

**(2019) 08 CHH CK 0148**

**Chhattisgarh High Court**

**Case No:** M.A.(C) No. 934 Of 2013

Mamta Bai Rajak And Ors

APPELLANT

Vs

Vijay Kumar Kashyap And Ors

RESPONDENT

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**Date of Decision:** Aug. 22, 2019

**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 163A, 173
- Code Of Civil Procedure 1908 - Section 2(11), Order 5 Rule 9, Order 5 Rule 10, Order 5 Rule 11, Order 5 Rule 12, Order 5 Rule 13, Order 9 Rule 15, Order 9 Rule 16, Order 9 Rule 17, Order 9 Rule 18, Order 9 Rule 19, Order 9 Rule 20, Order 16 Rule 2, Order 16 Rule 3, Order 16 Rule 4, Order 16 Rule 5, Order 16 Rule 6, Order 16 Rule 7, Order 16 Rule 8, Order 16 Rule 9, Order 16 Rule 10, Order 16 Rule 11, Order 16 Rule 12, Order 16 Rule 13, Order 16 Rule 14, Order 16 Rule 15, Order 16 Rule 16, Order 16 Rule 17, Order 16 Rule 18, Order 16 Rule 19, Order 16 Rule 20, Order 16 Rule 21, Order 18 Rule 3, Order 18 Rule 4, Order 18 Rule 5, Order 18 Rule 6, Order 18 Rule 7, Order 18 Rule 8, Order 18 Rule 9, Order 18 Rule 10, Order 22 Rule 3, Order 22 Rule 9
- Chhattisgarh Motor Vehicles Rules, 1994 - Rule 240

**Hon'ble Judges:** Sanjay Agrawal, J

**Bench:** Single Bench

**Advocate:** R. K. Jain, Ravindra Agrawal, Amrito Das, K. Rohan

**Final Decision:** Allowed

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**Judgement**

Sanjay Agrawal, J

1. This Miscellaneous Appeal has been preferred by the proposed legal representatives of the deceased Applicant No.1 Kush Kumar Rajak under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as ' the Act, 1988') questioning the legality and propriety of the order dated 24.06.2013 passed in CT No.238/07, by which, the Claims Tribunal has rejected the applications preferred by them under Order 22 Rule 3 of CPC as

well as under Order 22 Rule 9 of CPC holding that the claim petition filed under Section 163-A of the Act, 1988 has abated.

2. Briefly stated the facts of the case are that on 23.01.2007, deceased Satish Kumar Rajak was driving the offending vehicle ""Tractor- Trolley

bearing its registration No. C.G.-10-A-8599 owned by Non- applicant No.1 Vijay Kumar Kashyap, who was the employer of the deceased. When he

was going to load the sand in the Trolley from a ghat situated in Deori, suddenly the front tyre of the vehicle was burst and the vehicle turned turtle.

The deceased Satish Kumar was crushed under the Trolley, as a result of which he died on the spot due to the fatal injuries sustained by him. At the

relevant time, he was aged about 22 years old and used to earn Rs. 3300/- per month by working as driver under the employment of said Vijay

Kumar.

3. On account of the aforesaid accident, the Claimants i.e. the grand mother and the brother of the deceased, namely, Smt. Aghan Bai and Kush

Kumar instituted a claim petition enumerated under Section 163-A of the Act, 1988 by claiming the amount of compensation to the tune of Rs.

4,75,500/- under various heads.

4. The aforesaid claim has been contested by the Non-applicants. During the pendency of the claim petition, both the Claimants, grand mother and

brother of the deceased, have expired respectively on 14.12.2011 and 01.11.2009. After the sad demise of the Applicants/Claimants, wife and children

of Claimant Kush Kumar, the brother of the deceased Satish Kumar, have moved an application under Order 22 Rule 3 of CPC and also under Order

22 Rule 9 of CPC for their substitution in place of said Applicant Kush Kumar in order to carry on the interest of their predecessor-in-interest which

accrued to him upon the death of his brother Satish Kumar.

5. After considering the aforesaid applications, the Claims Tribunal by its order impugned rejected both the applications by observing inter alia;

(i) that since the applications were made much beyond the period prescribed under the provisions of the Indian Limitation Act, 1963, therefore, the

claim petition under Section 163-A of the Act, 1988 has already abated; and

(ii) that since the wife and children of Kush Kumar were not dependant upon deceased Satish Kumar, therefore, they could not be substituted in the

matter.

6. As a consequence, the Claims Tribunal while rejecting the applications, observed that the claim petition filed under Section 163-A of the Act, 1988 has abated.

7. Being aggrieved, the proposed legal representatives of said Claimant Kush Kumar have preferred this appeal. Shri R. K. Jain, learned counsel for the Appellants submits that the order impugned as passed by the Claims Tribunal holding that the claim petition has abated and the proposed legal representatives are not dependant upon the deceased Satish Kumar, therefore, not entitled to be substituted in place of the Claimants, is apparently contrary to law. He submits further that the provision prescribed under Order 22 of CPC is not applicable in view of the Rule 240 of Chhattisgarh

Motor Vehicles Rules, 1994 (hereinafter referred to as the 'Rules, 1994'), therefore, the order impugned cannot be held to be sustainable. In support, he placed his reliance upon the decision rendered in the matter of Chuhamal Issardas and others Vs. Haji Wali Mohammed and others and Manjuri Bera (Smt) Vs. Oriental Insurance Company Ltd. & another reported respectively in 1968 MPLJ 780 and (2007) 10 SCC 643.

8. On the other hand, Shri Ravindra Agrawal and Shri Amrito Das along with Shri K. Rohan, learned counsel for the respective Respondents while supporting the order impugned submit that since the said applications filed under Order 22 Rules 3 & 9 of CPC were made much beyond the prescribed period of limitation, therefore, the Claims Tribunal has not committed any illegality in rejecting the same by holding that the claim petition filed under Section 163-A of the Act, 1988 has already abated by operation of law.

9. I have heard learned Counsel for the parties and perused the entire record carefully.

10. The first observation as made by the Claims Tribunal by holding that the petition filed under Section 163-A of the Act, 1988 has abated upon rejecting the said application filed under the provision of Order 22 of CPC is liable to be set aside as the provision prescribed under Order 22 is not applicable by virtue of Rule 240 of Rules, 1994. The said Rule is relevant for the purpose is reproduced herein as under:-

240. Procedure to be followed by Claims Tribunal in holding enquiries. - Application of certain provisions of Code of Civil Procedure 1908; Save as

otherwise expressly provided in the Act or these rules, the following provisions of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908)

namely, those contained in Order V, Rules 9 to 13 and 15 to 20, Order IX, Order XVIII, Rules 3 to 10, Order XVI, Rules 2 to 21, Order XVII, Order

XXI and Order XXIII, Rules 1 to 3 shall apply to proceedings before a Claims Tribunal in so far as they may be applicable thereto.

11. A bare perusal of the aforesaid Rule of Rules, 1994, it is evident that the provisions prescribed under Order 22 of CPC are not applicable under

the Act, 1988. Although, the Appellants have moved the said application for their substitution in place of the deceased Claimants while referring to the

said provision but merely by referring the wrong provision would not affect their interest particularly when the provision of Order 22 of CPC, as

observed herein above, is not applicable by virtue of the aforesaid Rule. Therefore, the claim petition filed under Section 163-A of the Act, 1988

cannot be held to be abated.

12. At this juncture, the principles laid down by the Division Bench of the Madhya Pradesh High Court in the matter of Chuhamal Issardas and others

Vs. Haji Wali Mohammed and others (supra) as relied upon by Shri Jain, learned counsel for the Appellants, are to be seen, wherein it has been held

by considering that the provisions relating to the abatement contained in Order 22 of CPC have no application to these proceedings initiated under the

Act of 1988. Therefore, when an application was filed though belatedly beyond 90 days, it ought to have been allowed.

13. In view of the principles laid down in the aforesaid judgment, vis-a- vis, non-applicability of the provisions relating to abatement contained in Order

22 of CPC by virtue of Rule 240 of Rules, 1994, the Claims Tribunal has certainly committed an illegality in dismissing those applications by holding

inter alia that the claim petition preferred under Section 163-A of the Act, 1988 has abated. Consequently, the finding so recorded by the Claims

Tribunal in this regard deserves to be and is hereby set aside.

