

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 761 of 2013**

1. State of Chhattisgarh through the Secretary to the Government of Chhattisgarh, Department of Water Resourced, Mahanadi Bhawan, Naya Raipur, Chhattisgarh
2. The Collector, Tahsil and District Raipur Chhattisgarh

---Appellants**VERSUS**

1. Smt. Mankibai, aged about 28 years, Wd/o Makhan Dhruw
2. Ku. Durga, aged about 12 years, D/o late Makhan Dhruw
3. Ku. Yogeshwari, aged about 3 years D/o late Makhan Dhruw

Respondents 2 and 3 are minors and represented through their mother Smt. Mankibai

All are R/o village Loharsi, Thana and Tahsil-Rajim, Distt. Raipur Chhattisgarh

----Respondents

For Appellants	:	Mr. Vimlesh Bajpai, Govt. Advocate
For Respondents	:	Mr. Shivendu Pandya, Advocate

(proceedings through Video Conferencing)**Hon'ble Shri Justice Parth Prateem Sahu****Order on Board****23/07/2021**

1. Challenge in this appeal is to the award dated 10.12.2012 passed by learned Third Additional Motor Accident Claims Tribunal, Raipur, C.G. (for short "Claims Tribunal") in claim case no. 71/2004, whereby learned Claims Tribunal allowed the application filed under Section 166 of the Motor Vehicles Act, 1988 (for short "Act of 1988") in part and awarded Rs. 3,50,000/- as total compensation in a death case.
2. Facts relevant for disposal of this appeal are, that on 07.04.2004, at

about 3:00 pm, Makhan Dhruw was travelling on a jeep bearing registration no. CG02 1695 (henceforth "offending vehicle") which was driven by Kanhaiya Yadav driver of offending vehicle. On account of rash and negligent driving of vehicle by its driver-Kanhaiya Yadav, it became uncontrolled and dashed with a tree standing on road side. In the accident, Makhan Dhruw suffered grievous injuries and died on spot. Accident was reported to concerned police station.

3. Respondents 1 to 3 submitted application under Section 166 of the act of 1988, pleading therein that on the date of accident, deceased was 33 years of age, was working as operator of Haller mill, earning Rs. 3,000/- per month. During his spare time, he was usually doing work of fitting and repairing of bore wells, from this he was earning Rs. 2,000/- per month.
4. Appellants/ non-applicants submitted reply to the claim application, denying the facts pleaded therein, it was further pleaded that offending vehicle was a Government vehicle, no notice for claim of compensation was given. The Collector sent the offending vehicle under the Pulse Police program for Government use. Driver of offending vehicle was not permitted to carry any private person on the vehicle. Offending vehicle was being used contrary to the orders and directions of the Government, hence, the non-applicants are not liable to satisfy the amount of compensation. It was further pleaded that there was no accident from the offending vehicle on 07.04.2004.
5. Learned Claims Tribunal, based upon the pleadings and evidence brought on record by respective parties, held that Makhan Dhruw died on spot on account of rash and negligent driving of offending vehicle

by its driver on 07.04.2004 at Rajim road. Non-joinder of necessary parties and non-applicants to be not liable for payment of compensation was not found to be proved and awarded Rs. 3,50,000/- as total compensation with interest @ 6% p.a.

6. Mr. Vimlesh Bajpai, learned State counsel appearing on behalf of appellants submits that as per the case of claimants, deceased Makhan Dhruw died while travelling on Government vehicle. No private person is allowed to travel on Government vehicle. Driver of the offending vehicle illegally allowed the deceased person to travel in the offending vehicle, hence, appellants are not liable to satisfy the amount of compensation to be awarded to the respondents/ claimants.
7. Mr. Shivendu Pandya, learned counsel for respondents/ claimants submits that the application for grant of compensation is filed under Section 166 of the Act of 1988. Admittedly, the accident and death of late Makhan Dhruw was a result of motor accidental injuries suffered by him while traveling on offending vehicle owned by appellants. Under the Motor Vehicles Act, victim/ legal representatives of the victim are entitled for compensation if it is proved that the death or injuries are arising out of use of motor vehicle. In the facts of the case at hand, deceased died while traveling on the motor vehicle, hence, the Claims Tribunal rightly passed the award in favour of the respondents/ claimants.
8. I have heard learned counsel for the parties and also went through the record.
9. Claimants in support of their claim application have filed copy of F.I.R.

and the Final report prepared by the police along with other documents of criminal case. In the F.I.R. the registration number of vehicle is specifically mentioned. After the accident, other persons traveling on road reached near the offending vehicle and found the persons traveling on the offending vehicle suffered grievous injuries. The driver of offending vehicle stated his name to be Kanhaiya Yadav. In the final report, submitted by the police, there is specific mentioned that after the duty under Pulse Polio program on 07.04.2004, driver of offending vehicle Kanhaiya Yadav was returning from Gariyaband to Raipur, while so, he permitted Makhan Dhruw (deceased) and other persons namely Budhiyarin Bai Yadav, Tilak Yadav and Samaru Yadav to board on vehicle as passengers and while driving rashly and negligently, met with an accident. Post mortem report of deceased Makhan Dhruw is also filed in which it is mentioned as “deceased suffered severe external and internal haemorrhage over face, head and chest”. Nature of death to be accidental. Appellants have examined one S.K. Verma as NAW-1, who is his cross-examination has admitted the fact of accident on 07.04.2004, as also the motor accidental death of three persons including the driver and the jeep was taken in custody by his Department. He also admitted that deceased Kanhaiya Yadav was engaged in the Department as driver of offending vehicle.

10. From the aforementioned facts, evidence available on record, death of Makhan Dhruw on account of motor accidental injuries, while traveling on offending vehicle, driven by Kanhaiya Yadav (employee of appellants), rashly and negligently, is proved. As per the provisions under Motor Vehicles Act, claimants being legal representatives of

deceased Makhan Dhruw became entitled for compensation against the owner and driver of offending vehicle for accidental death of Makhan Dhruw. Under the provisions of Motor Vehicles Act, the liability to satisfy the amount of compensation is upon owner, driver and insurer of the offending vehicle, if the vehicle is insured. Perusal of provisions under Section 140 of the Act of 1988, would further make it clear that where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement. Appellants are owner of the offending vehicle, hence, it is the liability upon the owner of the vehicle to satisfy the amount of compensation resulting in death or injury arising out of use of motor vehicle. Offending vehicle was not insured. Driver of vehicle also died in accident. Except liability to satisfy the amount of compensation, no other ground is raised in this appeal.

11. For the foregoing reasons, I do not find any infirmity in the award passed by learned Claims Tribunal holding the appellants liable to satisfy the amount of compensation.
12. Accordingly, appeal being devoid of any substance which is liable to be and is hereby dismissed accordingly.

Sd/-
(Parth Prateem Sahu)
Judge