

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1135 of 2016

1. Tikaram Yadav S/o Shri Digeshwar Prasad Yadav, aged about 18 years, R/o Village Khaira, Post Arjuni (Balda Kachhar), Via Palari, District Balodabazar, Chhattisgarh(Claimant)

---- Appellant

Versus

1. Chhabi Lal Patel S/o Shri Mahesh Ram Patel, aged about 36 years, R/o Khaira, Post Arjuni (Balda Kachhar), Via Palari, District Balodabazar, Chhattisgarh(Driver of offending vehicle CG-04, JD-6108)
2. Branch Manager, Oriental Insurance Company Limited, Branch Office, Chawla Complex, Sai Nagar, Devendra Nagar Marg, Raipur, Chhattisgarh(Insurer of offending vehicle CG-04, JD-6108)

---- Respondents

For Appellant – Shri Atanu Ghosh, Advocate.

For Respondent No.1– None, though served as per office note.

For Respondent No.2– Shri P. Dutta, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

28-11-2016

1. Heard on maintainability of the instant MAC.
2. At the outset, learned counsel for the appellant would submit that on application under Section 166,140 of the Motor Vehicles Act, 1988 (in short 'the Act, 1988') the appellant/applicant not specifically declared that he had not filed any application under Section 10 of the Employees' Compensation Act, 1923 and he does not intend to file any such application before said forum. He had also not specifically mentioned that the appellant/applicant was under the employment of respondent No.1. In the absence of above two mandatory facts, the Court below vide order dated 14-03-2016 dismissed the application filed by the appellant/applicant under Section 166 of the Act, 1988. Learned counsel would further argued that in the light of Section 167 of the Act, 1988 he is at liberty to file application under the proviso of the Act, 1988 instead to file any application under the Employees' Compensation Act, 1923. He does not intend to file any application under the provisions of Employees' Compensation Act,

1923, he wants to avail opportunity to file the application under Section 166, 140 of the Act, 1988 available to him under the law. Hence, he foregoes his right to file any application under the Employees' Compensation Act, 1923 and wants to avail the forum of claims tribunal under the Act, 1988. Therefore, he may be permitted to file a duly constituted motor accident claim case before the concerned tribunal exhibiting the entire above facts and the said may be disposed of on its merit.

3. On due consideration of the aforementioned submission, the instant MAC is disposed of without any appreciation on its merit reserving the liberty of the appellant/applicant to file a duly constituted motor accident claim case under the provisions of the Motor Vehicles Act, 1988 disclosing all the above facts along with declaration of fact required to demonstrate that the applicant never filed any application under Section 10 of the Employees' Compensation Act, 1923 and he gives up his option to proceed under the provisions of Employees' Compensation Act, 1923 and he only intends to explore the matter by filing duly constituted application under the provisions of Motor Vehicles Act, 1988.

4. The instant MAC is disposed of without any appreciation. Needless to mention that if any such application is filed under the Motor Vehicles Act, 1988, the same shall be disposed of on its merit without being influenced with the order dated 14-03-2016 passed in the Claim Case No.H-122/2015, afresh.

5. The MAC disposed of.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE