

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1155 of 2013**

1. Kunti Bai W/o Late Dharampal, Caste Gond, aged about 40 Years
2. Dhan Singh S/o Late Dharampal, aged about 15 Years, Occupation Student of Class 8th
3. Ku. Suman D/o Late Dharampal, Caste Gond, aged about 13 Years Minor, Occupation Student of Class 7th
4. Ku. Devanti D/o Late Dharampal, Caste Gond, aged about 11 Years, Occupation Student of Class 5th
5. Jagmohan S/o Late Dharampal, Caste Gond, aged about 8 Years, Occupation Student of Class 3rd

Appellants no. 2 to 5 are minor, through legal guardian mother Kunti Bai appellant no.1,

All are R/o Village Peeparjhad, P.S. Patna, Tah. Baikunthpur, Distt. Koriya C.G.

----Appellants**Versus**

1. Sub Area Manager, Katkona Colliery, S.E.C.L. Distt. Koriya, C.G.
2. General Manager, Katkona Colliery, S.E.C.L, District Koriya, C.G.
3. Jai Maseeh Uraon R/o Village Katkona Colliery, Koriya, (S.D.L. Driver) P.S. and Distt. Koriya C.G.

---- Respondents

For appellants	Shri V.K. Sahu, Advocate.
For Respondent no.1 & 2	Shri Vinod Deshmukh, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Order on Board****09/05/2019**

1. This is claimants appeal against the award dated 31.07.2013 passed by Motor Accidents Claims Tribunal, Koriya (Baikunthpur), C.G. in claim case No. 49/2012, whereby the claim petition has been dismissed.

2. The claimants filed an application under Section 166 of the Motor Vehicles Act on account of death of Dharampal Gond, aged about 42 years in the mines as he was run over by SDL machine which was being driven by non-applicant No.3 in a rash and negligent manner. However, the Tribunal dismissed the said claim petition on the ground that the vehicle by which the accident occurred does not fall within the definition of Motor Vehicle as provided under Section 2(28) of the Motor Vehicles Act and that a sum of Rs. 5,98,808/- has already been deposited by the employer under the provisions of the Employees Compensation Act with the concerned Commissioner and, therefore, the claim petition being not maintainable is liable to be dismissed.
3. On claim petition being filed by the claimants under Section 166 of the Motor Vehicles Act for compensation, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.
4. Learned counsel for the appellant submits that the Tribunal has wrongly dismissed the claim petition because admittedly the deceased died in an accident due to use of Motor Vehicle in the coal mines on account of rash and negligent driving by non-applicant No.3.
5. On the other hand, learned counsel for the respondent Nos. 1 & 2 supports the impugned order.
6. Admittedly, the deceased died in an accident occurred on 12.09.2010 in the coal mines on account of being run over by SDL Machine and the said machine does not fall within the definition of Section 2(28) of the Motor Vehicles Act as the Machine in question is a special type of vehicle adapted for use only in a factory or in any other enclosed

premises. Therefore, looking to the special design of the Machine involved in this case, the same does not fall within the ambit of Motor vehicle considered for the purpose of grant of compensation as per the provisions of the Motor Vehicles Act. It is also not in dispute that the employer of the said coal mines where the deceased was working has already been deposited a sum of Rs. 5,98,808/- with the concerned Commissioner against its liability. The Tribunal in the impugned order apart from the above observations has also mentioned that if the claimants are not satisfied with the amount so deposited by the employer with the Commissioner they may prefer appeal against the same before the competent authority. Considering the facts and circumstances of the case, the manner in which the accident occurred and the deceased namely Dharampal Gond died, the definition of Section 2(28) of the Motor Vehicles Act, this Court is of the opinion that the Tribunal was fully justified in not entertaining the application under Section 166 of the Motor Vehicles Act filed by the claimants and dismiss the same as being not maintainable.

7. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed.

-Sd/-
Gautam Chourdiya
Judge