

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 524 of 2014

1. Udayram Kothari, S/o Mansharam Aged About 50 Years, C.G.
2. Smt. Tijobai W/o Udayram Kothari Aged About 48 Years

Both are R/o Dalli Rajhara, Tah. And Distt. Balod C.G.

---- Appellants

Versus

1. Harish Kumar Rawate And Anr. S/o Rekhilal Rawate Aged About 23 Years R/o Badgaon, Tah. Daundi Lohara, Distt. Balod C.G., Chhattisgarh
2. National Insu.Co.Ltd. Regional Manager, Supela, Bhilai, Distt. Durg C.G., District : Durg, Chhattisgarh

---- Respondents

For Appellants
For Respondent No.2

Shri Shikhar Bakhtiyar, Advocate.
Shri P.K. Tulsyan, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Order on Board

22/10/2018

1. This is claimants' appeal against the award dated 18.12.2013 passed by the 2nd Additional Motor Accidents Claims Tribunal, Balod, District Balod, C.G. in Claim Case No. 01/2013, whereby the appellant's claim petition has been dismissed.
2. Facts in brief necessary for disposal of this appeal are as under:
 - i) Son of the appellants namely Shailendra Kothari was riding Motor Cycle bearing Registration No. CG07-LX-1782 on the date of mishap i.e. 06.07.2011.
 - ii) Due to the accident Shailendra died on 28.07.2011

during the medical treatment at Jawaharlal Hospital, Bhilai.

iii) FIR was lodged at P.S. Balod by one Harshraj Verma in this context. The respondent No.1 is the owner of the aforesaid motor cycle whereas the respondent No.2 is the insurer of the motor cycle on the date of mishap.

iv) The Tribunal, framed issues to decide the matter and after adducing the evidence, rejected the claim of the appellant. Hence, this appeal.

3. Counsel for the appellant submits that learned Tribunal has committed material illegality and the award suffers from irregularity and liable to set aside. He also submits that the Tribunal should have given to the appellant a proper opportunity to lead evidence to clarify the above aspect of matter. He further submits that application of claimants was filed under Section 163-A of the Motor Vehicle Act and compensation is to be computed on structured formula basis and it is not in dispute that death occurred due to accident arising out of the use of motorcycle.

4. Learned counsel for respondent No.2, on the other hand, supported the award and submitted that in the facts & circumstances of the case, the Tribunal has rightly dismissed the claim petition.

5. Heard learned counsel for the parties and perused record of the Tribunal.

6. The claim petition has been filed by the appellants under Section 163-A of the Motor Vehicle Act, 1988 on the ground that death of son of the appellants namely Shailendra Kothari was due to use of the Motor Cycle bearing registration No. CG07-LS-1782 and Section 163-A of the Motor Vehicle Act is a special provision as to

payment of compensation on structured formula basis when accident occurred out of use of motor cycle. There is no need to prove any negligence on the part of the deceased. In this case also the claim petition was under Section 163-A of the Act, therefore, the Tribunal was not justified in rejecting the claim petition on the ground that claimant failed to prove that the accident occurred on account of vehicle being dashed against the cow or being dashed against another motorcycle. The Tribunal should also have given a proper opportunity to the appellants to lead the evidence in this regard.

7. Considering every aspect of the matter including the pleadings of the claimants, the manner in which the accident occurred, in my opinion, the matter needs remand for decision afresh at the end of the Tribunal.

8. For the reasons mentioned herein above, the appeal is allowed, the award impugned is set aside and the matter is remitted back to the concerned Tribunal to decide the claim petition afresh on its own merits, after affording full opportunity of hearing to the parties, as expeditiously as possible preferably within a period of 6 months from the date of first appearance of the parties. Parties are directed to appear before the concerned Tribunal on 12th December, 2018.

9. Needless to mention the Tribunal shall provide proper and sufficient opportunity to the parties to adduce evidence, to amend the pleadings and to file additional documents, if any.

10. Record of the Tribunal be sent back forthwith.

11. No order as to costs.

Sd/-
Gautam Chourdiya
Judge

Akhilesh