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**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 896 of 2014**

1. Krishna Kumari, W/o Late Raju Soni, aged about 35 years, R/o Niche Para, Dharamjaigarh, P.S. & Tahsil Dharamjaigarh, Distt. Raigarh (CG)
2. Ranjita Soni, D/o Late Raju Soni, Aged About 17 Years, Minor, through Guardian Mother Krishna Kumari, Wd/o Late Shri Raju Soni, Aged about 35 years, R/o Niche Para, Dharamjaigarh, P.S. & Tahsil Dharamjaigarh, Distt. Raigarh C.G.
3. Sanjita Soni, D/o Late Raju Soni, Aged About 15 Years, Minor, through Guardian Mother Krishna Kumari, Wd/o Late Shri Raju Soni, Aged About 35 years, R/o Niche Para, Dharamjaigarh, P.S. & Tahsil Dharamjaigarh, Distt. Raigarh C.G.
4. Sandeep Soni, S/o Late Raju Soni, Aged About 13 Years, Minor, through Guardian Mother Krishna Kumari, Wd/o Late Shri Raju Soni, Aged About 35 years, R/o Niche Para, Dharamjaigarh, P.S. & Tahsil Dharamjaigarh, Distt. Raigarh CG
5. Durga Soni, D/o Late Raju Soni, Aged About 10 Years, Minor, through Guardian Mother Krishna Kumari, Wd/o Late Shri Raju Soni, Aged About 35 years, R/o Niche Para, Dharamjaigarh, P.S. & Tahsil Dharamjaigarh, Distt. Raigarh C.G.
6. Muskan Soni, D/o Late Raju Soni, Aged About 8 Years, Minor, through Guardian Mother Krishna Kumari, Wd/o Late Shri Raju Soni, Aged About 35 years, R/o Niche Para, Dharamjaigarh, P.S. & Tahsil Dharamjaigarh, Distt. Raigarh C.G.
7. Nilesh Soni, S/o Late Baiju Prasad Soni, Aged About 21 Years, R/o Niche Para, Dharamjaigarh, P.S. & Tahsil Dharamjaigarh, Distt. Raigarh C.G.
8. Ku. Sudha Soni, D/o Late Baiju Prasad Soni, Aged About 27 Years, R/o Niche Para, Dharamjaigarh, P.S. & Tahsil Dharamjaigarh, Distt. Raigarh C.G.
9. Bimala Soni, W/o Late Baiju Prasad Soni, Aged About 62 Years, R/o Niche Para, Dharamjaigarh, P.S. & Tahsil Dharamjaigarh, Distt. Raigarh C.G.

**---- Appellants****Versus**

1. Ganesh Shil, S/o Santosh Kumar Shil, Aged About 27 Years  
R/o Occupation-Driver, R/o Dharamjaigarh Colony, Police  
Station & Tahsil Dharamjaigarh, Distt. Raigarh C.G., (Driver of  
Mini Pick Up Vehicle No.CG10-C-1429)
2. Santosh Kumar Shil, S/o Upendra Nath Shil, Aged About 62  
Years, Owner of vehicle, R/o Near Jeet Theater, Bilaspur, P.S.  
Tarbahar, Distt. Bilaspur C.G.,  
  
Present Address- Dharamjaigarh Colony, Police Station &  
Tahsil Dharamjaigarh, Distt. Raigarh C.G. (owner of Mini Pick  
Up Vehicle No.CG10-C-1429)
3. The Oriental Insurance Company Limited, Branch Office 1<sup>st</sup>  
Floor, Rama Trade Center, Beside Rajeev Plaza, Bus Stand,  
Bilaspur, P.S. Tarbahar, Distt. Bilaspur C.G. (Insurer of Mini  
Pick Up Vehicle No.CG10-C-1429)
4. Nirmal Say, S/o Arjun Say, Aged About 34 Years, R/o Durgapur  
Colony, Dharamjaigarh, P.S. & Tahsil Dharamjaigarh, Distt.  
Raigarh C.G. (Driver of Mini Pick Up Vehicle No.CG10-C-1429)

**---- Respondents**

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| For Appellant       | : | Mr. Ajit Kumar Yadav, Advocate |
| For Respondent No.3 | : | Mr. H.P. Agrawal, Advocate     |

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**Hon'ble Shri P. R. Ramachandra Menon, CJ**  
**Hon'ble Shri Parth Prateem Sahu, J**

**Order On Board**

**Per Parth Prateem Sahu, J**

**16/09/2020**

1. This is claimants' appeal under Section 173 of the Motor  
Vehicles Act, 1988 (for short 'the Act of 1988') challenging the  
award dated 9.5.2014 passed by the learned 1<sup>st</sup> Additional  
Motor Accident Claims Tribunal, Raigarh (henceforth 'the  
Claims Tribunal') in Claim Case No.59/2007 dismissing claim  
application of the claimants/appellants herein.
2. Facts relevant for disposal of this appeal, as appearing from  
the claim application filed by claimants/appellants before the

Claims Tribunal, are that on 7.8.2007 Raju Soni was travelling along with his goods on Mini Pick-up bearing No.CG10-C-1429 (for short 'the offending vehicle') and going to Kantada and Jamargidih Market from Dharamjaigarh to sell grains, fruits and vegetables. On account of rash and negligent driving of offending vehicle by its driver- non-applicant No.1, Raju Soni fell down from the running vehicle and suffered grievous injuries over his head, waist and back. He was taken to Dharamjaigarh Hospital where during the course of treatment he died on 13.8.2007. The accident was reported to the concerned police station based on which crime was registered against non-applicant No.1 for the offence under Section 304A of the IPC.

