

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 800 of 2018**

- Branch Manager- Royal Sundaram Alliance Ins. Co. Ltd., Raj Chambers, Office No. 306, third Floor, Mova Raipur (C.G.) (Insurer of Vehicle No. CG-07-N-4613).

---- Appellant**Versus**

1. Smt. Priti Wd/o Late Vipul Tamrakar, Age, 23 years,
2. Abhishek S/o Late Vipul Tamrakar, age 08 years,
3. Ku. Jia D/o Late Vipul Tamrakar age 06 years,

Both are minors hence representing through their mother Smt. Priti Wd/o Late Vipul Tamrakar.

All R/o Tamerpara, Dhamdha Thana and Tahsil Dhamdha, Dist.- Durg (C.G.) (Claimants).

4. Ghanshaym alias Narayan S/o Sheshnarayan Patel, aged about 30 years, R/o Sonersarar, Tahsil Dhamdha, Dist.- Durg (C.G.) (Driver of Vehicle No. CG-07-4613).
5. Sheshnarayn S/o Khajan Singh Patel, aged about 60 years, R/o Titurghat, Tahsil Dhamdha, Dist.- Durg (C.G.) (Owner of the vehicle No. CG-07-4613).
6. Radheylal S/o Late Chunnilal Tamrkar, aged bout 65 years, R/o Tamerpara, Dhamdha Thana and Tahsil Dhamdha, Dist.- Durg (C.G.) (Father of deceased).

---- Respondents

For Appellant	:Shri Rohitashav Singh, Advocate.
For Respondent Nos. 1 to 3	:None
For Respondent No. 4 & 5	:Shri P. R. Patanker, Advocate.
For Respondent No. 6.	: None

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

14.05.2019

This appeal is by the Insurance Company under Section 173 of the Motor Vehicle Act against the award dated 16.02.2018, passed by Motor Accident Claims Tribunal, Durg, District Durg (for short 'the Tribunal') in Claim case No. 194/2015, awarding total compensation of Rs. 4,30,000/-with interest @ 6% from the date of filing of claim petition till its reliazation. Out of the said amount the Tribunal awarded Rs. 40,000/- in favour of non-applicant No. 3/respondent No. 06- father of deceased, fastening liability on the Royal Sundaram Alliance Ins. Co. Ltd./non-applicant No. 4 & Non applicant Nos 1 & 2 jointly and severally.

02. As per claim petition, on 30.03.2010, deceased- Vipul Tamrkar, 35 years, earning Rs.36,000/- per years by running welding shop, died in the motor vehicular accident caused due to rash and negligent driving of vehicle Swaraj Tractor bearing No. CG07/N.4613 by respondent No. 4/Non-applicant No. 1- Ghanshaym @ Narayan, died on account of the injuries sustained by him in the said accident;

03. On claim petition being filed by the claimants under Section 163(A) of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

04 Learned counsel for the appellant/Insurance Company submits that this appeal is filed only on the sole ground that the deceased was murdered by respondent No. 4- driver of the offending vehicle tractor. The FIR was lodged under Section 302 of IPC against the Non-applicant No. 1. Thus, present being a case of murder, the learned Tribunal wrongly fastened the liability upon the Insurance Company.

05 Learned counsel for the respondents Nos. 4 & 5 opposes the contention made by learned counsel for the appellant and submits that as per judgment dated 27.06.2012 (Ex. P/10) given by the First

Additional Sessions Judge, Durg in S.T. No. 67/2010, the learned Tribunal in which the finding given that looking to the death of the Vipul Tamrkar died due to use of motor vehicle there is no intention and motive was proved for committing the murder of the deceased and learned Sessions Judge acquitted- Ghanshyam and as per evidence adduced by the claimant there is no any intention for murder is found, only in this case, deceased fell down from the tractor and tractor crushed the deceased therefore, it is not a case of murder and non-applicant No. 1 acquitted from the charge of murder, therefore, the learned Tribunal rightly fastened the liability upon the Insurance Company.

06 I have heard learned counsel appearing for the parties and perused the record of Claims Tribunal including impugned award.

07 It is not disputed by both the parties that Ghanshaym who was the driver of the offending vehicle acquitted from the charge under Section 302 of IPC vide Ex. P/10. There is no contrary evidence against the driver of the offending vehicle and he was not examined before the learned Tribunal. As per postmortem report and order passed by the Sessions court vide Ex. P/10, in para 15 of the said judgment this fact is mentioned that the death of deceased can be accidental death which is occurred on 30.03.2010. Learned Tribunal after considering the entire oral and documentary in particular the judgment Ex. P/10 held that it is not a case of murder. After some hot-talk between the deceased and the driver/non-applicant No. 1 while they were traveling in the offending vehicle in between, the non applicant No. 1 pushed out the deceased, he fell down from the vehicle

and was rushed over by the vehicle, in that eventuality it can not be said that there was an intention or motive on the part of the non-applicant No. 1 to cause death of Vipul Tamrakar and it appears to be a case of accidental death, not murder as contended by learned Counsel for the appellant.

08 On the basis of aforesaid discussions, this Court finds no illegality or infirmity in the impugned award required any interference by this Court. Accordingly, there is no substance in the arguments advanced on behalf of the appellant/Insurance Company. Accordingly, the miscellaneous appeal being devoid of merit is liable to be and is hereby dismissed. No order as to costs.

Sd/-

**(Gautam Chourdiya)
Judge**