

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 35 of 2018**

Sunil Lalwani Son Of Ramesh Lalwani, Aged About 36 Years Caste Sindhi, R/o Ward No. 19, Near Gadar Pool, Ice Factory Dallirajhara, Police Station Rajhara, Tahsil Doundi, Civil And Revenue District Balod, Chhattisgarh.

---- Appellant**Versus**

1. Smt. Meena Dev Reddy, Wd/o Late Subhash Reddy, Aged About 47 Years Caste Telugu.
2. Smt. Laxmi Bai Dev Reddy, Wd/o Late Narayan Rao, Aged About 75 Years Caste Telugu,
3. Hitesh Dev Reddy, Son Of Late Subhash Reddy, Aged About 22 Years Caste Telugu,

Respondents No. 1 to 3 are R/o. Stadium Chowk, Ward No. 9, Dallirajhara, Police Station Rajhara, Tahsil Doundi, Civil And Revenue District Balod, Chhattisgarh.

4. Goudhan Koma, S/o. Shamsay Koma, Caste Halba, Aged About 21 Years R/o Village Narratola, Police Station Rajhara, Tahsil Doundi, Civil And Revenue District Balod, Chhattisgarh. (Driver)
5. Dayalu Ram Mandavi, R/o Q. No. 17, Gol Chowk, Danganiya Raipur, Police Station Civil Lines, Tahsil , Civil And Revenue District Raipur, Chhattisgarh. (Registered Owner)

----Respondents

For Appellant : Mr. Ratnesh Kumar Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****10/01/2018**

1. Present is an appeal by the possessive Owner of the vehicle under Section 173 of the Motor Vehicles Act assailing the award dated 26.10.2017, passed by the Motor Accident Claims Tribunal, Balod, Chhattisgarh, in Claim Case No. 09/2016.
2. Vide the impugned award the Tribunal, in a death case, has awarded a compensation of Rs.11,54,600/- with interest @10% per annum from the date of application.

3. The contention of the counsel for the appellant is that there was absolutely no evidence led by the registered owner or for that matter the claimants and also .the driver of the vehicle to establish that the present appellant was in fact the possessive owner of the vehicle at the time of accident. He further submits that there is a categorical denial both in the written statement as well as in the statement before the Tribunal by the present appellant denying the fact that he was in possession of the vehicle i.e. TATA AC bearing registration No. CG/04/JB/8264.
4. The counsel for the appellant further submits that it is a case where neither the driver involved in the instant case has been proceeded exparte, so also the registered owner has not given any evidence before the Tribunal, thus, the finding of the Tribunal is erroneous. He further submits that the only reliance or the finding of the Tribunal is based upon the criminal record, wherein the present appellant has been shown to be the possessive owner of the vehicle at the time of the accident, which may not be an admissible piece of evidence and therefore also the finding of the Tribunal deserves to be set-aside/quashed.
5. Having heard the counsel for the appellant and on perusal on record, considering the entire facts and circumstances of the case, particularly taking into account the finding arrived at for issue No.2 by the Tribunal, wherein the Tribunal has found that in the cross examination of the present appellant he has admitted the fact that Godhan Koma was the Driver of the offending vehicle was engaged by him and that further from the criminal records pertaining to the accident, which was produced before the Tribunal, it reveals that

there is a document Exhibit P/17, which shows that the present appellant was the owner of the vehicle and he had purchased the vehicle from one Dayalu Mandavi about two years back and for operating the vehicle had engaged Godhan Koma as his driver.

6. Given the said finding of facts by the Tribunal, it cannot be said that the finding is either perverse or contrary to the evidence. Further, what is also relevant is that so far as establishing a case under the Motor Vehicles Act, it is preponderance of probability which is to be applied and not the standard of proof to the extent of proving it beyond all reasonable doubts.
7. In view of the same, this Court does not find any strong case made out by the appellant calling for interference with the impugned award.
8. The opinion of this Court further stands fortified from the decision of the Hon'ble Supreme Court in the case of ***“Rajasthan State Transport Corporation vs. Kailash Nath Kothari and Others”*** (1997) 7 SCC 481.
9. The appeal thus fails and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge