

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 36 of 2015**

1. Hathiyan Bai, W/o Baliram @ Balram, aged about 56 years.
 2. Shravan Kumar, S/o Baliram @ Balram, aged about 36 years.
- Both are agriculturists, R/o Village- Dhaneli, Tah. Khairagarh, P.S. Khairagarh, Distt. Rajnandgaon (CG)

---- Appellants/claimants**Versus**

1. The Oriental Insurance Company Ltd., Branch Kamthi Line, Rajnandgaon, District Rajnandgaon C.G.
2. Collector, Rajnandgaon, District Rajnandgaon (CG)
3. Executive Engineer, Road & Building, Khairagarh, Distt. Rajnandgaon (CG)
4. Executive Engineer, Rural Engineering Services, Division Rajnandgaon, through the Incharge Officer- M.R. Sahu, Sub Engineer, Khairagarh, Tah. & Distt. Rajnandgaon (CG)
5. Pradhanmantri Sadak Yojna Adhikari, Khairagarh, Distt. Rajnandgaon C.G.

---- Respondents

For Appellants	:	Mr. Rakesh Pandey & Mr. Abhishek Pandey, Advocates
For Respondent No.1	:	None.
For Respondent No.2 to 5	:	Mr. Siddharth Dubey, Dy. Govt. Advocate.

Hon'ble Shri PR Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board**Per Parth Prateem Sahu, J****07/01/2021**

1. Claimants-appellants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging award dated 31.10.2014 passed by learned Additional Motor Accident Claims Tribunal, Khairagarh, District Rajnandgaon in Claim Case No.26/2010 thereby dismissing application of claimants filed under Section 166 of the Act of 1988.

2. Facts of the case relevant for disposal of this appeal are that on 31.3.2003 at about 7.00 p.m. Baliram @ Balram was travelling on his motorcycle bearing registration number CG08-ZE-2797, when he reached Sidar Khapri brook (*nala*) on Mudipar to Khairagarh road, he along with motorcycle fell down in brook from cross-bridge, suffered grievous injuries and succumbed thereto.
3. Claimants-appellants filed an application under Section 166 of the Act of 1988 pleading therein that condition of road where accident took place was not good, there was no sign board of cross-bridge, there was no railing over cross-bridge due to which deceased while driving motorcycle fell down, suffered injuries and died. They have further pleaded that deceased was working as Supervisor in District Cooperative Central Bank Limited, Mudipar Branch, Rajnandgaon and earning Rs.9,105/- per month.
4. Non-applicant No.1 Insurance Company submitted its reply to application, while denying the pleadings made therein pleaded that insurance policy with regard to motorcycle was issued as 'Act only' policy covering risk of third party only. Driver of motorcycle being owner will not come within the purview of third party, hence the claimants are not entitled to claim any amount of compensation. Earlier the claimants have preferred an application under Section 163-A of the Act of 1988 which came to be dismissed on the ground of maintainability as

income pleaded therein was Rs.1,09,260/- p.a. Deceased himself was driving motorcycle rashly & negligently, suffered accidental injuries, hence the claimants are not entitled for any amount of compensation.

5. Non-applicant Nos.2 to 4 submitted their reply to claim application denying the pleadings made therein. It was pleaded that cross bridge, which is a place of accident, is in good condition, roads therein are also in good condition, sign board has been affixed on the side of road. As there is no requirement of fixing side rod on cross-bridge, it was not fixed. It was further pleaded that no compensation can be awarded under Section 166 of the Act of 1988 for the reasons mentioned in claim application and claim application is liable to be dismissed.
6. The Claims Tribunal after appreciating the pleadings and evidence placed on record by the respective parties has dismissed claim application by holding that application filed by claimants-appellants under Section 166 of the Act of 1988 is not maintainable for want of jurisdiction as the present case is of civil nature under the law of tort.
7. Mr. Rakesh Pandey, learned counsel for claimants-appellants submits that application filed under Section 163-A of the Act of 1988 was not dismissed on merits, rather it was dismissed while deciding preliminary issue of its maintainability on the basis of income pleaded therein i.e. more than Rs.40,000/-

