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**(2018) 02 CHH CK 0205**

**Chhattisgarh High Court**

**Case No:** Miscellaneous Appeal (C) No. 618 Of 2012

Ganeshi Bai And Ors

APPELLANT

Vs

Gangaram And Ors

RESPONDENT

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**Date of Decision:** Feb. 12, 2018

**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 163A, 166, 173

**Hon'ble Judges:** P. Sam Koshy, J

**Bench:** Single Bench

**Advocate:** Deepak Kumar Singh, C.P. Lahre, Dharmesh Shrivastava

**Final Decision:** Allowed/Disposed Of

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**Judgement**

P. Sam Koshy, J

1. Present is an appeal filed by the claimants under Section 173 of the Motor Vehicles Act (In short ""MV Act"" ) assailing the award dated 28/02/2012

whereby the learned Additional Motor Accident Claims Tribunal, Sakti, District Janjgir-Champa (C.G.) has rejected the claim case i.e. Motor

Accident Claim Case No.91/2006 on the ground that, the claim was not maintainable under Section 166 of the MV Act.

2. The facts of the case in brief is that, the deceased in the instant case Tekram Sahu was a driver of the Tractor and Trolley bearing registration

Nos. CG-11-ZG-0783 and CG-11-ZG-0784 respectively. The said Tractor was owned by the respondent No.1 and respondents No. 1(A), 1(B) and

1(C) are the legal representatives of the said respondent No.1-Gangaram.

3. The accidental death arose on 24/05/2006 while the deceased was driving the Tractor, due to a technical fault the front wheel got broken and the

Tractor turned turtle and the deceased who was driving the Tractor sustained injuries to which he later succumbed.

4. The claimants had filed the claim application under Section 166 of the MV Act which the Tribunal has rejected on the ground that, the deceased

himself was responsible for the accident and that since no other vehicle was involved, there was no negligence attributable to any other person but the

deceased and therefore the said claim was not sustainable under Section 166 of MV Act.

5. True it is that, the finding of the Tribunal so far as the claim case under Section 166 is concerned cannot be found fault with, but what also cannot

be brushed aside is the fact that, the claim application of the claimants under Section 166 of MV Act even though was not maintainable but

considering the fact that the proceedings of payment of compensation being a liberal legislation, the Tribunal should have taken a more pragmatic

approach and should have permitted the claimants to amend the claim application and to convert it into an application one under Section 163-A of MV

Act. By rejecting the claim application as not maintainable, the Tribunal has in fact literally left the claimants without any compensation for the

accidental death caused in the family and which the claimants would have otherwise been entitled for under Section 163-A of MV Act.

6. Under the given facts and circumstances of the case, this Court is of the opinion that ends of justice would meet if the impugned award is set aside

and the matter is remitted back to the Tribunal concerned. It is ordered accordingly. The claimants shall also be entitled for suitable amendment to be

carried out in the claim application by converting the claim application to one under Section 163-A of the MV Act.

7. Since the parties are present before this Court, they are directed to appear before the Tribunal on 14/03/2018.

8. Meanwhile, the registry of this Court is directed to ensure that the records are remitted back to the Tribunal at the earliest.

9. After an appropriate amendment being carried out, it is expected that the Tribunal shall proceed further to decide the case in accordance with law

and pass a fresh order as expeditiously as possible, considering the fact that the accident is an old accident so also the claim application.

10. The appeal stands allowed in part and disposed off.