

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A.(C) No. 724 of 2014****Reserved on 19.12.2019****Pronounced on 09.01.2020**

- National Insurance Co. Ltd. Code No. 321501, Branch Manu Complex, Main Road, Kosabadi, Korba, Distt. Korba C.G., 495681, Thru- Divisional Office, Priyadarshini Nagar, Bilaspur, Distt. Bilaspur C.G.

---- Appellant**Versus**

1. Sofiya De Silbha D/o Lao De Silbha Aged About 50 Years Vide President, Sandesh Niketan Gina Bahar, P.S. And Tah. Kunkuri, Distt. Jashpur C.G.
2. Lal Sai Minj S/o Shri Thakur Minj Aged About 43 Years R/o Supalga Mainpath, P.S. Kamleshwarpur, Tah. Sitapur, Distt. Surguja C.G.
3. M/s Shri Balaji Metals And Minerals Pvt.Ltd. Thru- Mahabir Prasad Lakhotiya, Managing Director, 151 Indira Chowk, Complex, T.P. Nagar, Korba, Distt. Korba C.G., 495677

---- Respondents**M.A.(C) No. 725 of 2014**

- National Insu. Co. Ltd. Code No. 321501, Branch Manu Complex, Main Road, Kosabadi, Korba, Distt. Korba C.G., 495681, Thru- Divisional Office, Priyadarshini Nagar, Bilaspur, Distt. Bilaspur C.G.

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2. Lal Sai Minj S/o Shri Thakur Minj Aged About 43 Years R/o Supalga Mainpath, P.S. Kamleshwarpur, Tah. Sitapur, Distt. Surguja C.G., District : Surguja (Ambikapur), Chhattisgarh
3. M/s Shri Balaji Metals And Minerals Pvt.Ltd. S/o Thru- Mahabir Prasad Lakhotiya, Managing Director, 151 Indira Chowk, Complex, T.P. Nagar, Korba, Distt. Korba C.G.

---- Respondents**M.A.(C) No. 726 of 2014**

- National Insu. Co. Ltd. Code No. 321501, Branch Manu Complex, Main Road, Kosabadi, Korba, Distt. Korba C.G., 495681, Thru- Divisional Office, Priyadarshini Nagar, Bilaspur, Distt. Bilaspur C.G.

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3. M/s Shri Balaji Metals And Minerals Pvt.Ltd. S/o Thru- Mahabir Prasad Lakhotiya, Managing Director, 151 Indira Chowk, Complex, T.P. Nagar, Korba, Distt. Korba C.G. ---- Respondents

M.A.(C) No. 727 of 2014

- National Insu. Co. Ltd. Code No. 321501, Branch Manu Complex, Main Road, Kosabadi, Korba, Distt. Korba C.G., 495681, Thru- Divisional Office, Priyadarshini Nagar, Bilaspur, Distt. Bilaspur C.G.

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Versus

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District : Surguja (Ambikapur), Chhattisgarh
3. M/s Shri Balaji Metals And Minerals Pvt.Ltd. S/o Thru- Mahabir Prasad Lakhotiya, Managing Director, 151 Indira Chowk, Complex, T.P. Nagar, Korba, Distt. Korba C.G. ---- Respondents

For Appellant:	Shri Qamarul Aziz, Advocate.
For Respondent No. 1:	Ms. Binu Sharma, Advocate.
For Respondents No.2 & 3:	None, though served.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J

CAV Award/Order

1. Since all these appeals preferred by the Appellant/National Insurance Company Limited arise out of the same accident involving the common questions of law, they are being disposed of by this common order/award. The parties to this appeal shall be referred hereinafter as per their description in the Claims Tribunal.
2. Briefly stated the facts of the case are that on 24.05.2007 at about 05:00 am, deceased Mangrita Minj along with others, namely, Mariyum

Tirkey, Mery Gress and Mery Kujur was going from Sandesh Niketan Ginabahar, Kunkuri to Raigarh while travelling in the Marshal Max Jeep bearing registration number CG-14-2764 for treatment of her eyes. It was being driven by its driver Laeos and as soon as they reached near the village Nonaijor, Tehsil Dharamjaigarh, it was dashed vehemently from its opposite side by the offending vehicle "Truck" bearing its registration number CG-12-C-1723, which was owned by Non-applicant No.2- M/s Shri Balaji Metals and Minerals Pvt. Ltd., and was insured with Non-applicant No.3-National Insurance Co. Ltd. At the relevant time, it was being driven rashly and negligently by its driver, Lalsai Minj (Non-applicant No.1), owing to which the alleged accident occurred, whereby deceased Mangrita Minj and others have expired.

3. On account of the aforesaid accident, as many as 4 claim petitions under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act, 1988') have been made by one Sofia De Silbha, the Vice-President of Sandesh Niketan Ginabahar, Kunkuri by showing herself to be the legal heir of the deceased persons.

4. The aforesaid claims were contested by Non-applicant No.3, the Insurance Company alone and the Claims Tribunal after considering the evidence led by the Claimant allowed the claims in part on finding that the alleged accident occurred due to rash and negligent driving of the driver of the offending vehicle resulting in the sad demise of deceased Mangrita Minj and others. It held that the vehicle in question was not being driven in violation of the insurance policy and observed further by considering issue No. 5 that in absence of any cogent and reliable evidence, the Applicant/Respondent No.1 cannot be held to be the legal heir of the

deceased persons. In consequence, while fastening the liability upon the Appellant/Insurance Company, it has been directed that the Applicant would be entitled to obtain the amount of compensation only upon furnishing the succession certificate having been obtained from the competent Court.

5. Being aggrieved, the insurer has preferred these appeals. Shri Qamarul Aziz, learned counsel appearing for the Appellant/Non-applicant No.3, the Insurance Company, while inviting attention to the evidence of the Applicant (A.W.1) submits that the parents and siblings of the deceased persons are alive, however, without disclosing this material fact, the claim petitions as framed and instituted even without any authority cannot be held to be maintainable in the eye of law. It is contended further that the Claims Tribunal even upon holding that the Applicant is not the legal heir of the deceased persons, yet has erred in entitling her to obtain the amount of compensation upon furnishing the said certificate.

6. Countering the aforesaid contention, Ms. Binu Sharma, while supporting the award impugned, submits that the deceased have ceased to be the member of their natural family upon executing a perpetual vows in the institute of Franciscan Missionaries of Marry and the Applicant, who is the Vice-President of Sandesh Niketan Ginabahar, Kunkuri was competent enough to file the petition. In support, she placed her reliance upon the decision rendered in the matter of ***Mahant Shyamdas Guru Mohandas v. Lalaram M. Kori and Ors.*** reported in **AIR 2008 Madhya Pradesh 47**.

7. I have heard learned Counsel for the parties and perused the entire record carefully.

8. On the basis of the aforesaid contentions, the question which arises for consideration in all these appeals is whether the Applicant could be held to be the legal heir of the deceased persons so as to be entitled to institute a claim petition under Section 166 of the Act, 1988?

9. In order to consider the aforesaid question, it is necessary to examine the provision prescribed under Section 166 of the Act, 1988 which reads as under:-

166. Application for compensation.— (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made—

- (a) by the person who has sustained the injury; or
- (b) by the owner of the property; or
- (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or
- (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

[(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.]

[***]

[(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act.]

10. By virtue of clause (c) of sub-section (1) of the aforesaid provision, it is clear that in case of death, all or any of legal representatives of the deceased become entitled to compensation and any such legal heir can file a claim petition and, according to clause (d), it can be filed by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be. The proviso to said sub-section makes a position clear that where all the legal representatives had not joined, then application can be made on behalf of the legal representatives of the deceased by impleading those legal representatives as the Respondents.

11. In the case in hand, what is reflected from a bare perusal of the evidence of the Applicant/Claimant that not only the parents of the deceased but siblings of theirs were also alive and all of them had attended their last rituals. Yet, none of their legal representatives were made the party Respondents nor their whereabouts were even disclosed while instituting the claim under the said provision. That apart, it reveals further from her own admission that she was even not authorized by any of the legal representatives of the deceased to file the claim petitions as such. It is, thus, evident that the claim petitions were filed by the Applicant without any lawful authority.

12. In so far as contention of Ms. Binu Sharma that since the deceased persons have ceased to be the member of their natural family by executing the perpetual vows in the institute of the Franciscan Missionaries of Marry and, therefore, the application, as framed, at their instance, could be held to be maintainable, is, however, noted to be rejected as it was nowhere pleaded in the claim petitions that the deceased persons had ceased to be

the member of their natural family or had executed any deed like a perpetual vows. In absence of such a pleading and/or the cogent and reliable evidence, it cannot be held that the deceased persons had ceased to be the member of their natural family. Besides, a claim petition was not instituted on behalf of the said institution, in fact, it was made by the Applicant in her individual capacity while showing herself to be the Vice-President of Sandesh Niketan Ginabahal, Kunkuri, which is altogether a different from the so called institution, i.e., "Franciscan Missionaries of Marry"

13. Pertinently to be noted here further that the Claims Tribunal after considering the evidence led by the Applicant/Claimant has arrived at a conclusion that the Claimant cannot be held to be the legal heir of the deceased for want of any cogent and reliable evidence being produced by her and the finding so recorded has not been questioned by the Applicant. In such an eventuality, the claim petitions as instituted by her cannot be held to be sustainable in the eye of law.

14. As far as the principles laid down by the Division Bench of Madhya Pradesh High Court in the matter of ***Mahant Shyamdas Guru Mohandas v. Lalaram M. Kori and Ors.*** (supra) as relied upon by Ms. Binu Sharma, are concerned, they are noted to be distinguishable from the facts involved in the present case. In the said matter, the Claimant Mahant Shyamdas had instituted a claim petition under Section 166 of the Act, 1988 on the premises that he was the "Guru Bhai", the spiritual brother of deceased Harnamdas, who was found to be the spiritual son of preceptor and the other disciples of his Guru has become his brothers and, as such, he (the deceased) ceased to be the member of his natural family and

whole of his relationship had converted into a spiritual relationship. In that factual scenario, the claim petition instituted by Guru, the spiritual brother of the deceased, was held to be maintainable. In absence of proof of such a fact, the principles laid down in the said matter cannot be held to be applicable in the instant matter.

15. In view of the forgoing discussion, neither the Applicant/Claimant could be held to be the legal heir of the deceased persons nor the claim made by her without following the mandatory provision prescribed under Section 166 of the Act, 1988 could be held to be maintainable.

16. Consequently, the appeals are allowed and the award impugned passed by the Claims Tribunal is hereby set aside. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
JUDGE