

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 611 of 2016**

1. Shiv Shanker Lader S/o Harish Chandra Lader, Aged About 45 Years
2. Smt. Jawa Bai, W/o Shiv Shanker Lader, Aged About 40 Years
3. Minor Chandrashekhar Lader, S/o Shiv Shankar, Aged About 15 Years
4. Minor Ku. Kajal Lader, D/o Shiv Shanker, Aged About 11 Years

Appellants No. 3 & 4 Through Natural Guardian Father Shiv Shanker Lader, S/o. Harish Chandra Lader,

All R/o Khadafdipara, Ward No. 19, Janjgir P.S. Janjgir, District Janjgir-Champa (Chhattisgarh)

---- Appellants**Versus**

1. Ramesh Dhiwar S/o Mannu Lal Dhiwar, Aged About 31 Years R/o Village Banari, P. S. Janjgir, District Janjgir Champa (Chhattisgarh)
2. Chief Executive Officer, District Panchayat Janjgir Office, District Panchayat Janjgir Champa (Chhattisgarh)
3. State Of Chhattisgarh Through Collector, Janjgir, District Janjgir Champa (Chhattisgarh) Civil & Revenue District Janjgir Champa (Chhattisgarh)

----Respondents

For Appellants	:	Mr. Vikas Pandey, Advocate
For Respondent No.2	:	Mr. Alok Bakshi, Advocate
For State	:	Ms. M. Asha, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****23/10/2017**

1. Heard on I.A. No.1, which is an application for condonation of delay.
For the reasons assigned in the application and finding them to be satisfactory, I.A. No.1 is allowed and delay of 64 days in filing the appeal stands condoned.
2. The present is an appeal under Section 173 of the Motor Vehicles Act assailing the award dated 19.10.2015, passed by the 1st

Additional Motor Accident Claims Tribunal, Janjgir-Champa, Chhattisgarh, in Motor Accident Claim Case No. 23/2015.

3. The brief fact of the case is that the deceased Rupesh Kumar, the driver of the Maruti Van bearing registration No. CG-12-D-5141, met with an accidental death as a result of collision with another vehicle TATA Sumo bearing registration No. CG-02-2764. As a result of the accident, the deceased succumbed to the injuries on 19.09.2011. That, during the course of treatment a criminal case was also registered against the Driver of the TATA Sumo i.e. the Ramesh Dheever- Respondent No.1 for the offence punishable under Section 279, 337 and 304-A of I.P.C. in Crime No. 488/2011, registered at Police Station Janjgir. Subsequently, a charge sheet was also filed on 21.12.2011 and a case is pending consideration before the Chief Judicial Magistrate, Janjgir vide Criminal Case No. 257/2011.
4. The legal heirs of deceased Rupesh Kumar filed a claim case under Section 140/166 of the Motor Vehicles Act, which stood rejected vide impugned order dated 19.10.2015. While rejecting the claim petition the finding of the learned Tribunal is that the claimants have not been able to prove the negligence on the part of the vehicle coming from the opposite direction and which is an ingredient ***sine qua non*** for establishing a case under Section 166 of the Motor Vehicles Act.
5. The admitted factual matrix of the case as is reflected from the fact narrated from the preceding paragraphs shows that there is a criminal case pending against the Driver of the offending vehicle and he has been prosecuted for the offence under Sections 279 and 304-A of I.P.C. The very fact that there was a case registered against the

respondent No.1 for the offence under Sections 279 and 304-A of I.P.C. is by itself is prima-facie strong material to draw an inference for deciding a case under Section 166 of the Motor Vehicles Act. It is a well known principles of law that the standard of proof required for proving a case before a Criminal Court is entirely different than the standard of proof required for proving a case under the Motor Vehicles Act. Before a Criminal Court, the case has to be proved beyond reasonable doubts, for a conviction, whereas before the claim case it is the principles of preponderance of probabilities which is required for establishing a case under the Motor Vehicles Act. Moreover, one should not forget the fact that provisions under Section 166 so also 163-A and Section 140 of the Motor Vehicles Act is a liberal legislation enacted for the betterment of or injured or legal representatives of deceased person.

6. In the given factual matrix of the case, this Court is of the opinion that the finding arrived at by the Tribunal does not seem to be fair and reasonable and the same deserves to be and is accordingly set-aside and the matter is remitted back to the Tribunal for consideration of the matter afresh, reserving the liberty of either parties to lead further evidence, if any.
7. Needless to mention that the appellants would also have an option and liberty of making an appropriate request before the Tribunal, if required, for converting the case under Section 163-A of the Motor Vehicles Act.
8. The appeal thus stands allowed and disposed of with the aforesaid liberty.

9. It is directed that the parties should appear before the Tribunal on 29th of November, 2017, by which time the Registry should ensure that the record reaches back to the trial Court well before the next date of hearing given by this Court.

Sd/-

(P. Sam Koshy)
Judge

Ved