14. Further observation of the Claims Tribunal rejecting the said application by observing that the proposed legal representatives/Appellants, who are

the heirs of deceased Claimant Kush Kumar, are not dependant upon deceased Satish Kumar and as such, not entitled to be substituted in place of the Claimants, is also liable to set aside.

15. In order to consider the said observation, the provision prescribed under Section 166 of the Act, 1988 is to be noted which is relevant for the purpose of this case reads as under:-

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.

[(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area

in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or

within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that

effect immediately before the signature of the applicant.] [\*\*\*] [(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act.]

16. In terms of clause (c) of sub-section (1) of Section 166 of the Act in case of death, all or any of the legal representatives of the deceased become entitled to compensation and any such legal representative can file a claim petition. The proviso to said sub section makes the position clear that where all the legal representatives had not joined, then application can be made on behalf of the legal representatives of the deceased by impleading those legal representatives as respondents.

17. The expression ""legal representative"" as prescribed in the aforesaid provision has not been defined under the provisions of the Act, 1988. The widest meaning, therefore, can be ascribed to it in terms of Section 2(11) of the Code of Civil Procedure, 1908, which reads as under:-

2(11). ""legal representative"" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;

18. According to the aforesaid provision, ""legal representative"" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;

19. At this juncture, the principles laid down in the matter of *Manjuri Bera (Smt) Vs. Oriental Insurance Company Ltd. & another (supra)* as relied upon by Shri Jain, are to be seen where a definition contained in Section 2(11) of CPC was considered. In the said matter, a married daughter, who was not dependant upon her deceased father, was held to be entitled to file the claim petition as a legal representative of her father. Paragraphs 12 &

15 which are relevant for the purpose read as under:-

12. As observed by this Court in *Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique* [1989] Supp (2) SCC 275 the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It

includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression ""legal representative"". As observed in *Gujarat SRTC v. Ramanbhai Prabhatbhai* [1987] 3 SCC 234 a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child.

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15. Judged in that background where a legal representative who is not dependant files an application for compensation, the quantum cannot be less than the liability referable to Section 140 of the Act. Therefore, even if there is no loss of dependency the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from Section 140 of the Act.

20. It is, thus, evident based upon the aforesaid principle that even if a legal representative, who is not dependant upon the deceased, can maintain an application for compensation.

21. Now coming to the case in hand, where the original claim petition was made by the grand mother and brother of the deceased Satish Kumar, and both the Claimants, namely, Smt. Aghan Bai and Kush Kumar have expired during the pendency of the claim petition respectively on 14.12.2011 and 09.11.2009. The alleged application was, therefore, made under Order 22 of CPC by the Appellants for their substitution in place of the Claimant/ Applicant No.1 Kush Kumar. It was, however, rejected by the Claims Tribunal as observed herein above. Pertinently to be noted here that these proposed legal representatives/Appellants are in fact not claiming their independant interest but are praying for their substitution in order to carry on the interest of their predecessor-in-interest, namely, Kush Kumar, which accrued to him upon the death of his deceased brother Satish Kumar.

Consequently, based upon the principles laid down in the matter of *Manjuri Bera (Smt) Vs. Oriental Insurance Company Ltd. & another (supra)*, the observations made by the Claims Tribunal holding that they are not dependant upon the brother of their predecessor-in- interest are wholly irrelevant

and cannot be held to be sustainable. The finding of the Claims Tribunal, therefore, deserves to be and is hereby set aside.

22. In view of the foregoing discussions, the appeal is allowed. The order impugned dated 24.06.2013 passed by the First Additional Motor Accident

Claims Tribunal, Bilaspur in CT No.238/07 is hereby set aside. The matter is accordingly remitted to the concerned Tribunal with a direction to allow

the applications of legal heirs of the deceased Applicant/Claimant No.1 Kush Kumar for their substitution and thereafter decide the claim in

accordance with law on the basis of the pleadings on its merits. The parties present over here are directed to remain present before the concerned

Tribunal on 15.10.2019, who, in turn, shall issue a fresh notice to Respondent No. 3 Balda Prasad only and proceed with the matter in accordance

with law.

23. Registry is hereby directed to transmit the entire record forthwith to the concerned Court. No order as to costs.