

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 981 of 2012**

1. Aasharam Khandait S/o Dhoba Ram Khandait Aged About 45 Years Lakha, Tah. Raigarh, P.S. Raigarh, Distt. Raigarh C.G.
2. Smt. Jagmati Khandait W/o Aasharam Aged About 42 Years Lakha, Tah. Raigarh, P.S. Raigarh, Distt. Raigarh C.G.

---- Appellants**Versus**

1. Nand Kumar Singh S/o Ram Dayal Singh Aged About 31 Years Rajiv Nagar, Mittumuda, Raigarh, Tah. And Distt. Raigarh C.G. At Present R/o Chhoteatarmuda, Raigarh, Tah. And Distt. Raigarh C.G.
2. Sanjay Singh S/o Ramnagina Singh Aged About 39 Years Jute Mill, Raigarh, Tah. And P.S. Raigarh, Distt. Raigarh C.G.
3. Manager Chholamandalam M.S. General Company Ltd. Chhare House, Second Floor, Nsc Bose Road, Chhennai, Thru- Branch Manager, Chholamandalam, M.S. General Com.Pvt. Ltd. Raipur, P.S. Raipur, Distt. Raipur C.G.

---- Respondents

For Appellant	:	Shri Amit Sharma, Advocate.
For Respondent No.3	:	Shri Rohitashva Singh, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****22.02.2018**

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the claimants against the award dated 05.09.2012 passed by the 1st Additional Motor Accident Claims Tribunal, Raigarh (in short, the Tribunal) in Claim Case No.150/2011. Vide the impugned award, the Tribunal has rejected the claim application of the claimants on the ground that the claimants have not been able to establish the aspect of negligence on the part of the respondents. The Tribunal has exonerated the insurance company of its liability on the ground that the offending vehicle at the relevant point of time did

not have a permit or fitness certificate.

2. What is undisputed is the accident that took place on 23.01.2011 at around 7 PM in the evening. The place of accident was Laxman Paw crossing at Village Gerwani, Distt .Raigarh. The said area is a remote area. Further, what is also reflected from the proceedings drawn is that the accident took place when the deceased who was travelling on a motorcycle dashed the rear side of the stationery Dumper bearing registration No.CG-13-D-0116 which was owned by the respondent No.2 and the driver of which was respondent No.1.
3. The Tribunal while considering the evidence of the claimants reached to the conclusion that since the offending vehicle was hit from the rear side and that the offending vehicle was in a stationery position, therefore, the driver and the owner of the Dumper cannot be held negligible for the accident.
4. This finding of the Tribunal does not seem to be a correct finding. The Tribunal should have look into the aspect of the time of accident, the surroundings on the place of accident and that whether the driver of offending vehicle had taken sufficient care while parking the vehicle. The Tribunal also should have seen the spot map to ascertain whether the vehicle was parked on the place where there was sufficient place for the deceased to pass from the road or whether the accident took place in the middle of the road. The Tribunal also could have ascertained whether there was an element of contributory negligence or not instead of outrightly rejecting the claim application holding it to be not sustainable.

5. Given the facts and circumstances of the case, this court is of the opinion that it is a fit case where the impugned award dated 05.09.2012 deserves to be and is accordingly set aside and the matter is remitted back to the Tribunal for a fresh adjudication of the case.
6. Needless to mention that the parties including the claimants and the respondents would be at liberty to amend their pleadings and lead fresh evidence, if so desired.
7. Since the parties are present before the court, they are directed to remain present before the concerned Tribunal on 20.03.2018.
8. Registry is directed to sent back the records of the case forthwith so that it may reach the concerned Tribunal by 20.03.2018 positively.
9. The appeal thus stands partly allowed and disposed of.

Sd/-

(P.Sam Koshy)
Judge