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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1568 of 2015**

1. Ms. Archana Singh Wd/o Kamal Kishore @ Kishore Singh, Aged About 26 Years
2. Bhima @ Sashwat Singh S/o Kamal Kishore @ Kishore Singh, Aged About 5 Years
3. Ku. Kanchi Singh D/o Kamal Kishore @ Kishore Singh, Aged About 2 Years Appellant nos. 2 & 3 through its Through Natural Guardian Ms. Archana Singh Wd/o Kamal Kishore Singh
4. Smt. Rukhmani Singh W/o Jagjeevan Singh, Aged About 45 Years
5. Jagjeevan Singh S/o Ramjee Singh, Aged About 48 Years
6. Ramjee Singh S/o Ranmat Singh, Aged About 80 Years
7. Smt. Chandan Bai W/o Ramjee Singh, Aged About 75 Years

All are R/o Village- Chirhula, Tahsil- Mungeli, District- Mungeli, Chhattisgarh

----Appellants**Versus**

1. Kishore Kumar Narwani S/o Late Jhhamatlal, Aged About 50 Years R/o Padawa Chowk, Mungeli, Tahsil And District- Mungeli, Chhattisgarh Owner of The Offending Vehicle, Chhattisgarh
2. Bhuneshwar Prasad S/o Bhagwandas Banjare, Aged About 40 Years R/o Village Jujarbhata, Tahsil And District- Mungeli, Chhattisgarh
3. Reliance General Insurance Company Limited, Registered Office-19, Reliance Centre, Walchand Heerachand Road, Mumbai, Pin No. 400001, Branch Office- Reliance General Insurance Company Limited, Shop No. 124-126, Krishn Complex, Court Chowk, Raipur, Chhattisgarh
4. Nagendra Pratap Singh S/o Rampratap Singh Parihar, R/o Village Tedhadhora, Tahsil And District- Mungeli, Chhattisgarh.
5. Iffco Tokiyo General Insurance Company Limited, Third Floor, 345-347, Lalganga Shopping Mall, G.E.Road, Raipur, District- Raipur, Chhattisgarh

---- Respondents**MAC No. 1533 of 2015**

1. Ms. Champa Bai Wd/o Late Mohan Yadav, Aged About 40 Years
2. Dilharan Yadav S/o Late Mohan Yadav, Aged About 21 Years
3. Ku. Vimalleshwari Yadav D/o Late Mohan Yadav, Aged About 12 Years
4. Baldau Yadav S/o Late Mohan Yadav, Aged About 10 Years Minor,
Appellant nos. 3 & 4 Through Natural Guardian Ms. Champa Bai Wd/o
Late Mohan Yadav,
5. Nakul Yadav S/o Late Rambagas Yadav, Aged About 65 Years
6. Smt. Bundaka Bai W/o Nakul Yadav, Aged About 60 Years

All are R/o Village- Chirhula, Tahsil- Mungeli, District- Mungeli,
Chhattisgarh.

---- Appellants

Versus

1. Kishore Kumar Narwani S/o Late Jhhamatmal, Aged About 50 Years
R/o Padawa Chowk, Mungeli, Tahsil And District- Mungeli.
2. Bhuneshwar Prasad S/o Bhagwandas Banjare, Aged About 40 Years
R/o Village Jujharbhata, Tahsil And District- Mungeli, Chhattisgarh.
3. Reliance General Insurance Company Limited, Registered Office-19,
Reliance Centre, Walchand Heerachand Road, Mumbai, Pin No.
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Limited, Shop No. 124-126, Krishn Complex, Court Chowk, Raipur,
Chhattisgarh.
4. Nagendra Pratap Singh S/o Rampratap Singh Parihar, R/o Village
Tedhadhora, Tahsil And District- Mungeli, Chhattisgarh.
5. Iffco Tokiyo General Insurance Company Limited, Third Floor, 345-347,
Lalganga Shopping Mall, G.E.Road, Raipur, District- Raipur,
Chhattisgarh

---- Respondents

For Appellants	Shri Malay Shrivastava, Advocate.
For Respective Respondents	Shri Amrito Das, Shri Tarkeshwar Nande & Shri Akhil Mishra, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board

