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HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal (C) No. 457 of 2018**

Arun Kedia, S/o Shri Jodhraj Kedia, Aged About 45 Years, R/o Ward No.7 Latiya Road, Akaltara, Tahsil & Thana Akaltara, District Janjgir-Champa, Chhattisgarh (Registered Owner of Truck CG-10-ZB-0428).

---- Appellant**Versus**

1. Smt. Sukwara Bai, Wd/o Late Shri Munna Kumar Harwansh, Aged About 35 Years, R/o Village Khaira, Thana & Tahsil Masturi, District Bilaspur, Chhattisgarh (Applicant No.1).
2. Manoj Kumar, S/o Late Shri Munna Kumar Harwansh, Aged About 17 Years, Minor Through Natural Guardian Mother Smt. Sukwara Bai Wd/o Late Munna Kumar Harwansh Aged About 35 Years, R/o Village Khaira, Thana & Tahsil Masturi, District Bilaspur, Chhattisgarh (Applicant No.2).
3. Mithun Kumar, S/o Late Shri Munna Kumar Harwansh, Aged About 14 Years, Minor Through Natural Guardian Mother Smt. Sukwara Bai Wd/o Late Munna Kumar Harwansh Aged About 35 Years, R/o Village Khaira, Thana & Tahsil Masturi, District Bilaspur, Chhattisgarh (Applicant No.3).
4. Mukesh Kumar, S/o Late Shri Munna Kumar Harwansh, Aged About 12 Years, Minor Through Natural Guardian Mother Smt. Sukwara Bai Wd/o Late Munna Kumar Harwansh Aged About 35 Years, R/o Village Khaira, Thana & Tahsil Masturi, District Bilaspur, Chhattisgarh (Applicant No.4).
5. Kumari Neha, D/o Late Shri Munna Kumar Harwansh, Aged About 10 Years, Minor Through Natural Guardian Mother Smt. Sukwara Bai Wd/o Late Munna Kumar Harwansh Aged About 35 Years, R/o Village Khaira, Thana & Tahsil Masturi, District

Bilaspur, Chhattisgarh (Applicant No.5).

6. Nageshwar Kumar, D/o Late Shri Munna Kumar Harwansh, Aged About 8 Years, Minor Through Natural Guardian Mother Smt. Sukwara Bai Wd/o Late Munna Kumar Harwansh Aged About 35 Years, R/o Village Khaira, Thana & Tahsil Masturi, District Bilaspur, Chhattisgarh (Applicant No.6).
7. Smt. Makhana Bai, W/o Shri Lachhi Ram Harwansh, Aged About 60 Years, R/o Village Khaira, Thana & Tahsil Masturi, District Bilaspur, Chhattisgarh (Applicant No.7).
8. Lachhi Ram Harwansh, S/o Late Shri Pila Harwansh, Aged About 65 Years, R/o Village Khaira, Thana & Tahsil Masturi, District Bilaspur, Chhattisgarh (Applicant No.8).
9. Ajay @ Gowardhan Prasad Yadav, S/o Gopi Yadav, Aged About 24 Years, R/o Village Bargaon, Tahsil & Thana Akaltara, District Janjgir-Champa, Chhattisgarh (Driver of Truck No. C.G. 10 Z.B. 0428).

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For Appellant	:	Shri Vinay Pandey, Advocate.
For Respondents	:	None.

Hon'ble Shri Justice Sanjay Agrawal

Order On Board

05.09.2019

1. Heard on admission.
2. This Miscellaneous Appeal has been preferred by Non-Applicant No.2 namely Arun Kedia, the registered owner of the vehicle in question, under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988') questioning the

legality and propriety of the award dated 06.12.2017 passed by the 4th Additional Motor Accident Claims Tribunal North Bilaspur, (C.G.) (for short 'the Claims Tribunal') in Claim Case No.250/2015, by which the learned Claims Tribunal has awarded a total amount of compensation to the tune of Rs.7,42,000/- with 8.5% interest per annum from the date of filing of the claim petition till its realisation.

3. Briefly stated the facts of the case are that on 29.10.2013, deceased Munna Kumar was returning by his motorcycle from Akaltara and as soon as he reached near the Block Office at main road, Akaltara, it was dashed vehemently by the offending vehicle (Truck) bearing its Registration No.CG-10-ZB-0428, which was owned by Non-Applicant No.2 namely Arun Kedia. According to the claim petition, the alleged vehicle was being driven rashly and negligently by its driver namely Ajay @ Gowardhan Prasad Yadav/Non-Applicant No.1, as a result of which the alleged accident occurred and the deceased has sustained serious injuries and expired on the way to the hospital.
4. On account of the aforesaid accident, the claimants being legal representatives, instituted a claim petition enumerated under Section 166 of the Act of 1988 by alleging *inter alia* that deceased Munna Kumar was a Raj Mistri by profession and used to earn Rs.300/- to 350/- per day, and thus, total amount of compensation to the tune of Rs.26,50,000/- has been claimed on various heads.
5. The aforesaid claim has been contested by the Non-Applicants

by alleging *inter alia* that the deceased himself was responsible for the alleged accident and pleaded further that the alleged offending vehicle (Truck) was not involved in connection with the said accident and a false criminal case has been registered against Ajay @ Gowardhan Prasad under Section 304-A of the Indian Penal Code, 1860 being Crime No.352/2013.

6. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred due to the rashness and negligent driving of the driver of the offending vehicle namely Ajay @ Gowardhan Prasad, resulting into the sad demise of deceased Munna Kumar and that by considering the monthly income of the deceased to the tune of Rs.5,000/-, awarded total amount of compensation to the tune of Rs.7,42,000/- with 8.5% interest per annum from the date of filing of the claim petition till its realisation.
7. Being aggrieved, the Non-Applicant No.2/Owner of the vehicle in question has preferred this appeal. Shri Pandey learned counsel for the appellant submits that the award impugned as passed by holding that the vehicle in question was involved in the alleged accident is apparently contrary to law. He submits further that in absence of any cogent and reliable evidence, the Claims Tribunal ought not to have held that the driver of the offending vehicle was driving the alleged vehicle in a rashness and a negligent manner. Without considering the evidence placed on records in its proper manner, the Claims Tribunal has erred in allowing the claim. It is contended further by him that without any cogent and

reliable evidence, the Claims Tribunal has erred in assessing the monthly income of the deceased to the tune of Rs.5,000/- per month.

8. I have heard learned counsel for the appellant and perused the entire record carefully.
9. In order to consider the aforesaid contention, as to whether the alleged offending vehicle was involved in connection with the said accident or not, for which, I examined the entire record and from perusal of the same, it appears that the initial burden in order to establish the factum of the alleged accident was duly proved by the claimants by examining the eye-witness of the alleged accident namely, Ravi Shankar, who was examined as Applicant Witness No.2. According to him, the alleged accident took place in front of him as he was also going by his own vehicle at the relevant time along with his friend Raju. The evidence so adduced by this eye-witness could not have been rebutted by the Non-Applicants in his cross-examination. Besides, based upon the F.I.R. (Ex.P/2) lodged by one Hemant Singh, an investigation was conducted by the concerned Investigating Officer, who in turn has submitted a charge-sheet (Ex.P/1) against the driver of the offending vehicle namely Ajay @ Gowardhan Prasad Yadav in connection with the aforesaid offence. Thus, the initial burden was duly discharged by the claimants in order to establish the said fact by way of cogent and reliable evidence. Pertinently to be noted here that the driver of the alleged offending vehicle has not entered into the witness box in order to disprove the factum of

alleged accident, though he could have thrown some light on it. Non-Examination of the said driver would, therefore, lead to an irresistible conclusion that he alone was responsible for the alleged accident occurred on 29.10.2013.

10. It appears further from the perusal of the record that Arun Kedia (Appellant herein), the owner of the vehicle in question alone entered into the witness box. However, it appears from his deposition that he was examined only to establish the fact that he is not the owner of the alleged vehicle as he sold it to Non-Applicant No.1, Ajay @ Gowardhan Prasad Yadav. The said fact was even could not have been established by him as he failed to produce any documentary evidence in this regard and contrarily admitted the fact that he is the registered owner of the vehicle in question.
11. Based upon the aforesaid evidence led by the parties, it is evident that the alleged accident occurred on 29.10.2013 due to rashness and negligent driving by the driver of the offending vehicle. The finding so recorded by the Claims Tribunal based upon due and proper appreciation of the evidence led by the parties deserves to be and is hereby affirmed.
12. In so far as the further contention of Shri Pandey that the assessment of compensation made by the Claims Tribunal by considering monthly income of the deceased to the tune of Rs.5,000/- without any basis is, however, noted to be rejected. While filing the claim petition, it is pleaded by the claimants specifically that the deceased was a Raj Mistri by profession and

used to earn Rs.300/- to 350/- per day and this plea has neither been denied specifically nor the evidence led by deceased's wife (Smt. Sukwara Bai) in this regard could have been rebutted. Be that as it may, the Claims Tribunal by applying the principles of probability has assessed his daily income to be that of Rs.150/- to 200/-, monthly Rs.5,000/- in order to provide just and proper amount of compensation payable to the claimants. As such, I do not find any infirmity in the same.

13. Consequently, I do not find any substance in this appeal. The appeal being devoid of merit, is hereby dismissed at admission stage itself. No order as to costs.

Sd/-
(**Sanjay Agrawal**)
Judge