



(26)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

M.A.(C) No. 1369 of 2007

APPELLANT/
NON-APPLICANT
NO.2/OWNER

Ramdayal Bhaskar, S/o Nankuram
Bhaskar, aged about 40 years, R/o
Dr. Ambedkar Nagar, Raigarh, District
Raigarh (C.G.)

Versus

RESPONDENTS/
CLAIMANTS/APPLI-
CANTS

1. Smt. Khairoonisha, W/o Sayed
Kalam, aged about 58 years,
2. Sayed Akeel Ahmad, S/o Late
Hazi Sayed Mohd. Kalam, aged
about 30 years, Through:-
General Power of Attorney
Holder Sayed Sakeel Ahmad,
aged about 35 years, S/o Late
Hazi Sayed Mohd. Kalam
3. Sayed Sakeel Ahmad S/o Late
Hazi Sayed Mohd. Kalam,
All Residents of Budhapara,
Raipur, Tah. and Distt. Raipur
(C.G.)

NON-APPLICANT
NO.1

4. Ganesh Mahant, aged about 28
years, S/o Ramdas Mahant, R/o
Mittumuda, Raigarh (C.G.)

NON-APPLICANT
NO.2/INSURER

5. New India Insurance Company
Ltd. Raigarh (C.G.) (L.C.
No.6/14296/98

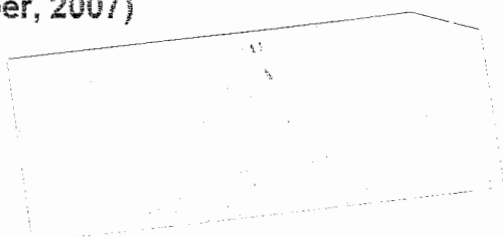
Memorandum of appeal under Section 173 of Motor Vehicles
Act, 1988

Present :

Shri Amit Sharma, counsel for the appellant.

ORAL ORDER
(Passed on 30th November, 2007)

Heard on admission.





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2. This is an appeal filed by the owner against an award dated 27-08-2007 in Claim Case No.72/2005 passed by the First Additional Motor Accidents Claims Tribunal, Raipur (hereinafter referred to as "the MACT") whereby in a case of accidental death, compensation of Rs.2,15,000/- was awarded against the appellant/owner while exonerating the respondent No.5/Insurance Company.

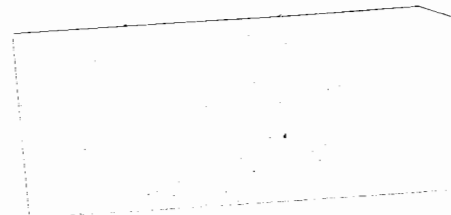
3. In this appeal, the following are not disputed by the learned counsel for the appellant:-

- (a) that the appellant was the owner of Qualis No. CG-13/C-090 on the date of accident.
- (b) that respondent No.4-Ganesh Mahant, driver of the appellant was authorized by the appellant to take the said vehicle for servicing to Raipur,
- (c) that death of Syed Kamal who was travelling in the above mentioned vehicle occurred on 23-02-2005 at about 9.30 P.M.
- (d) the MACT has rightly exonerated the Insurance Company from liability to pay compensation.

4. Shri Amit Sharma, learned counsel for the appellant has made a two fold submission:

- (a) That the learned MACT erred in assessing the monthly income of the deceased at Rs.6000/-.
- (b) That the appellant being the principal was not responsible for the unauthorized act of the non-applicant No.4 in carrying the deceased as a gratuitous passenger in the vehicle at the time of accident.

5. Having considered the rival submissions, I have perused the impugned award. The claimant adduced the oral evidence of the widow and son of the deceased to show that the deceased was an electrical engineer. The evidence led by the claimants further show that the deceased used to engage assistants for the said work. Although evidence was led by the claimants to show that the deceased was earning a sum of Rs.45,000/- per month the MACT





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has assessed the monthly income of the deceased at Rs.6000/- per month which in my considered opinion cannot be faulted with.

7. So far as the other contention raised by the learned counsel for the appellant is concerned, ~~in view of~~ the fact that the respondent No.4 was authorized to take the vehicle for serving to Raipur and on way picked up a gratuitous passenger would not absolve the appellant from the liability to pay compensation.

8. In this view of the matter, there is no merit in this appeal. Accordingly, the appeal is dismissed at the stage of admission.

9. Consequently, I.A. No.01 which is an application for grant of stay also stands dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Kvr