

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 40 of 2012**

Seema Dewangan D/o Neham Dewangan, Aged about 21 years, R/o Durga Chowk, Ashok Nagar Gudiyari Raipur, Tahsil and District Raipur, Chhattisgarh

---- Appellant**Versus**

1. Kirit Ram Dewangan S/o late Babu Lal Dewangan, Aged about 51 years,
2. Durga Bai Dewangan, W/o. Kirit Ram Dewangan, Aged about 48 years,
Both are R/o. Prem Nagar, Gudiyari, District Raipur, Chhattisgarh
3. Nand Kumar Sahu S/o Lakhan Lal Sahu, Aged about 33 years, R/o Village Silouri, P.S. Bhakhara, Dhamtari, District Dhamtari, Chhattisgarh
4. Ramchand Panjwani S/o Kundan Lal Panjwani, R/o Risaipara, Dhamtari, District Dhamtari, Chhattisgarh
5. United India Insurance Co. Ltd. Through, Zonal Manager, Zonal Office, In front of Shandilya Stones, Devarshi Talkies Road, Dhamtari, District Dhamtari, Chhattisgarh

----Respondent

For Appellant	:	Mr. Yogendra Pandey, Advocate on behalf of Mr. Anil Gulati, Advocate
For Respondents No.1 & 2	:	Mr. Anmol Sharma, Advocate on behalf of Mr. Pawan Kesharwani, Advocate
For Insurance Company	:	Ms. Chitra Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****01/02/2018**

1. Present is an appeal under Section 173 of the Motor Vehicles Act.
The challenge is to the award dated 02.11.2011, passed by the 4th Additional Motor Accident Claims Tribunal, Raipur, Chhattisgarh, in Claim Case No. 167/2011, whereby the Tribunal in a death case has awarded a compensation of Rs.2,70,000/- with interest @ 7.5% per annum from the date of application.

2. The present appeal has been filed by the respondent No.4 before the Tribunal, who claimed herself to be the legally wedded wife of the deceased.
3. The brief fact of the case is that the deceased Lekhraj Dewangan, aged around 23 years met with an accidental death on 06.06.2010, when he was dashed by a Truck bearing registration No. CG/05/ZC/0341. The parents of the deceased i.e. the respondents No.1 & 2 in present the appeal had filed a claim application under Section 166 of the Motor Vehicles Act. The Claimants had also impleaded the present appellant as respondent No.4 in the claim application.
4. The status of the present appellant before the claims Tribunal was shown to be that of a divorced wife of the deceased. This fact itself shows that the Claimants at no point of time tried to get the award without the knowledge or notice of the present appellant. While passing the impugned award the Tribunal has granted the entire compensation to the Claimants/parents and has not granted any compensation to the present appellant i.e. the respondent No.4 before the Tribunal.
5. It is this award, which is under challenge by the appellant herein, the so called wife of the deceased. The contention of the counsel for the appellant is that undisputedly she is the legally wedded wife of the deceased and that there has been no legal divorce from a competent court of law issued in her favour with which it can be said that the deceased and the present appellant had got divorced. It was further contended that unless there is a proper decree of divorce issued from a competent court of law, the status of the present appellant would remain that of legally wedded wife and therefore she

would be entitled for a share in the compensation amount to be awarded by the Tribunal on the death of her husband.

6. Having heard the contentions put forth by the counsel for the appellant what is relevant at this juncture to take note of is the fact that the present appellant had been examined before the Tribunal, so also the father of the present appellant namely Neham Ram Dewangan was also examined as Non-Applicant Witnesses No. 1 and 2. Both these persons have in very categorical terms have accepted the fact that the marriage between the deceased and the present appellant was dissolved by a mutual agreement entered into between the parties on 20.06.2009, wherein in the customary meeting held in the society, they had officially separated and since then the deceased and the present appellant were staying separately. There is also a specific averment made by the Non-Applicant Witness No.2-Neham Ram Dewangan, the father of the present appellant that the present appellant since the separation from the deceased had been staying along with him, and it was he, who was taking care of the present appellant, which further establishes the fact that the present appellant was not dependent upon the deceased any further from 20.06.2009 onwards till his death on 06.06.2010 i.e. for a period of almost one year.
7. Further a perusal of the impugned award would show that the Tribunal in paragraphs No.16 & 17 has categorically dealt with the issue and has reached to the conclusion that the present appellant shall not be entitled for any compensation for the reason of there being a customary separation between the two, which was duly executed in a stamp paper and was referred to as a "*Talaknama*".

8. Given the said finding by the Tribunal and the factual matrix as narrated in the preceding paragraphs, this Court does not find the finding of the Tribunal so far as disentitling the present appellant any share in the compensation to be either erroneous or perverse, nor can it be said to be contrary to the evidence which have come on record.
9. Under the said circumstances, this Court is of the opinion that no strong case has been made out by the appellant calling for an interference with the impugned award and the appeal thus fails and is accordingly rejected.
10. It is made clear that the interim order granted by this Court on 30.01.2012 shall also stand vacated and the Claimants i.e. the respondents No. 1 & 2 shall be entitled for the entire amount of compensation. The appeal stands dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved