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HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 517 of 2012**

Ishwar Prasad Sahu S/o Bhikhuram Sahu, R/o Village-Lawatara, Post Office Lawatara, Tahsil And Police Station Berla, Distt. Durg Now Bemetara C.G.

---- Appellant**Versus**

1. National Insurance Co. Ltd. through Branch Manager, Rajnandgaon (CG).
 2. Royal Sunderam Allianz Insurance Co. Ltd. Raipur.
 3. Baldev Prasad @ Baldau S/o Vishesh @ Parshottam Sahu, R/o Village- Lawatara, Post Office - Lawatara, Tahsil And P.S. Berla, Distt. Durg Now Bemetara C.G.
 4. Yugal Kishor Sahu S/o Rupesh Sahu, R/o Village- Lawatara, Post Office - Berla, Distt. Durg Now Bemetara C.G.
 5. Mahesh Ram Verma S/o Sudarshan, R/o Village- Bhaleshar P.S. And Tah. Berla, Distt. Durg Now Bemetara C.G.
 6. Bhikhuram Sahu S/o Lasauram Sahu, R/o Village- Lawatara, P.S. Berla, Distt. Durg Now Bemetara C.G.
 7. Paretu S/o Bisesar Nishad, aged about 40 years.
 8. Budhiyarin D/o Paretu Nishad, R/o Village Hathmudi, Tah And Post And P.S. Bemetara, Distt. Durg Now Bemetara C.G.
 9. Sangam S/o Paretu Nishad, aged about 13 years.
 10. Shivkumari D/o Paretu Nishad,
- Respondents No.8 to 10 are minor through father-appellant No.7-Paretu Nishad.
- All R/o Village Hathmudi, Tehsil and P.S. Bemetara, Distt. Durg Now Bemetara C.G.

---- Respondents

For Appellant : Shri Sudhir Verma, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****16.02.2018**

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the owner against the award dated 20.03.2012 passed by the Additional Motor Accident Claims Tribunal, Bemetara (in short, the Tribunal) in Claim Case No.104/2010. Vide the impugned award,

the Tribunal has awarded compensation of Rs.4,36,000/- along with interest @ 6 percent per annum from the date of application.

2. While passing the award, the liability of payment of compensation has been fastened upon the appellant-owner and has exonerated the insurance company.
3. The sole ground of challenge by the appellant is that there is an element of contributory negligence which was brought before the Tribunal but the Tribunal has not properly appreciated this aspect and therefore prayed for the award to be suitably modified.
4. The only piece of evidence which is relied upon by the appellant is that of oral statement of Yugal Kishore who was driver of the Tractor involved in the accident and who has stated that when he was going on road, a matador from the opposite direction came and dashed the Tractor resulting in accident. Except for the aforesaid oral statement made by Yugal Kishore there has to be no any evidence produced by any of the parties with which it can be proved that the Tractor had also crossed wrong side of the road when the accident had occurred. Neither was any evidence to show that the accident occurred on the middle of the road so as to presume that both the parties were equally responsible for the accident.
5. In the absence of any strong evidence in this regard led by the owner, it has to be presumed that the findings of the Tribunal in not considering the contributory negligence to be proper, legal and justified.
6. This court thus does not find any strong case made out by the

appellant to interfere with the impugned award. The appeal being devoid of merit is liable to be and is hereby rejected.

Sd/-
(P.Sam Koshy)
Judge

inder