

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 1324 of 2014**

1. Smt. Gita W/o late Mohar Say, aged about 25 years, Caste Gond
2. Rohit Singh S/o Late Mohar Say, aged about 5 years, Caste Gond, through Mother Smt. Gita W/o Mohar Say Singh
Both R/o village Domnapara, P.S. & Tahsil Manendrgarh, District Korea, C.G.

-----Appellants/Claimants**VERSUS**

1. Vishnu Kant Tiwari @ Gudda Tiwari, S/o Vijay Kujara Tiwari, aged about 30 years, R/o Ward no. 4, Manendrgarh, Near T.V. Tower, Manendragarh, District Korea C.G.
2. Urmila Singh W/o Vijay Bahadur Singh, aged about 25 years, R/o Village Kuhaka, Tahsil Kotma, District Anupur (M.P.)
3. Branch Manager, Choramandalam M.S. General Insurance Company Limited Jabalpur, M.P.

-----Respondents

For Appellants	: Mr. Shailesh Ahuja, Advocate
For Respondent 1,2	: None
For Respondent 3	: Mr. Abhishek Sinha, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Order on Board****Per Parth Prateem Sahu, J.****01/12/2020**

1. Challenge in this appeal is to the award dated 30.07.2014 passed by learned Second Motor Accident Claims Tribunal, Manendragarh, District Korea C.G. in claim case no. 19/2011 whereby learned Claims Tribunal dismissed the application filed under Section 166 of the Motor Vehicles Act, 1988 (for short "Act of 1988") on the ground that the claimants have failed to prove negligence on the part of owner of the offending vehicle in the motor accident.
2. Facts of the case relevant for disposal of this appeal are that the offending tractor bearing registration no. MP 18AA 2748 was owned by non-applicant 2 and insured with non-applicant 3. On 23.02.2011, Mohar Say,

while driving the offending tractor, was going to load cow dung manure on tractor trolley, it met with an accident and turned turtle. In the said accident, Mohar Say, driver of the offending tractor, suffered grievous injuries and died.

3. Claimants/ appellants who are wife and child of late Mohar Say filed an application under Section 166 of the Act of 1988 pleading therein that deceased Mohar Say was employed as driver of offending tractor owned by non-applicant 2. He was being paid Rs. 7,000/- per month as salary. Cause of accident as pleaded in the claim application was that when the deceased, while driving the Tractor, was going to load cow dung manure, reached near Mission School turn, suddenly a cow came in front of the vehicle, in attempt to save cow, he lost his control over the vehicle and met with an accident. Appellants-claimants have sought for compensation of Rs. 19,30,000/- from non-applicants 1 to 3.
4. Non-applicant 1 and 2 submitted reply to the claim application, denied employment of deceased but accepted that the deceased was a tractor driver and his services were taken on daily basis whenever it was required. He was being paid Rs. 80/- per day, wages are being paid on behalf of non-applicant 2. The offending tractor was being insured with non-applicant 3-Insurance Company and non-applicant 1 was working as supervisor on behalf of non-applicant 2 to manage the affairs of the tractor.
5. Non-applicant 3/ Insurance Company submitted reply to the claim application, took a preliminary objection that, application filed under Section 166/ 140 of the Act of 1988 is not maintainable because driver of the tractor himself was liable for the accident. It was further pleaded that the deceased was traveling as occupant and not as a driver of the vehicle. Vehicle was being used in breach of conditions of Insurance Policy.

6. Learned Claims Tribunal, upon appreciation of pleadings and evidence placed on record by the respective parties, upon considering the provisions of law, held that application for compensation filed in its form is not maintainable and dismissed the application filed under Section 166 of the Act of 1988.
7. Dr. Sailesh Ahuja, learned counsel for the appellants-claimants submits that the Claims Tribunal erred in dismissing the claim application in its entirety. Claims Tribunal has recorded a finding that on the date of accident, deceased was under employment of non-applicant 1 & 2, he was being paid regular salary by non-applicant 2 (owner of the offending tractor), accident as also death of Mohar Say, has been found to be proved on account of motor accidental injuries, but even then Claims Tribunal has erroneously dismissed the entire claim application filed under Section 166 of the Act, 1988. He pointed out that as the claimants in their application have very specifically pleaded the cause of accident due to sudden coming of cow in front of vehicle and, in attempt to save her, tractor met with an accident. Claims Tribunal erroneously recorded a finding that accident was result of self-negligence of the deceased. He submits that the appeal be allowed and just compensation be awarded to the appellants-claimants.
8. Mr. Abhishek Sinha, learned counsel for the Insurance Company submits that the Claims Tribunal, taking into consideration, entire facts and circumstances of the case, has rightly arrived at a finding that the application filed under Section 166 of the Act of 1988 is not maintainable. He submits that the claim under Section 166 of the Act of 1988 is a negligence based claim for which claimants are required to prove that the injured/ deceased suffered injuries on account of negligence of the driver or owner of the vehicle. He submits that there is no such pleading in the application filed under Section 166 of the Act of 1988 by the appellants. In

support of his contention, he places his reliance on cases of **Oriental Insurance Company Limited Vs. Meena Variyal and others** reported in (2007) 5 SCC 428 and **Sahiblal Chandra and others v. Bhudayal Chandra and others** reported in (2007) 2 CGLJ 128.

9. We have heard learned counsel for the respective parties and also perused the records of the claim case.
10. Pleadings made in the application under Section 166 of the Act of 1988 by claimants, very specifically mentions that, deceased was working as driver of the offending vehicle; he was going to load cowdung manure, on the way a cow suddenly came in front of vehicle on road, in attempt of saving the cow, deceased lost his control over the tractor and met with an accident. There is no pleading that the accident was result of involvement of any other motor vehicle or some mechanical failure of the offending vehicle alleging the responsibility/ negligence upon the owner of the offending vehicle. The Hon'ble Supreme Court in case of **Meena Variyal (supra)** has considered the issue with regard to the maintainability of the claim application filed under Section 166 of the Act of 1988 and held as under.

“27. We think that the law laid down in *Minu B. Mehta v. Balkrishna Ramchandra Nayan*, (1997) 2 SCC 441 was accepted by the legislature while enacting the Motor Vehicles Act, 1988 by introducing Section 163-A of the Act providing for payment of compensation notwithstanding anything contained in the Act or in any other law for the time being in force that the owner of a motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be, and in a claim made under sub-section (1) of Section 163-A of the Act, the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle concerned. Therefore, the victim of an accident or his dependents have an option either to proceed under Section 166 of the Act or under

Section 163-A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section 163-A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependents to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle.”

11. In the light of the aforementioned law laid down by Supreme Court in case of **Meena Variyal (supra)** that for maintaining claim application under Section 166 of the Act of 1988, claimants are required to prove negligence on the part of others for the accident which unfortunately is missing in this case.
12. For the foregoing reasons, we do not find any infirmity in the award passed by Claims Tribunal that the appellants-claimants failed to prove negligence of owner of the offending vehicle, hence the claim application is not maintainable. We affirm the finding and reasoning assigned by the Tribunal for dismissing the application filed under Section 166 of the Act of 1988.
13. For the foregoing reasons, appeal being devoid of any substance which is liable to be and is hereby dismissed accordingly. However, the claimants will be at liberty to file appropriate application before the appropriate forum for redressal of their grievance if permissible under law.

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

Sd/-
(Parth Prateem Sahu)
 Judge