

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 942 of 2013**

1. Abraham Kerketta s/o Kisun Kerketta, age 56 years
2. Smt. Argen Kerketta w/o Abraham Kerketta, age 52 years
3. Ku. Ritika Kerketta d/o Late James Kerketta, age 03 years, through natural guardian Grand mother Argen.

All by caste Uraon, R/o village Hari, Tahsil Manora, District Jashpur C.G.

Present Resident of village Gajma, Tahsil Manora, District Jashpur C.G. Civil and Revenue District-Jashpur C.G.

-----Appellants/ Claimants.

VERSUS

1. Surendra Singh S/o Bacchulal Singh, aged about 46 years, Occupation-Driver, R/o village Dipatoli, Jashpur (Behind Jain Mandir), Tahsil and District Jashpur C.G.
2. (A) Smt. Chintamani Singh W/o Surendra Singh, R/o Village Dipatoli, Jashpur, Tahsil and District Jashpur C.G.
3. The Oriental Insurance Company Limited through Branch Manager, Branch Office Bilaspur, through nearest Branch Office Itwari Bazar, Raigarh, District Raigarh C.G.
4. Krushmala Minj wd/o Late James Kerketta, aged about 27 years
5. Minor- Monika d/o late James Kerketta, aged about 06 years
6. Minor Aryan s/o Late James Kerketta, aged about 04 years.

No. 5 and 6 Minor through Natural Guardian & Mother, Krushmala Minj.

All by caste Uraon. No. 4 to 6 resident of village Harri, Tahsil Manora, District Jashpur C.G.

-----Respondents

For Appellants	:	Mr. A.K. Prasad, Advocate.
For Respondent No. 3	:	Mr. Deepak Gupta, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Parth Prateem Sahu, J.

15/07/2020

1. Challenge in this appeal is to the award dated 17-12-2012 passed in claim case Number 18/2010 by Motor Accident Claims Tribunal, Jashpur C.G., whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs. 4,47,000/- and apportioned the amount of compensation between the legal heirs of the deceased.

2. Brief facts relevant for disposal of this appeal are that on 03-05-2009, late James Kerketta along with his sister was traveling on a Bus bearing Registration No. CG 14A 2348 and going to Jashpur from Gajma. On the way, bus met with an accident near Kantabel from which, James Kerketta succumbed to accidental injuries on spot. Originally claim application was filed by the Appellants/ claimants 1 to 3 under Section 166 of the Motor Vehicles Act claiming Rs. 47,13,000/- as compensation on the grounds mentioned therein.
3. Respondent 1 and 2/ Non-applicant 1 and 2 submitted reply to claim application while denying all the facts except the admitted facts pleaded in the application, adding that, on the date of accident, bus was insured with Respondent 3/ Non-applicant 3-Insurance Company and the liability, if any, for payment of amount of compensation would be of Insurance Company.
4. Respondent 3/ Non-applicant 3 -Insurance Company also submitted reply to the claim application taking the technical plea that no information about the accident was forwarded to the Insurance Company, there was breach of conditions of insurance policy and further the accident was on account of negligence on the part of deceased himself.
5. During the pendency of the claim application, Respondent 4 to 6 filed an application under Order 1 Rule 10 of CPC for arraying them as applicants in the claim application mentioning therein that Respondent 4 is widow of the deceased and Respondent 5 and 6 are minor children. The said application was allowed and thereafter, they have been impleaded as claimants by way of amending the cause title of claim application.
6. After conclusion of the enquiry under the provisions of Motor Vehicles Act, learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs. 4,47,000/- as compensation to the claimants (Appellants and Respondent 4 to 6), while apportioning the amount, awarded Rs. 1 lakh each to minor children i.e. Ritika, Monika and Aryan. The Appellants aggrieved by apportionment of award of Rs. 1 lakh to minor Ritika and minor Monika, filed an

application for correction of the award by mentioning therein that minor Ritika and minor Monika are two different names of one person who is the only daughter of deceased but separate amount of award has been apportioned in the name of minor Ritika and minor Monika. The said application has been treated under Section 152 of CPC by the learned Claims Tribunal and vide order dated 15-07-2013, after hearing the learned counsel for the applicants, dismissed the application taking note of age mentioned in the claim application of minor Ritika as 3 years and age of minor Monika as 6 years and further the application under Section 152 of CPC for correction was not filed immediately but after a delay. It is also mentioned in the order rejecting the application filed under Section 152 of CPC that looking to the age of minor daughters mentioned in the application, there exists dispute, therefore, it cannot be correct in application under Section 152 of CPC.

7. Learned counsel appearing for the appellants submits that in this appeal, he has only prayed for correction/ modification of the award and apportionment of Rs. 1 lakh two times to one person. He submits that going through the application under Order 1 Rule 10 filed by Respondent 4 to 6 also, it is clear that minor Ritika who has been impleaded as claimant No. 3, her original name is Monika (as mentioned in paragraph 5 of the application). Going by paragraph 3 of the same application, there is categorical pleading that deceased James Kerketta was survived by two children and wife. Looking to the documents available on record i.e. application under Order 1 Rule 10 of CPC and the submission made by the learned counsel for the appellants in this appeal as well as before the learned Claims Tribunal in an application under Section 152 of CPC, it is clear that the deceased was survived by his wife and two children but it appears that the confusion arose only when, in the claim application, name of daughter shown as minor Ritika aged 3 years, while in the application under Order 1 Rule 10 of CPC, name of daughter of deceased has been shown as minor Monika aged 6 years.
8. The contention of the learned counsel for the appellants upon perusing the application and material available on record prima facie appears to be correct that

there is only one daughter of deceased but she has been impleaded in the party array by two different names i.e. minor Ritika and minor Monika.

9. Be that as it may, looking to the submission made by the respective parties and upon going through the application under Order 1 Rule 10 of CPC and application under Section 152 of CPC, we find it appropriate to remit back the case to the concerned Claims Tribunal for ascertaining the fact whether minor Ritika and minor Monika are two different persons or only one person called by two different names. The learned Claims Tribunal, to arrive at a correct factual position, may also interact with minor child(s); to arrive at a correct finding with regard to the claim of the appellant, we also direct the appellants 1 and 2 as well as Respondent 4 to keep the child present before the Claims Tribunal on the date so fixed for hearing. As there is no other prayer except to modify the impugned award with regard to the apportionment of the amount of compensation between the claimants, we are not setting aside the quantum of impugned award. The matter is **remitted back to the Claims Tribunal** to ascertain the fact whether minor Ritika and minor Monika are two different children or only one child called by two different names. After ascertaining the fact, the learned Claims Tribunal will be obliged to pass appropriate orders with regard to apportionment of the amount.
10. The learned Claims Tribunal will make all its endeavor to decide the issue as early as possible preferably within three months from the date of receipt of the copy of the order passed by this Court.
11. Records be sent back to the concerned Claims Tribunal forthwith.
12. The present appeal is hereby disposed of accordingly.

Sd/-
(P.R. Ramachandra Menon)
 Chief Justice

Sd/-
(Parth Prateem Sahu)
 Judge