

NAFR

**HIGH COURT of CHHATTISGARH, BILASPUR****MAC No. 626 of 2014**

- Sachidanand Jha (DEAD-DELETED)
    - (a) Smt. Bindu Devi W/o late Sachidanand, aged about 48 years
    - (b) Roshan Anand S/o Late Sachidanand, aged about 26 years
    - (b) Deepak Jha S/o late Sachidanad aged about 44 years
- All are R/o Main Road Near Makde Hotel Surajpur, District Surajpur C.G.
- Appellants/Claimants**

**VERSUS**

- Ramautar Agrawal & Construction Company Bilaspur, Proprietor: Ramautar Agrawal R/o Ringh Road Vaishali Nagar District Bilaspur C.G.
- Respondent**

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| For Appellants | : | Mr. Sushil Dubey, Advocate |
| For Respondent | : | None.                      |

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**Hon'ble Shri P.R. Ramachandra Menon, Chief Justice****Hon'ble Shri Parth Prateem Sahu, Judge****Order on Board****Per Parth Prateem Sahu, J.****18/11/2020**

1. Appellants-claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "Act of 1988") challenging the impugned award dated 12.03.2014 passed by learned 2<sup>nd</sup> Additional Motor Accident Claims Tribunal Surajpur, District Surajpur C.G. in claim case no. 2/11 whereby learned Claims Tribunal dismissed the application filed under Section 166 of the Act of 1988 seeking compensation of Rs. 25,00,000/-.
2. Facts relevant for disposal of this appeal are that the appellants have filed an application under Section 166 of the Act of 1988 pleading therein that on the date of accident ie. 28.04.2003 Sachidanand Jha (original claimant) was under the employment of non-applicant/ Respondent and earning Rs. 4,000/- per month, when he was traveling on a vehicle owned by non-applicant to the site from Rajgamar, at that relevant time at about 02:00 p.m. due to rash and negligent driving of the driver of the vehicle it met

with an accident. In the said accident, Sachidanand suffered grievous head injury. Initially he was taken to nearby hospital and thereafter admitted to Appollo hospital Bilaspur. Non-applicant met with wife of injured and assured her that he will incur all the medical expenses as he was employee of non-applicant. On the instructions of non-applicant claimants have also made correspondence to office of Hon'ble Chief Minister but they could not get any monetary help from the government. Injured was doing all his activity on bed, due to head injury and his mental condition, he was unable to narrate the incident.

3. Non-applicant has denied all the facts pleaded in the claim application. It was further pleaded that the case does not fall within the category of motor accident claim, applicant has not suffered any motor accidental injury. Claimants have not filed important details and documents on record.
4. Upon appreciation of pleadings and evidence brought on record by the respective parties, learned Claims Tribunal held that the claimants failed to prove that late Sachidanand suffered accidental injuries from the motor vehicle of non-applicant, resultantly on account of injuries he died and dismissed the application filed under Section 166 of the Act of 1988.
5. Mr. Sushil Dubey, learned counsel for the appellants submits that the Claims Tribunal erred in dismissing the entire claim application without considering and realizing the entire facts, documents and evidence placed on record by the appellants. He submits that the deceased was an employee of non-applicant, hence, he is having the liability to compassionate the appellants-claimants on account of death of late Sachidanand. Deceased suffered motor accidental injuries during the course of his employment and as such Respondent/ non-applicant is having the primary liability to pay compensation. He further contended that the claimants have placed on record Annexure A-3 which is addressed to non-applicant which specifies that the deceased was under the

employment of non-applicant. He further referred to a letter written by Appollo hospital Bilaspur dated 15.07.2003 at page 65 of the record wherein it is addressed to deceased but the address has been shown of non-applicant. He submits that the appeal be allowed and the appellants-claimants be awarded suitable amount of compensation.

6. We have heard learned counsel for the appellants and also perused the record.
7. To appreciate the submission made by the learned counsel for the appellants, we have perused the pleadings made in claim application. Upon perusal of application filed under Section 166 of the Act of 1988, we find that there is no specific mention of involvement of a particular vehicle, there is no mention of type of vehicle, registration no. of vehicle nor the driver of the offending vehicle has been arrayed as party non-applicant. Since the application has been filed under Section 166 of the Act of 1988, perusal of provisions under Section 166 would show that the application under the aforementioned provision shall be maintainable for seeking compensation for injury arising out of an accident of the nature satisfying under sub-section 1 of Section 165 of the Act. Section 165(1) envisages that the Claims Tribunal shall be constituted for the purpose of adjudicating upon the claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles.
8. In the case at hand, upon going through the pleadings and evidence brought on record, the claimants have failed to prove that the deceased suffered bodily injury arising out of use of a particular motor vehicle, there was joint pleading that the deceased suffered injuries while traveling on a motor vehicle owned by non-applicant. They have not filed any document to show that the motor vehicle owned by non-applicant/ Respondent was involved in the accident from which the deceased suffered injury leading to

his death. Applicants/ claimants could not able to make out a case that the deceased suffered motor accidental injuries from a particular motor vehicle. Claims Tribunal has recorded categorical finding that the claimants have failed to prove that late Sachidanand suffered injuries on account of accident from the vehicle owned by non-applicant. In view of the above, application filed under Section 166 of the Act of 1988 would not lie. We do not find any perversity or illegality in the finding arrived by learned Claims Tribunal.

9. For the foregoing reasons, we do not find any substance in the appeal. Appeal stands dismissed accordingly. However, the appellants will be at liberty to file appropriate proceedings before the appropriate forum if available to them under the law.

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

Sd/-  
**(Parth Prateem Sahu)**  
Judge