingly set aside and the matter is remitted back to the Tribunal with a

direction to decide the entitlement of the claimants taking into account the evidences led by the claimants in this regard.

6. The issue as to whether the accident has occurred or not stands decided by this Court holding that there is sufficient proof to hold that an accident did take place on 21.11.2013 in which the deceased Heerendra Rathod had died and that at the relevant point of time, the offending vehicle belonged to respondent no.2 which was being driven by respondent no.1 and was insured by respondent no.3. The Tribunal shall now proceed to decide the other issues and also the entitlement of the claimants.

7. The Registry is directed to send back the record to the Tribunal forthwith. The parties present before the Court today are directed to enter appearance before the Tribunal on 24th of October, 2017.

8. The appeal thus stands allowed and disposed of.

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