p.a.. He further pointed out that as per liberty granted by the High Court, claimants-appellants have preferred application under Section 166 of the Act of 1988, which came to be dismissed by impugned award. He submits that the Claims Tribunal has not taken into consideration specific grounds raised by claimants-appellants in application showing the cause of accident on account of negligence on the part of non-applicant Nos.2 to 5 in not keeping roads in good condition, not putting proper sign board and not fixing railing on cross-bridge. He further pointed out that Claims Tribunal has only taken into consideration that grounds raised for claiming compensation appear to be of civil nature and dismissed claim application, which is erroneous and is liable to be set aside.

8. Per contra, Mr. Siddharth Dubey, learned counsel representing respondent No.2 to 5 submits that the Claims Tribunal rightly arrived at a finding that application filed under Section 166 of the Act of 1988, in view of grounds pleaded therein, was not maintainable. He further submits that it is case of self accident and deceased died on account of his rash and negligence act while driving his own motorcycle. There is no involvement of any other motor vehicle in accident. He further submits that application under Section 166 of the Act of 1988 is maintainable only when negligence on the part of owner or driver of motor vehicle is pleaded and proved.
9. We have heard learned counsel for the parties.

10. The question involved in this appeal for consideration of this Court is whether application filed under Section 166 of the Act of 1988 on the grounds mentioned therein is maintainable or not?

11. To appreciate submissions made by learned counsel for both sides, it would be proper to have a glance at the relevant provisions contained in the Act of 1988. Section 165 (1) of the Act of 1988 reads thus:-

“(1) A State Government may, by notification in the Official Gazette, constitute one or more **Motor Accidents Claims Tribunals** (herein above in this chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of **motor vehicles**, or damages to any property of a third party so arising, or both.”

12. Section 166 (1) of the Act of 1988 is also extracted below:-

“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.”

13. Perusal of provision under Section 165 (1) of the Act of 1988

would show that claimant shall be entitled for amount of compensation with respect to death or bodily injuries to a person arising out of use of motor vehicle. In case at hand, there is no dispute that deceased was driving motorcycle owned by him and there is no involvement of any other motor vehicle in the accident. If the evidence of claimants is considered, they have examined Mohammed Hussain Qureshi, Branch Manager of District Co-operative Bank, Rajnandgaon to prove employment and earning of deceased. Shrawan Kumar, son of deceased, was examined as witness, who in his evidence has stated that accident occurred due to some stone of the bridge extirpated due to which deceased became unbalanced and fell down from bridge. From the facts pleaded and stated by witness, it appears that this witness was not present on spot, hence his evidence cannot be accepted as proved to the manner or cause of accident. Other witness namely Naval Singh was also not present on spot. There was no eyewitness to accident.

14. Application if filed under Section 166 of the Act of 1988 then the claimants are required to prove negligence of owner or driver of the vehicle for getting amount of compensation. In case at hand, deceased-owner met with an accident while driving motorcycle. Any other motor vehicle was not involved in accident. Aforementioned aspect has been considered by Hon'ble Supreme Court in case of **Oriental Insurance Co. Ltd. vs. Meena Variyal & ors** reported in (2007) 5 SCC 428

and it was held in Para-27 as under:-

“27.....Therefore, the victim of an accident or his dependants have an option either to proceed under Section 166 of the Act or under Section 163-A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned.....”

15. In view of above provision of law and the ruling of Hon'ble Supreme Court, we are of the considered view that the Claims Tribunal has not committed any error in holding that application filed under Section 166 of the Act of 1988 is not maintainable in the facts and circumstances of case. We affirm the said finding.

16. We have also perused copy of insurance policy, which is placed on record as Ex.D-1, which is an 'act only' policy issued in respect of motorcycle in question. However, the insured has not paid any premium covering risk of owner and driver of vehicle. In this situation, the claimants are not entitled to claim any amount of compensation against non-applicant No.1-Insurance Company.

17. For the foregoing reasons, we do not find any substance in this appeal, the same is liable to be dismissed and it is hereby dismissed.

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

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-