

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 1213 of 2012**

1. Smt. Mamta Shastri W/o late Shri Rupesh Shastri, aged 36 years
2. Ku. Akansha Shastri D/o late Shri Rupesh Shastri, aged 17 years
3. Akash Shastri S/o late Shri Rupesh Shastri, aged 16 years

Appellant No. 2 & 3 through legal guardian mother Smt. Mamta Shastri
W/o late Shri Rupesh Shastri, R/o Tiwari Flour Mill, C/o Shri Ashok
Tiwari, Vidya Nagar, District Bilaspur (CG)

---- Appellants**Versus**

1. Santosh Kumar Sahu S/o Mansa Ram Sahu, Dharsiwan, Charaunda
District Raipur (CG) present address – near Kali Mandir, Tifra, District
Bilaspur(CG), owner – vehicle Sumo No. CG 04/2602
2. Jamil Khan S/o Shri Jalil Khan, R/o Gharaula Mohalla, Shahdol (MP)
3. Branch Manager, ICICI Lombard General Insurance Co. Ltd., through
Divisional Manager, division Office, 304, 306 Lalganga, Shopping Mall,
near Raj Takies, Jaistambh Road, District Raipur (CG)

---- Respondents

For Appellants	:	Shri Azad Siddiqui, Advocate
For Respondent no. 3	:	Shri P. Acharya under instruction of Shri Amrito Das, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****22/02/2018**

Present is a claimants' appeal under Section 173 of the Motor Vehicles Act. The challenge is to the award dated 16.11.2011 passed by the 3rd Additional Motor Accident Claims Tribunal, Bilaspur (CG) in Claim Case No.23/2010. Vide the impugned order, the Tribunal has rejected the claim application of the claimants on the ground that the claimants have not been able to substantively prove the fact that the death had occurred on account of

the use of the offending vehicle on the date of accident. The accident itself could not be sufficiently proved and established to have arisen out of the vehicle belonging to the respondent.

2. Perusal of the record would show that the claimants in the instant case had sought for issuance of summons against the witnesses and the same though served but the witnesses did not turn up before the Tribunal to lead evidence. Subsequently, the right to lead evidence was closed and the matter was decided by the Tribunal rejecting the claim application.

3. At this juncture, without entering into the merits of the case, this Court is of the opinion that in a death case when a claim application is rejected, the claimants are rendered with no other avenue for claiming compensation which the legal representatives of the deceased would have been otherwise entitled for. The provision of law particularly in respect of grant of compensation under the Motor Vehicles Act is a liberal piece of legislation meant for the protection and security to be provided to the injured or the legal representatives of the deceased who died from an accident as the case may be. It is the duty of the Tribunal to be more pragmatic and also as far as possible be liberal in a death case. The rejection of the claim application always is detrimental to the interest of the claimants particularly when it is dismissed on account of non availability of sufficient evidence.

4. Given the facts and circumstances of the case where summons had been issued but the witnesses did not turn up, the claimants had an opportunity of getting those witnesses even examined on commission. The Tribunal could have suggested the claimants to take appropriate steps in this regard also which does not seem to have been undertaken as per the record. Under the circumstance, this Court is of the opinion that the impugned order is not sustainable and the same deserves to be and is accordingly set aside.

5. The matter stands remitted back to the Tribunal for a fresh adjudication. The Parties would be at liberty to amend their pleadings suitably if required and they would also be entitled for leading additional fresh evidence, if any. The claimants would have the liberty of moving appropriate application for getting the witnesses examined on commission, if required, thereafter, the Tribunal shall proceed and decide the matter on merits afresh.

6. Since the parties are present before this Court, let them appear before the Tribunal on 22nd March, 2018. The Registry should ensure that the record is sent back immediately to the Tribunal so that it reaches the Tribunal by 22nd March, 2018. Considering the seniority of the matter it is expected that the Tribunal shall proceed and decide the matter as expeditiously as possible.

Sd/-

**(P. Sam Koshy)
JUDGE**