

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 250 of 2018**

1. Soma S/o Late Sukman, aged about 52 years, R/o Village Naumujhmeta, Gram Panchayat- Timnar, Police Station and District Narayanpur, Chhattisgarh
2. Ku. Manbati D/o Soma, aged about 20 years, R/o Village Naumujhmeta, Gram Panchayat- Timnar, Police Station and District Narayanpur, Chhattisgarh

---- Appellants**Versus**

1. Chhinnusami S/o Shri Sengodan aged about 34 years, R/o 4-55A, Prithi Pannirkuthipalyam, PO- Tiruchengode TKG Namakal (Tamil Nadu)Driver of Truck No. K A/ 27/ A/ 3798
2. S. Chhinnadurai S/o Shivmalai R/o Number 4, Kalasipalyam, New Extension, Bangalore, Karnatka PIN 560018Owner of Truck No. K A / 27/A/3798
3. New United India Insurance Company Ltd. its Branch Officer, Branch Office Jagdalpur, District Bastar, Chhattisgarh.Insurance Company

---- Respondents

For Appellants : Shri Vaibhav A. Goverdhan, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****07/02/2018**

Present is a claimant's appeal. Challenge in the present appeal is to the order dated 17.11.2017 passed by the Motor Accident Claims Tribunal, Kondagaon (CG) in Claim Case No. 70 of 2016. Vide the impugned order, the Tribunal has dismissed the claim application on the ground of non compliance of its earlier order/directives.

2. Facts of the case in brief are that the claimants had filed an application under Section 166/140 of Motor Vehicles Act before the Motor Accident Claims Tribunal, Kondagon seeking compensation for the death of the son of appellant no.1 and brother of appellant no.2.

3. After registering the case, the Tribunal issued notices to the respondents which could not be served on account of the address not being proper. Subsequently, the claimants moved an application under Order 5 Rule 20 of CPC for substituted service of paper publication. The said application was allowed and proper Process Fee was also filed by the claimants. However, due to inadvertence and for certain reasons beyond the control of the claimants, they could not get the publication done in the daily news paper and therefore, the Tribunal rejected the claim application vide impugned order dated 17.11.2017 leading to the filing of this appeal.

4. Counsel for the appellants submits that due to certain difficulties at the house of the claimants, the paper publication part could not be done and therefore, the claimants may be granted one more opportunity to comply with the earlier directives given by the Tribunal. He submits that in case the appeal is not allowed and the matter is not remitted back, the claimants would be denied from the rightful claim of compensation which they are otherwise entitled for.

5. Having heard the contention put forth by the counsel for the appellants and on perusal of the record what is reflected is that the vehicle involved in the accident i.e. the offending vehicle was duly insured with respondent no.3 Insurance Company. The Insurance Company was duly served and was being represented through its counsel and they were contesting the case on merits. The only default was the non-service of notice upon the owner and driver on account of there being no proper address.

6. The rejection of the claim application only on account of non compliance of paper publication within the stipulated period appears to be too harsh on the part of the Tribunal.

7. The fact which cannot be brushed aside is that the claim application under the provisions of the Motor Vehicles Act is a benevolent legislation enacted only for ensuring that the claimants in a death case or in an injury case are sufficiently compensated for the accidental death or injury as the case may be. In the instant case, the claim application was in respect of a death case. Therefore, this Court is of the opinion that the Tribunal should have been more considerate and sympathetic while considering a death case under the provisions of Motor Vehicles Act. Moreover, the claim application in the instant case is of 2016 and it is not too old a case where the Court should have shown so much haste in dismissing the claim application.

8. Under the circumstances, the impugned order dated 17.11.2017 is not sustainable and the same deserves to be and is accordingly set aside. The matter is remitted back to the Tribunal and the appellants are granted one more opportunity to ensure the paper publication part. Since, the claimants are represented before this Court, they are directed to appear before the Tribunal on 28th of February, 2018. The Tribunal shall proceed with the matter from the stage it was fixed prior to 17.11.2017 and after granting reasonable time to the claimants for compliance of the order passed on the application under Order 5 Rule 20 of CPC, it shall decide the matter as expeditiously as possible.

9. The appeal thus stands allowed and disposed of.

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