

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR****Misc. Appeal (C) No. 270 of 2012**

1. Smt. Sushila Bai W/o Late Shri Rajesh Kaushik, aged about 38 years,
  2. Dipak Kaushik S/o Late Shri Rajesh Kaushik, aged about 19 years,
  3. Ku. Joti Kaushik D/o Late Shri Rajesh Kaushik, aged about 17 years,
  4. Prakash Kaushik S/o Late Shri Rajesh Kaushik, aged about 14 years,
  5. Vidhanand Kaushik S/o Late Sitaram Kaushik, aged about 63 years,
- Appellant No.3 & 4 are minors represented through their mother namely  
Smt. Sushila Bai, W/o. Late Shri Rajesh Kaushik, aged about 38 years,  
All R/o. Village Pand, Police Station Hirri, Tahsil and District Bilaspur  
Chhattisgarh

**---- Appellants****Versus**

1. Rameshwar Singh S/o. Vikram Singh, aged about 40 years, R/o. Khaira (Dagdaniya), Police Station Sipat, District Bilaspur Chhattisgarh (Driver of Truck bearing no. CG 10A/1860)
2. Mars Mens Build Con India Private Limited, Proprietor - Anurag Sukla Agrasen Chauk, Magarpara Road, Police Station Civil Lines, Tahsil and District Bilaspur Chhattisgarh (Owner of Truck bearing no. CG 10A/1860)
3. The Branch Manager, New India Insurance Company Limited, Branch Office, Second Floor, Rama Trade Center, Opposite to Rajive Plaza, Bus Stand Road, Bilaspur, Chhattisgarh

**---- Respondents**


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For Appellants	:	Mr. R. K. Jain, Advocate
For Respondent no.2	:	Mr. Vikash Shrivastava, Advocate
For Respondent no.3	:	Smt. Chitra Shrivastava, Advocate

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**Hon'ble Shri Justice P. Sam Koshy****Order on Board****28/02/2018**

The present is an appeal by the claimants under Section 173 of the Motor Vehicles Act. The challenge in the present appeal is to the order dated 01.12.2011 passed by the Second Additional Motor Accident Claims Tribunal, Bilaspur (CG) in Claim Case No. 221 of 2011 whereby the Tribunal has rejected the claim application.

**2.** The ground for rejection of the claim application was the discrepancy in the merger intimation and the contents of the FIR. According to the Tribunal, the claimants have not been able to establish that the deceased died because of an accident that occurred on 19.03.2009.

**3.** Counsel for the appellants submits that merely because there was a discrepancy in the Merger intimation as also in the contents of FIR by itself would not be a relevant factor for rejecting the claim application. He submits that the standard of proof required to prove a claim application under the MV Act is a preponderance of probability and not proof beyond all reasonable doubt as is required in a criminal case. He further submits that the claimants had got an eye witness examined which has also not been properly appreciated by the Tribunal. Thus, prays for quashment of the impugned award and for awarding suitable compensation.

**4.** Counsel for the Insurance Company, on the other hand, submits that the finding of the Tribunal does not warrant interference as there does not appear to be any error committed by the Tribunal and that the finding is based on the evidences which were available on record. Therefore, prayed for rejection of the appeal.

**5.** Having heard the contentions put forth on either side and on perusal of the record what prima facie, reflects is the undisputed fact that the deceased died of a road accident on 19.03.2009. The only thing which has to be ascertained is whether the deceased died because of dashing his motorcycle against a stationary truck from rear side as is reflected in the merger intimation or whether the truck had dashed the motorcycle on which the deceased was travelling from the back side resulting in his death. This Court is of the opinion that under either of the circumstances, the claimants cannot be denied compensation for the reason that all that the claimants have to establish is the fact that there was an accident occurred in the course of use of the motorcycle which prima facie has been established. The only aspect

which the Court below should have considered is whether there was any element of contributory negligence on the part of the deceased or not and whether there were sufficient materials available to establish the involvement of the offending vehicle in the accident. Rejection of a claim application is always detrimental to the interest of claimants. It is settled position of law that the claim application under MV Act has to be considered in more liberal and pragmatic manner. The rejection of claim application on technical and hyper technical terms would be denial of justice to the claimants who otherwise in a death case are entitled for compensation if the accident had occurred from the use of a motor vehicle.

6. Given the facts and circumstances of the case, this Court is of the opinion that the impugned award is not sustainable and the same deserves to be and is accordingly set aside. The matter is remitted back to the Tribunal for deciding afresh. The claimants and the respondents would be at liberty to amend their pleadings if they so choose and the claimants shall also get another opportunity to lead any additional evidence which they intend to bring on record. The respondents also would have the liberty to rebut the additional evidence brought by the claimants by leading evidence on their behalf. Considering the seniority of the claim case, it is expected that the Tribunal shall decide the same at the earliest. Since the parties are present before this Court, let them appear before the Tribunal on 17<sup>th</sup> of April, 2018. Meanwhile, the Registry should send the records back immediately so that it can reach the Tribunal by next date of hearing fixed by this Court.

7. The appeal stands disposed of.

Sd/-  
**(P. Sam Koshy)**  
**Judge**