3. Claimants/appellants, who are widow, children, mother, brother & sister of deceased, filed an application under Section 166 of the Act of 1988 before the Claims Tribunal seeking total compensation of Rs.34,30,000/- mentioning therein that on the date of accident, the deceased was engaged in the business of selling grains, fruits & vegetables in market of different nearby villages and thereby earning Rs.8,000/- per month.
4. Non-applicant Nos.1 & 2, who are driver and owner of offending vehicle, submitted reply to the application denying the entire pleadings made therein and further pleaded that the death of Raju Soni was not on account of accidental injuries suffered by him on 7.8.2007, but on account of some other reason, which is evident from the post-mortem report. It was

also pleaded that the accident, as pleaded, occurred on 7.8.2007, whereas the death took place on 13.8.2007 and in the postmortem report itself it is mentioned that the injuries suffered prior to 6 to 12 hours of death. It was also pleaded that on the date of accident, one Nirmal Sai was driving the offending vehicle and not non-applicant No.1 and said Nirmal Sai who was not impleaded as non-applicant in the application. Thus, there is misjoinder of necessary party, therefore, the claim application is not maintainable. On the date of accident, the offending vehicle was fully insured with non-applicant No.3, therefore, liability if any would be upon non-applicant No.3.

5. Non-applicant No.3 Insurance Company also filed its reply to application denying the pleadings made therein. It was pleaded that on the date of accident, the insurance policy issued for vehicle bearing No.CG10-C-1429 was not in the name of non-applicant No.2 Santosh Kumar Sheel and non-applicant No.1 was not having valid and effective driving license to drive offending vehicle. The accident has not taken place nor Raju Soni suffered injuries. On the date of accident, the offending vehicle was plied in breach of conditions of insurance policy as deceased Raju Soni was travelling in the goods vehicle.
6. Non-applicant No.4, who has been alleged to be the driver of offending vehicle, also submitted reply to the application denying claim of appellants and admitted that he is driver of offending vehicle and not Ganesh Sheel. On the date of accident, he was driving the offending vehicle very carefully

and cautiously. Death of Raju was not the result of any accident, rather it was due to his own negligence. It was also pleaded that deceased has not suffered any injury resulting his death on the date of accident. The deceased was not keeping his health good prior to the date of accident. It was also pleaded that non-applicant No.2 was having valid and effective driving license on the date of accident.

7. Based on the pleadings of the parties, the Claims Tribunal formulated four issues for consideration and after taking into consideration the pleadings and evidence placed on record by respective parties, has initially dismissed the claim application vide award dated 22.7.2010 by recording a finding that the claimants failed to prove that the deceased died on 13.8.2007 on account of injuries suffered by him in motor accident dated 7.8.2007.

8. Award dated 22.7.2010 was challenged by the claimants before this Court by filing MAC No.231/2010 and this Court after considering the material and evidence available on record as also submission made by learned counsel therein, allowed the appeal by observing that **“in the light of medical evidence it can safely be presumed that the accident has direct nexus with the death of the deceased and the Claims Tribunal has erred in holding that the death of deceased was not due to injuries sustained by him in the accident dated 7.8.2007”**. After setting aside the award dated 22.7.2010, this Court remanded back the case to the Claims Tribunal for taking

decision afresh in the light of the observation made in the order of this Court and further directed that the Claims Tribunal shall provide opportunity to the parties to adduce further evidence, if any, and amend the pleadings or to file documents or verify the documents already filed.

9. After receiving back the case on remand, the Claims Tribunal while recording the proceeding based on the remand order passed by this Court, recorded that the parties were provided sufficient opportunities but they have neither brought any new fact nor led any new evidence. Final arguments were heard and the impugned award was passed. The Claims Tribunal by the award impugned again dismissed the claim of appellants recording the same finding that the claimants have failed to prove the death of Late Raju Soni on account of injuries suffered by him on 7.8.2007, which was already held by this Court to be erroneous finding and that the accident has direct nexus with the death of deceased.
10. The Claims Tribunal has not considered and decided the claim application in terms of the remand order passed by this Court on 27.4.2012 wherein this Court in very clear terms has held that in the light of medical evidence it can be safely presumed that the accident has direct nexus with the death of deceased. Despit this, the Claims Tribunal has recorded that the claimants failed to prove that death of the deceased was on account of motor accidental injuries suffered on 7.8.2007. The course pursued by the Claims Tribunal in deciding claim application

contrary to the observation made in the remand order cannot but is to be deprecated. This Court while deciding the miscellaneous appeal in earlier round of the same proceeding has clearly observed that the accident has direct nexus with the death of the deceased on the basis of medical evidence available on record, then the Claims Tribunal could not have dismissed the claim application on the same ground.

11. This Court can decide this appeal on merits but as the quantification of amount of compensation has not been made by the Claims Tribunal, we find it appropriate to remit back the case to the Claims Tribunal to decide the case taking into consideration the first remand order dated 27.4.2012; for quantification of the amount of compensation and to pass appropriate award in accordance with law taking into consideration the finding recorded by the Claims Tribunal with regard to breach of condition of insurance policy. In the first remand order this Court has directed to pass fresh award after affording proper opportunity of hearing to the parties but they have not led any further evidence. As we are remanding back the case to the Claims Tribunal for passing a fresh award, we direct the Claims Tribunal to grant one more opportunity of hearing to the respective parties before passing the award afresh.
12. The appeal is allowed. Impugned award is hereby set aside. The case is remitted back to the Claims Tribunal for deciding claim case and passing the award afresh after affording

opportunity of hearing to the respective parties. Looking to the date of accident, we direct the Claims Tribunal to decide the claim case within a period of five months from the date of receipt of copy of the order passed by this Court.

13. The Registry is directed to transmit the record of the Claims Tribunal without any further delay.

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

Sd/-  
(Parth Prateem Sahu)  
Judge

roshan/-