

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

REVP No. 131 of 2021

1. S.E.C.L. Vishrampur, through- Chief General Manager, S.E.C.L. Vishrampur, Tahsil Surajpur, District- Surguja (Now Surajpur), District : Surajpur, Chhattisgarh.
2. Sub Area Manager S.E.C.L. Vishrampur, Tahsil- Surajpur, District- Surajpur (Now Surajpur).
3. C.M.D. S. E. C. L. Seepat Road Bilaspur, District- Bilaspur (C.G.).
4. Director Technical S.E.C.L. Bilaspur, District-Bilaspur, Chhattisgarh. **---- Petitioners**

Versus

1. Smt. Bharti Devi, W/o Late Satish Kumar Singh, Aged About 28 Years,
2. Harsh Kumar Singh, S/o- Late Satish Kumar Singh, Aged About 21 Years,
3. Anish Kumar Singh, S/o- Late Satish Kumar Singh, Aged About 19 Years,
4. Nilmani Singh, S/o Ramgulab Singh, Aged About 57 Years,
5. Smt. Gayatri Devi, W/o Nilmani Singh, Aged About 53 Years,

All by Caste- Kshatriya, R/o- Village Vishrampur, Police Station- Vishrampur, Tahsil- Surajpur, District- Surguja, (Now- Surajpur), Civil & Revenue District- Surajpur, Chhattisgarh.

---- Respondent

For Petitioners	: Mr. Praful Bharat, Senior Advocate with Mr.Vaibhav Shukla & Mr. Chandradeep Prasad, Advocates.
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Hon'ble Shri Justice Gautam Chourdiya

Order on Board

22.09.2021

- 1) Heard on IA No.01, application for condonation of delay of 279

days in filing this review petition.

- 2) On due consideration, for the reasons mentioned in the said application which is supported by an affidavit, it is allowed and accordingly, delay in filing the review petition is condoned.
- 3) Also heard on admission.
- 4) The petitioners have filed this petition Section 114 of CPC for review of the order dated 10.5.2019 passed by this Court in MAC No.339/2015.
- 5) As per claim petition, when on 7.12.2002 at about 2.30 o'clock deceased Satish Kumar, aged about 34 years, who was working as Dumper Driver in SECL, was going to Pokhiriya Mines by driving dumper bearing No.6735, on the way the said dumper turned turtle, resulting in his death on the spot.
- 6) The Claims Tribunal as per award dated 30.9.2004 partly allowing the claim petition u/s 166 of Motor Vehicles Act, granted a total compensation of Rs.15,68,212/ with interest @ 7% p.a. from the date of filing claim petition till realization in favour of the claimants, fastening the liability upon the SECL.
- 7) SECL filed MAC No.1144/2004 against the said award and vide order dated 19.4.2011 this Court remanded the matter back to the Tribunal only for reassessment of the compensation. Thereafter, the Tribunal vide award dated 19.12.2014 after reassessing the compensation, awarded Rs.10,22,288/- in favour of the claimants.
- 8) Against the said award dated 19.12.2014, the claimants filed MAC No.339/2015 seeking enhancement of the compensation. However, no appeal or counter-appeal was filed by the SECL challenging the said award. This Court vide judgment dated 10.5.2019, assessed the total compensation payable to the claimants at Rs.25,74,680/- and directed for disbursing the same after adjustment of the amount already awarded to them in

compliance of the earlier awards.

9) Learned counsel for the petitioners submits that the report of DGMS (Annexure P/6) clearly shows that the deceased died due to his own negligence. Further, as per Section 2(28) of the Act of 1988, Haul Pack Dumper is not a vehicle which is adopted for use upon roads and is merely utilized for excavation. It is contended that the claimants have wrongly been awarded compensation towards funeral expenses, loss of estate etc. thrice. Further, as per order dated 10.5.2019 the Court was not justified in awarding interest on the balance of the compensation amount from the date of the claim petition. The Court ought to have seen that the claimants pursued two parallel remedy i.e. before the MACT and the Commissioner of Workmen Compensation Act which is impermissible under the law.

10) Heard learned counsel for the petitioners and perused the documents filed with the review petition as also the appeal.

11) Under Order 47 Rule 1 read with Section 114 of CPC, there is limited scope for considering the review petition. Three main grounds are there for review of the order/judgment which are as under:

(i) discovery of new and important fact or evidence,
or

(ii) mistake or error apparent on the face of record;
or

(iii) any other sufficient reasons

12) Admittedly the incident took place on 7.12.2002 whereas the said report of DGMS (Annexure P/6) is submitted by the Director (Statistics) on 9.8.2021 i.e. about 19 years after the incident. No such evidence has been adduced by the petitioners/SECL before the Tribunal to prove negligence on the part of the deceased. If according to the petitioners/SECL, there was any negligence on the part of the deceased, they should have

obtained and filed such report at the earliest, firstly before the Tribunal or thereafter, before this Court by filing an appeal or counter-appeal. But after a long delay of about 19 years, this report has been filed, which appears to be an afterthought.

- 13) The petitioners/SECL had filed an appeal i.e. MAC No.1144/2004 before this Court on the ground that the deceased himself was negligent in driving the vehicle Dumper and that the said vehicle does not fall within the category of motor vehicle. The Division Bench of this Court vide order dated 19.4.2011, considering the aforesaid submission of the SECL in light of the pleadings of the parties and the evidence adduced by them as also decisions of the Hon'ble Supreme Court governing the field, did not find any substance in the arguments advanced on behalf of SECL and partly allowing the said appeal, remanded the matter back to the concerned Tribunal for reassessment of the compensation. After reassessment of compensation by the Tribunal when the claimants approached this Court by filing MAC No.339/2015 for enhancement of the compensation, the petitioners/SECL did not file any counter appeal or cross-objection therein and did not raise the issue of Dumper being not a motor vehicle.
- 14) This Court while passing the order dated 10.5.2019 in MAC No.339/2015, considering the salary slip of the deceased, his age and nature of his job, the dependency of the claimants, the judgments of the Hon'ble Supreme Court in *Vimal Kumar and others Vs. Kishore Dan and others*, (2013) 7 SCC 476; *Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another*, (2009) 6 SCC 121 and *National Insurance Co. Ltd. Vs. Pranay Sethi*, (2017) 16 SCC 680, assessed the compensation including the amount under the conventional heads payable to the claimants, and after deducting the amount already paid to the claimants, directed for payment of additional compensation of Rs.15,52,392/- to them with interest @ 8% pa from the date of claim petition till realization, which was strictly in accordance

with law.

- 15) So far as the contention of the SECL that the claimants pursued two parallel remedy is concerned, it is a well settled principle of law that the claimants have the option of pursuing remedy either under the MACT or the Workmen Compensation Act and the claimants cannot be compelled to go for a particular remedy.
- 16) On the basis of aforesaid discussions and for the reasons stated above, this Court finds no ground to review its order dated 10.5.2019 passed in MAC No.339/2015. Accordingly, the review petition being meritless is liable to be dismissed at the admission stage itself and is dismissed as such.

Sd/-
(Gautam Chourdiya)
Judge

Nadim