

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1360 of 2014**

1. Smt. Gita Devi Kushwaha Wd/o late Sanjay Sing Kushwaha, age 32 years
2. Ku. Ful Kumari D/o late Sanjay Sing Kushwaha, age 6 years
3. Suruchi D/o late Sanjay Sing Kushwaha, age 1 year

Appellants No. 2 and 3 are minor hence impleaded through their Natural Guardian Mother appellant 1 Smt. Gita Devi Kushwaha Wd/o late Sanjay Sing Kushwaha, age 32 years

All R/o Darri Basti, Behind main road, Darri, Katghora, Distt. Korba

4. Manrakhan Kushwaha S/o Gopi Kushwaha, age 55 years
 5. Durgadeev Kushwaha W/o Manrakhan Kushwaha, age 53 years
- Both R/o Village Panjrao, Distt. Kaimur Mahuva Bihar.

-----Appellants**VERSUS**

1. Dashrath @ Guddu S/o Buddhu, R/o Chindu Briks Works, Kachhar, Tah and Distt. Bilaspur C.G.

---Driver of Vehicle CG10A2571

2. Chindu Briks Works, Kachhar, Tah and Dist. Bilaspur C.G.

-----Owner of Vehicle CG10A2571

3. The Oriental Insurance Co. Ltd. Through Divisional Manager, Near Old Bus Stand, Korba, Dist. Korba C.G.

----Insurer of Vehicle CG10A2571

4. Smt. Mahima Yadav W/o Ramesh Yadav, R/o Qtr No. 4 Ompur Colony, Tah and Distt. Korba C.G.

-----Owner of Vehicle CG12C1136

5. The New India Insurance Co. Ltd. through Divisional Manager, Transport Nagar, Korba, Distt. Korba C.G.

-----Insurer of Vehicle CG12C1136**----Respondents**

For Appellants	:	Mr. Amiyakant Tiwari, Advocate
For Respondent 3	:	Mr. N.K. Malviya, Advocate.
For Respondent 5	:	Mr. Raj Awasthi, 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.****06/10/2020**

1. Claimants have filed this appeal under Section 173 of the Motor Vehicles

Act, 1988 (for short "Act of 1988") challenging the impugned award dated 28-06-2014 passed by Additional Motor Accident Claims Tribunal, Katghora, Dist. Korba in claim case no. 15/07 whereby learned Claims Tribunal dismissed the claim application.

2. Facts relevant for disposal of this appeal are that on 24.02.2005 Sanjay Sing while driving the truck bearing registration no. CG 12C 1136 from Bilaspur to Korba met with an accident with a tractor bearing registration no. CG 10A 2571 owned by Respondent 2/ Non-applicant 2 and insured with Respondent 3/ Non-applicant 3. In the said accident, Sanjay Sing suffered grievous injury over his leg, chest and stomach. During the course of treatment, he died on 05.03.2005. Claimants who are widow, children and parents of the deceased filed an application under Section 166 of the Act of 1988 seeking compensation of Rs. 36,70,000/- pleading therein that on the date of accident deceased Sanjay was working as driver with Respondent 4/ Non-applicant 4 and earning Rs. 6,000/- per month and Rs. 1,500/- as allowance per day.
3. Non-applicant 1 and 2/ Respondent 1 and 2 who are driver and owner of the tractor did not appear before the Claims Tribunal hence they were proceeded ex parte.
4. Non-applicant 3/ Respondent 3-Insurance Company of the tractor submitted reply to the claim application and pleaded that on the date of accident, Non-applicant 1/ Respondent 1 was not possessing valid and effective driving licence. There was no valid permit and tractor was being used in breach of policy conditions. Deceased himself drove his truck rashly and negligently and there was contributory negligence on his part.
5. Non-applicant 4/Respondent 4-owner of the truck filed reply to the claim application pleading therein that the accident took place on account of rash and negligent driving of the tractor by non-applicant 1. Truck was insured

with Non-applicant 5/Respondent 5. The liability, if any, is upon Non-applicant 5-Insurance Company.

6. Non-applicant 5-Insurance Company of truck submitted its reply to the claim application pleading therein that the accident took place on account of the rash and negligent driving of the tractor by Non-applicant 1/Respondent 1, hence, Non-applicant 5/ Respondent 5 is not liable for compensation.
7. Claims Tribunal, on appreciation of pleadings and evidence placed on record by the respective parties held that the fact of accident on account of rash and negligent driving of the truck by Respondent 1/ Non-applicant 1 and dashing with truck causing injuries to Sanjay Sing resulting in his death was not found to be proved. Contributory negligence was not found to be proved and the issue with regard to breach of conditions of insurance policy was not decided and dismissed the claim application.
8. Mr. Amiyakant Tiwari, learned counsel for the appellants submits that the Claims Tribunal erred in dismissing the claim application without considering the entire documentary and oral evidence available on record. He submits that the Claims Tribunal erred in relying upon the copy of FIR and documents of the criminal case and arriving at a conclusion that it was the deceased who was driving the truck rashly and negligently and there was no evidence with regard to negligence on the part of Respondent 1-driver of the tractor. He submits that the FIR and the other documents cannot be relied upon without examining the person who has lodged the FIR. He further submits that Respondent 1 who was the driver of tractor has not entered into the witness box to prove that it was the deceased who drove his vehicle rashly and negligently. Lastly, learned counsel submits that the Tribunal erred in not awarding any amount of compensation under Section 140 of the Act of 1988 when the application is filed under Section 166 of the Act of 1988.

9. Mr. N.K. Malviya, learned counsel appearing for Respondent 3-Insurance company of the Tractor submits that the Claims Tribunal after considering the entire material and evidence available on record was perfectly justified in dismissing the claim application on the ground that the claimants failed to prove negligence on the part of Respondent 1/ Non-applicant 1. He further submits that the Claimants have not brought any evidence on record showing the negligence on the part of the driver of the tractor. Claimants have examined only Manrakhan Kushwah as witness AW-1 in support of evidence, who was not an eye witness to the accident. With regard to the award of amount of compensation under Section 140 of the Act of 1988, he submits that as there is involvement of two vehicles, the amount of compensation should be apportioned between both the Insurance Companies.
10. Mr. Raj Awasthi, learned counsel for Respondent 5-Insurance Company of the Truck submits that the Claims Tribunal arrived at a conclusion that the claimants failed to prove negligence on the part of the driver of the tractor has rightly dismissed the claim application. There is absolutely no evidence to prove the negligence on the part of Respondent 1/ Non-applicant 1. For maintaining an application under Section 166 of the Act of 1988, it is mandatory requirement to prove the negligence of the driver of the other vehicle. He further submits that as the Claims Tribunal has arrived at a finding that the deceased met with an accident on account of his own negligence, no liability of payment of amount of compensation on any head can be fastened upon the Respondent 5 (Insurance Company of the Truck).
11. We have heard learned counsel for the respective parties and also perused the record.
12. Claimants, in support of claim application, have placed on record the copy of FIR and other documents of criminal case in support of their pleadings.

Perusal of copy of FIR would show that the FIR was lodged within an hour of the accident by third person by name Mukesh alias Bouna Kewat. In the FIR, it is mentioned that the truck driver while driving his vehicle rashly and negligently dashed the trolley of the tractor and caused accident. Claimants have filed one application referred to Superintendent of Police as Ext.P-7 on 06.10.2005 after about more than 7 months of the accident. The claimants in support of their application have examined Manrakhan Kushwaha who is father of the deceased Sanjay. In his statement he admitted that neither he was present on the spot of accident nor he is an eye-witness. He also admits that Ext. P-7 is prepared on the basis of the information given by another person. Ext. P-7 is the complaint made by applicant 1.

13. Upon perusal of the evidence of AW-1 father of the deceased, it is clear that neither he was present on the spot nor the applicants who filed an application before the Superintendent of Police on 6.10.2005 vide Ext. P-7 was present but the contents of the application have been mentioned based on the information gathered by them from other peoples. He has not named any person nor examined any of them as witness before the Claims Tribunal.
14. In view of the aforementioned facts and evidence available on record, we do not find any infirmity or perversity in the impugned award passed by the Claims Tribunal and recording a finding that the claimants failed to prove negligence on the part of Respondent 1/ Non-applicant 1 driver of the tractor. We affirm the said finding recorded by the Claims Tribunal.
15. So far as, the submission made by the learned counsel for the appellants that the Claims Tribunal ought to have awarded at least an amount under 'no fault liability' as provided under Section 140 of the Act of 1988. The claimants have not filed any application under the said Section before the Claims Tribunal but the fact remains that there was accident between two

motor vehicles; one of which was driven by the deceased and in the said accident he died. These facts are undisputed facts. The Act of 1988 is a beneficial piece of legislation, if an application is filed for grant of compensation by the legal representatives of the deceased then the amount for which they are entitled for may not be denied only on technicalities. There is no bar of filing of application under Section 140 along with Section 166 of the Act of 1988 and the claimants could have filed an application under both the Sections seeking compensation. But, undisputedly, the application under Section 140 of the said act was not filed.

16. Looking to the object of the Act of 1988 and the fact of the accident to be proved and not disputed by the other parties, we find it appropriate to accept oral submission of the learned counsel for the appellants in view of provision under Section 140(4) of the Act of 1988 that the appellant may be compensated on “no-fault liability” to be paid to the claimants. We allow the oral prayer made by the learned counsel for the appellant and award Rs. 50,000/- as compensation towards “no-fault liability”. The amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. The liability to satisfy the amount of compensation would be upon Respondent 3-Insurance Company of the Tractor.
17. In view of the above, the appeal is allowed in part and the impugned award is hereby modified to the extent as indicated herein-above.

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

Sd/-
(Parth Prateem Sahu)
 Judge