

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1069 of 2018

1. Sonkunwar W/o Moolchand, Aged About 23 Years Caste Panika,
2. Anurag S/o Moolchand, Aged About 4 Years Caste Panika,
3. Shivani, D/o Moolchand, Aged About 15 Years Caste Panika,

Appellants No. 2 & 3 minors through mother Sonkunwar W/o Moolchand Panika.

All permanently R/o Village Baderabahra, Kodwahi, Post Silpahri, Police Station And Tahsil Pendra, District Bilaspur Chhattisgarh.

---- Appellants

Versus

1. Vidur Patel S/o Devchandra Patel, Aged About 32 Years Truck Driver, Pasra Police Station Chalgali, Tahsil Wadrafnagar, District Balrampur Chhattisgarh.
2. Smt. Sudha Keshri, W/o Tirathchandra, Truck Owner, R/o In-Front Of Church, Ward No. 8, Manendragarh, District Koriya Chhattisgarh.
3. National Insurance Company Limited, Divisional Office, First Floor, B-1, Taha Complex, Vyapar Vihar Road, Ring Road No. 1, Priyadarshini Nagar, Bilaspur Chhattisgarh.
4. Tilakram, S/o Sukhdev Panika, Aged About 70 Years
5. Rambai, W/o Tilakram Panika, Aged About 68 Years

Respondents No. 4 & 5 both are R/o Village Basti, PS and Tahsil Pendra, Distt. Bilaspur (CG)

---- Respondents

For Appellants	:	Shri Yogendra Chaturvedi, Adv.
For Respondent No.2	:	None though served.
For Respondents No.3	:	Shri Qamrul Aziz, Advocate.
For Respondents No.4 & 5	:	None.

Hon'ble Shri Gautam Chourdiya, J

Order On Board

15/11/2018

Aggrieved by the award dated 27.1.2018 passed by Additional Motor Accident Claims Tribunal, Pendra Road, Distt. Bilaspur in Claim Case No.8/2016 whereby application u/s 166 of the Motor Vehicles Act, 1988 (in short "the Act") of the claimants has been dismissed, the appellants/claimants have filed the instant appeal u/s 173 of the Act.

02. As per averments in the claim petition, on 25.1.2015 respondent No.1 by driving offending vehicle truck bearing registration No. CG 16A 1885 in a rash and negligent manner, dashed the deceased Moolchand Panika as a result of which Moolchand suffered grievous injuries and died.

03. Learned counsel for the appellants submits that on the date of accident, merg intimation was registered but after merg enquiry, the police did not register FIR against driver of the offending vehicle. The claimants had no knowledge about any eyewitness to the said accident. When the police did not register offence u/s 304A of IPC against driver of the offending vehicle, the claimant Sonkunwar, widow of the deceased, filed an application before the concerned Magistrate and on the direction of the Magistrate vide order of Ex.P/18, police registered FIR (Ex.P/1) u/s 304A of IPC against the driver of the offending vehicle. Statement of one eyewitness was also recorded before the Magistrate but unfortunately that eyewitness was not examined before the Tribunal. However, the Tribunal considering the merg documents and statement of Sultan Mohammad, who is an eyewitness to the accident, recorded a finding that the deceased committed suicide by jumping before the offending vehicle and as such, dismissed the claim petition of the claimants. Learned Tribunal has failed to consider that as per Ex.P/19, the eyewitness Sultan Mohammad stated before the Judicial Magistrate First Class, that he is

an eyewitness to the accident and that the deceased died on account of rash and negligent driving of the offending vehicle by its driver. In these circumstances, the Tribunal was not justified in dismissing the claim of the claimants merely on the basis of merg documents and report of the investigator of the insurance company without examination of the eyewitness Sultan Mohammad. The Tribunal, keeping in view the object of enactment of the Motor Vehicles Act, which is a benevolent legislation, ought to have afforded opportunity to the claimants to examine the said witness and adduce evidence to substantiate their case. Therefore, the matter may be remitted to the Tribunal for deciding the claim petition afresh after giving due opportunities to the parties to lead evidence and amend the pleadings if required.

04. On the other hand, learned counsel for respondent No.3 has supported the impugned award and submitted that the same has been passed keeping in view all the relevant aspects of the matter and as such, needs no interference by this Court.

05. Heard learned counsel for the parties and perused the material available on record including the impugned award.

06. Considering the facts and circumstances of the case, in particular the fact that there is one eyewitness to the accident namely Sultan Mohammad whose statement Ex.P/19 is on record, the offence under Section 304A of IPC has been registered against the driver of the offending vehicle as per direction of the JMFC vide order dated 29.10.2015 (Ex.P/18), this Court is of the view that the Tribunal was not justified in dismissing the claim petition of the claimants merely on the basis of merg documents and report of the insurer's investigator.

07. In the result, the appeal is allowed in part. The impugned award is hereby set aside the matter is remanded to the Tribunal with a direction to decide the claim case afresh after giving due opportunity of hearing and adducing evidence to both the parties, within a period of six months from the date of receipt of the records. The parties shall also be permitted to amend their pleadings, if so required, and adduce

evidence thereon.

08. Registry is directed to send the record to the concerned Tribunal without delay.

09. Parties present here are to appear before the concerned Tribunal on 14th December, 2018. However, the parties who are not represented here shall be given notice by the Tribunal on the said date for their appearance/representation on a date to be fixed by it.

It is made clear that nothing in this order shall be construed as an expression of opinion on merits of the case and the Tribunal to decide the claim case strictly on the basis of material available before it in accordance with law.

Sd/

(Gautam Chourdiya)

Judge