

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 658 of 2014**

1. Mosu S/o Late Ludru Aged About 43 Years R/o Padargudapara, Village Nadisagar, P.S. Ghotiya, Distt. Bastar C.G.
2. Smt. Samari W/o Masuram Aged About 38 Years R/o Padargudapara, Village Nadisagar, P.S. Ghotiya, Distt. Bastar C.G.

---- Appellants**Versus**

1. Madhura Maurya S/o Late Parsadi Aged About 40 Years R/o Pallichakwa, P.S. Badanji, Distt. Bastar C.G.
2. Botiram Kashyap S/o Shri Massu Kashyap Aged About 45 Years R/o Badechakwa, P.O. Lamker, P.S. Bhanpuri, Distt. Bastar C.G.
3. Branch Manager, New India Insurance Company Limited, Near Jhankar Cinema, Jagdalpur, Distt. Bastar C.G.

---- Respondents

For Appellants
For Respondent No.3

Shri Raza Ali, Advocate.
Shri Qamrul Aziz, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Order On Board****30/11/2018**

1. This is claimants' appeal against the award dated 14.03.2014 passed by 1st Additional Motor Accidents Claims Tribunal, Bastar Place Jagdalpur C.G. (for short 'the Tribunal') in claim case No. 76/2013, whereby the claim petition has been dismissed.
2. As per averments in the claim petition on 17.05.2010, while deceased Dev Chandra Kashyup, aged about 19 years, earning Rs.6,000/- per month, as a Labour was returning from his work

place, on the way he met with an accident, as respondent No.1 Madhura Mourya, while driving the vehicle Tractor bearing registration No. CG17-NM-0001 in a rash and negligent manner overturned the same and the deceased came under the said vehicle accidentally. On account of injuries suffered in the said accident, the deceased died while being taken to hospital for treatment. At the relevant time, the vehicle in question was owned by respondent No.2 and insured with respondent No.3.

3. As against the compensation of Rs.26,85,000/- claimed by the appellants/claimants parents of the deceased, by filing application under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for the death of deceased Dev Chandra Kashyap in the motor accident on 17.05.2010, the Tribunal after considering the evidences dismissed the claimants' appeal.
4. Learned counsel for the appellants submits that the Tribunal has decided the claim petition in a mechanical manner without due application of mind. He submits that though the witnesses examined by the claimants are not eye witnesses to the accident but from the material available on record, it is evident that the deceased died in the accident occurred on 17.05.2010 due to rash and negligent driving by non-applicant No.1 of the offending vehicle. He submits that the Tribunal ought not to have insisted upon strict rule of evidence for proving the claim by the claimants and should have decided the claim petition keeping in view the provisions of the Motor Vehicles Act which are benevolent in nature. He submits that the claimants are at least entitled for Rs.50,000/- towards no fault liability. Alternatively, he submits that

the matter may be remanded to the Tribunal for decision afresh after giving proper opportunity of hearing and adducing evidence to the parties.

5. On the other hand, learned counsel appearing for the respondent No. 3/Insurance Company Ltd. supports the award impugned.
6. I have heard learned counsel appearing for the parties and perused the record of the Tribunal as well as award impugned.
7. Having heard learned counsel for the parties, having regard to the material available on record, it is seen that the deceased died in an accident occurred on 17.05.2010 involving the vehicle i.e. Tractor bearing registration No. CG17-NM-0001, which was being driven by respondent No.1 at the relevant time, owned by respondent No.2 and insured with respondent No.3. The Tribunal has dismissed the claim petition on the sole ground that the claimants have failed to prove the manner in which the accident occurred, negligence of the Driver as the contents of the FIR, Final Report and the Postmortem Report are not in consonance with the averments made by the claimants in their claim petition. However, considering the over all facts and circumstances of the case, the nature and quality of evidence adduced by the parties, the provisions of the Motor Vehicles Act and also considering the reasons assigned by the Tribunal for dismissing the claim petition, this Court is of the opinion that the claim petition needs to be decided afresh by the Tribunal.
8. In the result, 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 28.01.2019.

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. With the aforesaid observations, the appeal stands disposed of.
12. No order as to costs.

Sd/-
Gautam Chourdiya
Judge

Akhilesh