

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 514 of 2017**

1. Sarju @ Suresh Kumar Chandravanshi, aged about 40 years, R/o Village- Bhanpur (Chechanmeta), Police Station- Pipariya, Tahsil- Kawardha, District- Kabirdham (C.G.).
2. Kumar Chandravanshi S/o Firtu Ram Candravanshi, aged about 42 years, R/o Village- Kanjheta, Police Station- Pandatarai, Tahsil- Pandariya, Civil and Revenue District- Kabirdham (C.G.).

---- Appellants**Versus**

1. Kapil Vaishnav S/o Sukhru Das Vaishnav, aged about 60 years,
2. Smt. Sadbhama Vaishnav W/o Kapil Vaishnav, aged about 58 years,
3. Mithlesh Vaishnav S/o Kapil Vaishnav, aged about 28 years,
4. Vinod Vaishnav (adopted son) of deceased Sevati Vaishnav, aged about 29 years,

All are R/o Village- Kanjheta, Tahsil- Pandariya, District- Kabirdham (C.G.).

5. The Branch Manager, L & T (wrongly mentioned as L.N.T.) General Insurance Company Ltd. Second Floor, Simran Tower, Jeevan Bima Marg, Pandri, Raipur, Tahsil & District- Raipur (C.G.)
6. Shivnandan Vaishnav S/o Late Shri Dhadkan Das Vaishnva, aged about 43 years, R/o Village- Daniyakhurd, Police Station- Sahaspur Lohara, District- Kabirdham (C.G.).

---- Respondent

For Appellants : Shri Dharmesh Shrivastava,
Advocate.
For Respondent/Insurance Company: Shri Amrito Das, Advocate

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board**03.01.2019**

1. This appeal is filed by the owner & driver under Section 173 of the Motor Vehicles Act, 1988 (in short “the Act”) challenging the award dated 09.02.2017 passed by Additional Motor Accident Claims Tribunal (FTC), Kabirdham in Claim Case No. 52/2016, awarding compensation of Rs.2,32,000/- in favour of claimants with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant Nos.1 & 2/driver & owner while exonerating non-applicant No.3/insurance company of its liability. The vehicle is driven by Non-applicant No. 1, owned by non-applicant No. 2 and insured with non-applicant No. 3.

2. Being aggrieved & dissatisfied with the aforesaid award fastening the liability upon the driver & owner of the offending vehicle, this appeal under Section 173 of the Motor Vehicles Act, 1988 (henceforth “MV Act, 1988) has been preferred.

3. Brief fact of the case are that on the date of accident i.e. 27.01.2016, at about 5.00 o'clock near village Kanjheta to Saihamalgi road Non-applicant No. 1- Sarju @Suresh Kumar Chandrvanshi while driving the offending vehicle (tractor) bearing registration No. CG- 09- C/7813 rashly and negligently dashed the Seveti Vaishnav, as a result of which she died.

4. Learned Counsel for the appellant submits that though appellant has also challenged quantum of the compensation in this appeal, however, he is not pressing this ground and is confining argument only to the extent of liability. He submits that the Tribunal has wrongly exonerated non-applicant No. 3/Insurance Company of its liability by not

properly appreciating the evidence of the claimants and non-applicant Nos. 1 & 2. The Tribunal has come to the conclusion that the deceased was driving the offending vehicle on the basis of FIR (Ex. P/2) and the final report (Ex P/1) whereas from the record, it is evident that the FIR was registered on the basis of mere intimation and author of the FIR has not been examined. No evidence has been adduced by the Insurance Company to substantiate its plea of breach of policy conditions. In these circumstances the Tribunal was not justified in fastening the liability of non-applicant Nos. 1 & 2 while exonerating the Insurance Company.

5. On the other hand, learned counsel for the insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter and the evidence adduced by the parties, has rightly exonerated the insurance company and fastened liability on the owner/appellant.

6. Heard learned counsel for both the parties and perused the record of the Tribunal and awards impugned.

7. As per evidence of the claimants and the claim petition, on 27.01.2016 at around 5-6pm while the deceased was returning to her village, non-applicant No. 1 by driving the offending vehicle in a rash and negligent manner dashed the deceased which resulted in her death. As per statement of NAW01- Sarju @ Suresh Kumar Chandrvanshi (driver) he found the deceased lying on the road in injured condition. According to this witness, the deceased was hit by another vehicle and he is not aware of the particulars of that vehicle though in the FIR which was registered on the basis of mere intimation it has been stated that the deceased was sitting on the mudguard of the offending vehicle,

however, the author of the same has not been examined before the Tribunal even otherwise, as per evidence of the claimants and their claim petition while the deceased was returning to her village on foot, she was dashed by the vehicle and as per statement of NAW01 he found the deceased was lying on the road in injured condition. FIR is not a substantive piece of evidence and as such it cannot be place on pedestal higher than the statement made before the claims Tribunal on oath **United India Insurance Company Ltd. Vs. Smt. Kamli & Others, 2010(2), CGLJ 1 (M.P.)**. No evidence whatsoever has been adduced by the Insurance Company to prove that there was any breach of policy conditions on the part of non-applicant Nos. 1 or 2 therefore, considering the overall evidence and circumstances of the case, pleadings of the parties and the evidence adduced by them in support thereof this Court is of the opinion that the Tribunal was not justified in fastening the liability on non-applicant Nos. 1 & 2 while exonerating the Insurance Company.

8. In the result, the appeal is allowed and the impugned award is hereby modified to the extent non-applicant No. 3/Insurance Company is liable jointly and severally with Non-applicant Nos. 1 & 2 to pay compensation as awarded by the Tribunal to the claimants. The amount if any deposited by the Non-applicant Nos. 1 & 2 before the concerned Tribunal shall be adjusted accordingly.

Sd/-

**(Gautam Chourdiya)
Judge**

Amita

