

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 595 of 2012**

1. Vijay Vaktani, W/o. Late Shri Daulatram Vaktani, Aged about 22 years,
2. Gurumukh Vaktani, S/o. Late Shri Daulatram Vaktani, Aged about 30 years,
Both R/o. Village Chakarbhata, Police Station Chakarbhata, Tahsil Bilha, District Bilaspur Chhattisgarh

---- Appellants**Versus**

1. Subhash Mandal, S/o. Surendra Mandal, Aged about 31 years, R/o. Khalsa Road Lines, Pachpedi Naka, Raipur, Police Station Tikarapara, District Raipur Chhattisgarh (Driver)
2. Gurubindar Singh, S/o. Devendra Singh Khalsa, R/o. Katora Talab, Sindhi Colony, House No. 876, Police Station Civil Lines, District Raipur Chhattisgarh (Owner)
3. The Branch Manager, New India Insurance Company Limited, Raipur, through: Jhonal Manager, Local Office, Second Floor, Rama Trade Centre, Opposite to Rajive Plaza, Bus Stand Road, Bilaspur Chhattisgarh

---- Respondents

For Appellants	:	Ms. Kiran Jain, Advocate
For respective Respondents	:	Mr. Mahavir Bhatnagar, Advocate
		Mr. K.N. Nande, Advocate
		Ms. Mandvi Bhardwaj, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****22/02/2018**

1. The present is an appeal by the Claimants under Section 173 of the Motor Vehicles Act. Challenge is to the award dated 03.12.2011, passed by the 2nd Additional Motor Accident Claims Tribunal, Bilaspur, Chhattisgarh, in Claim Case No. 542/2009.
2. Vide the impugned award, the Tribunal has rejected the claim application filed by the Claimants under Section 163A of the Motor Vehicles Act.

3. The rejection of the claim application was on the ground that the Driver and Owner of the offending vehicle were not in any manner responsible for the accident and that the accident occurred because of the negligence on the part of the deceased himself.
4. At this juncture, it is relevant to refer to the facts of the case. The admitted fact on perusal of the record was that the deceased in the instant case was traveling on his Scooter bearing registration No. MP/26/J/8045 on 13.12.2011 and at 2:00 o'clock of intervening night of 12/13.12.2011, the deceased hit a Truck bearing registration No. MP/23/BA/3587, which was parked on the road without any indication or parking lights being on. It is true that the deceased had hit the offending vehicle-the Truck from the rear portion. It is also not in dispute that the deceased had hit the stationary vehicle when the accident occurred.
5. However, what the Tribunal failed to appreciate is the fact that the claim application was initiated by the Claimants under Section 163A of the Motor Vehicles Act. It is by now well settled that for a claim application under Section 163A the issue of negligence part was not to be decided or seen by the Tribunal. The Tribunal in the instant case ought to have taken a more liberal view while deciding the claim application rather than dismissing the claim application itself on hypo-technical reasons.
6. The Larger Bench of the Hon'ble Supreme Court also in one of the recent judgment in the case of "**United India Insurance Company Limited vs. Sunil Kumar & Anr.**" reported in **2017 (13) Scale 652** has discussed and settled the issue. In the light of the aforesaid judgment of the Hon'ble Supreme Court, this Court is of the opinion

that the impugned judgment is not sustainable and the same deserves to be and is accordingly set-aside and the matter stands remitted back to the Tribunal for a fresh adjudication.

7. Since all the parties are represent before this Court, they are directed to appear before the Tribunal on 15th of March, 2018.
8. Meanwhile, the Registry should also ensure that the record is sent back to the Tribunal promptly, so that the same reaches the Tribunal by the date fixed by the Court i.e. 15th of March, 2018.
9. The parties are at liberty to amend the pleadings and also lead evidence, if any.
10. The appeal thus stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved