

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 1117 of 2011**

1. Smt. Radhika Bai Wd/o late Omprakash, aged about 24 years, caste Maithil Kshatri
2. Lilesh Kumar S/o late Omprakash, aged about 09 years, caste Maithil Kshatri
3. Dakeshwar Kumar S/o late Omprakash, aged about 07 years, caste Maithil Kshatri
4. Ku. Gunja D/o late Omprakash, aged about 03 years, caste Maithil Kshatri

Appellants 2 to 4 minor, through natural guardian mother Smt. Radhika Bai Wd/o late Omprakash

All are resident of village Farhad, PS Basantpur, Tehsil & District Rajnandgaon (CG)

---- Appellants**Versus**

1. Rajesh Sharda S/o Laxmi Narayan Sharda M/s Sharda Seemek Pvt. Ltd., Rajnandgaon, R/o Station Road, Rajnandgaon, District Rajnandgaon (CG) Owner of the vehicle
2. The Oriental Insurance Company Limited, Station Road Branch, District Rajnandgaon (CG)

---- Respondents

For Appellant	:	Shri P. R. Patankar, Advocate
For Respondent no.1	:	Shri W. Naiyer, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****09/01/2018**

Heard on I.A. No.01, which is an application for condonation of delay.

2. For the reasons assigned in the said application and finding them to be satisfactory, I.A. No.01 is allowed and the delay of 107 days in filing the appeal stands condoned.

3. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the claimants assailing the award dated 30.03.2011 passed by the Additional Motor Accident Claims Tribunal (FTC), Rajnandgaon (CG) in

Claims Case No. 121 of 2009. Vide the impugned award, the Tribunal, considering the entire facts and circumstances of the case and the evidence which has come on record has rejected the claim application leading to the filing of the present appeal.

4. A perusal of the record would show that it is a case where deceased Omprakash met with an accidental death on 02.05.2006 when he was hit by an unknown vehicle. Though initially an FIR was lodged, the Police after due investigation submitted a closure report. Subsequently, the legal heirs of the deceased had filed a complaint case before the JMFC, Rajnandgaon and the JMFC had ordered for registration of a case under Sections 279, 337 & 304A of IPC. Later on, the said complaint case also got dismissed and thereafter it has not been reopened in any manner.

5. In the given facts and circumstances of the case, this Court is of the opinion that the claim application under Section 166 of Motor Vehicles Act has rightly been rejected by the Tribunal as the condition required u/s 166 of MV Act which is sine qua non that of proving the accident and the negligence of the vehicle involved in the accident has not been established by the claimants. In the instant case, there does not seem to be any evidence which has been led by the claimants with which it could be established that the deceased had died on account of his being hit by a car belonging to respondent no.1. Under the said circumstance, this Court does not find any strong case made out by the appellants calling for an interference with the impugned order dated 30.03.2011.

6. Accordingly, the present appeal stands dismissed.

Sd/-
(P. Sam Koshy)
JUDGE