05/03/2019

1. As both these above appeals arise out of separate awards dated 13.10.2015 passed by the Additional Motor Accident Claims Tribunal Mungeli, C.G. in claim cases No. 56/2012 (MAC No.1568/2015) & 59/2012 (MAC No.1533/2015), involving offending vehicle – Hyva Truck bearing no. CG10-C-4478, they are being disposed of by this common judgment.
2. As per averments made in claim petitions, on 08.04.2012, deceased namely Kamal Kishore @ Kishore Singh along with Mohan Yadav was riding the motorcycle from Mungeli to village Chirhula. On the way near Raj Rice Mill, they met Sanat Kumar Yadav on the side of road. When they were standing on the road and talking with Sanat Kumar Yadav, non-applicant no.2 by driving offending vehicle in a rash and negligent manner dashed Kamal Kishore @ Kishore Singh, Mohan Yadav and Sanat Kumar Yadav, as a result both Kamal Kishore @ Kishore Singh and Mohan Yadav sustained grievous injuries and died on the spot itself whereas Sanat Kumar Yadav suffered grievous injuries. Offence against non-applicant no.2 was registered u/s 279, 337, 338 and 304A of IPC by the police and after investigation charge sheet was filed against him before the CJM, Mungeli.
3. On claim petitions being filed by claimants of Kamal Kishore @ Kishore Singh & Mohan Yadav under Section 166 of the Motor Vehicle Act claiming compensation of Rs.52,90,000/- & Rs.32,90,000/- respectively, the Tribunal vide separate awards dated 13.10.2015 passed in their claim cases No. 56/2012 and 59/2012 dismissed the claim petitions on the ground

that AW-2 Prahlad Singh who claims himself to be an eyewitness to the accident, is not an eyewitness as per Ex.A-2 and Ex.A-3 i.e. inquest report. Further, the Tribunal observed that in the documents related to crime no. 124/2012 of the said accident, there is no mention of involvement of the offending vehicle and therefore, merely on the ground of seizure of the offending vehicle it cannot be presumed that the said vehicle had caused accident.

4. Learned counsel for the appellants submits that Tribunal without considering the evidence adduced by the claimants regarding the accident, the charge sheet filed against driver of the offending vehicle and entire investigation carried out against the driver of the offending vehicle as per Ex. A-1 to Ex. A-5 in claim case no. 59/2012 and Ex.A-1 to Ex.A-9 in claim case no. 56/2012 documents produced by claimants regarding accident, charge sheet filed against the driver of the offending vehicle in criminal case no. 124/12 under Sections 279, 337, 338 and 304A of IPC and that no contrary evidence adduced by respondents in this case, wrongly dismissed the claim petitions filed by the claimants on the grounds mentioned above. As per charge sheet (Ex.A-1) filed against driver of the offending vehicle, name of Prahlad Singh is mentioned in serial no.3 as eyewitness, therefore, the learned Tribunal wrongly dismissed the claim petitions.
5. Learned counsel for the respondents supports the impugned award.
6. Heard both the parties and perused the material available on

record.

7. As per charge sheet Ex.A-1 the police after investigation registered offence against non-applicant no.2 Bhuneshwar Prasad under Sections 279, 337, 338 and 304A of IPC and in the said charge sheet Prahlad Singh has been mentioned as a witness at serial no.3. In his evidence Prahlad Singh AW-2 has categorically stated as to the manner in which the accident occurred and the respondents have failed to rebut the said contention of this witness in the cross-examination. It is settled principle of law that while deciding claim petitions strict rule of evidence is not to be insisted upon and it has to be decided on the basis of preponderance of probabilities. In the present case, there were sufficient material available on record in the form of charge sheet, statement of eyewitness Prahlad Singh, seizure memo and no evidence to the contrary was adduced by the respondents. In these circumstances, this Court is of the opinion that the Tribunal was not justified in dismissing the claim petitions on the ground that Prahlad Singh has not been able to explain as to any of the manner, accident occurred. The findings recorded by the claims Tribunal being not in consonance with the material available on record are liable to be set aside and the matter needs to be remanded to the Tribunal for decision afresh.
8. In the result, the appeal is allowed, the award impugned is set aside and the matter is remanded back to the concerned Tribunal to decide the claim petitions afresh on its own merits, after affording full opportunity of hearing to the parties, as

expeditiously as possible, preferably within a period of 6 months from the date of first appearance of the parties. Parties are directed to appear before the concerned Tribunal on 05.04.2019.

9. Needless to mention the Tribunal shall provide proper and sufficient opportunity to the parties to adduce evidence, to amend the pleadings and to file additional documents, if any.
10. Record of the Tribunal be sent back forthwith.
11. With the aforesaid observations, the appeal stands disposed of. It is made clear that nothing in this order shall be construed as an expression of opinion on merits of the case and the Tribunal shall decide the claim petitions on its own merits in accordance with law.

Sd/-
Gautam Chourdiya
Judge