

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 293 of 2014

1. Ku. Bhadrika Adholiya Bachh D/o Late Ram Milan Adholiya Aged About 16 Years
2. Ku. Ranjeeta Adholiya Bachh D/o Late Ram Milan Adholiya Aged About 14 Years
3. Ku. Shanti Adholiya Bachh D/o Late Ram Milan Adholiya Aged About 8 Years

Appellants No. 1 to 3 are minor, through represented by their natural guardian Uncle namely Dhaniram Bachh S/o Bakhat Ram Bachh, aged about 60 years,

All are R/o Vilage Birkona, Police Station Koni, Tahsil and Distt. Bilaspur (CG)

**---- Appellants
claimants**

Versus

1. Sandeep Kumar Bachh S/o Dhaneera Bachh Aged About 24 Years R/o Birkona, P.S. Koni, Tah. And Distt. Bilaspur C.G., (driver of alleged vehicle bearing registration No. CG 10 EL 9227)
2. Rakesh Kumar S/o Ram Milan Aged About 25 Years R/o Birkona, P.S. Koni, Tah. And Distt. Bilaspur C.G. (owner of alleged vehicle bearing registration No. CG 10 EL 9227)
3. The National Insu.Co.Ltd. S/o Thru-Divisional Manager, Divisional Office, 1st Floor, B-1, Taha Complex, Vyapar Vihar Road, Tah. And Distt. Bilaspur C.G. (insurer of alleged vehicle bearing registration No. CG 10 EL 9227)

---- Respondents

For Appellants	:	Shri AL Singroul, Advocate.
For Respondent No.3	:	Shri Raj Awasthi, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Order On Board

03/12/2018

Aggrieved by the award dated 18.12.2013 passed by III Additional Motor Accident Claims Tribunal, Bilaspur, Distt. Bilaspur in Claim Case No.30/2012 whereby application u/s 163A 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 7.8.2011 deceased Rammilan was going on motorcycle bearing No. CG 10 EL 9227 which was being ridden by non-applicant No.1 Sandeep as a pillion rider. However, as all of a sudden a cow came in front of the said vehicle and while non-applicant No.1 was trying to avoid any accident, one car which was being driven in a rash and negligent manner, dashed the motorcycle of Sandeep, as a result of which Rammilan suffered grievous injuries and died in hospital during treatment.

03. On claim petition being filed by the claimants under Section 163A of the Act, the Tribunal dismissed the same on the ground that the claimants have failed to prove that any such accident occurred, on the date of accident it was the deceased who was riding the motorcycle and there appears to be collusion between the claimants and non-applicants No. 1 & 2 being relative.

04. Learned counsel for the appellants submits that the learned Tribunal illegally and without considering the issue of earning, loss of earning of the deceased and without applying judicial mind has dismissed the claim petition on the ground of collusion between the claimants and non-applicants No. 1 & 2 being relative and the deceased himself being rider of the motorcycle in question whereas the evidence on record goes to show that the claimants had a good case for getting compensation against the death of the deceased.

05. On the other hand, learned counsel for respondent No.3/insurance company supports the impugned award.

06. Heard learned counsel for the parties and perused the material available on record.

07. In the claim petition has been pleaded that non-applicant No.1 Sandeep Kumar was riding the motorcycle on the date of accident. Non-applicants No. 1 & 2 admitted this fact that on the date of accident, the deceased was pillion rider in the motorcycle. As per evidence adduced by the claimants and non-applicants No. 1 & 2, it is clear that the accident occurred out of use of motorcycle bearing No. CG 10 EL 9227 in which the deceased Rammilan suffered grievous

injuries and died. In this case, no evidence has been adduced by the insurance company to rebut the above fact. However, learned Tribunal on the ground that non-applicant No.1 Sandeep Kumar did not lodge any FIR promptly and no report was produced before the Tribunal and that motorcycle was seized after two months from the date of accident, dismissed the claim petition.

08. The claimants filed claim petition under Section 163A of the Act and as such, in view of provisions of the said section, no negligence is required to be proved by the claimants for seeking compensation and only it is to be seen whether the accident occurred due to use of motorcycle. If the deceased was not owner of the vehicle and if any claim arises as per admitted fact by non-applicant No.1 Sandeep Kumar that the deceased was sitting as pillion rider and owner of the said vehicle is Rakesh (non-applicant No.2) who may be son of the deceased, the same has to be decided keeping in view the provisions of Section 163A of the Act and the evidence adduced by the parties. The Tribunal was not justified in dismissing the claim petition mechanically without considering the relevant aspects of the matter and the provisions of Section 163A of the Act. Hence the matter needs to be remanded to the Tribunal for decision afresh.

09. 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 first appearance of the parties. The parties shall also be permitted to amend their pleadings, if so required, and adduce evidence thereon.

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

11. Parties present here are to appear before the concerned Tribunal on 21st January, 2019. 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

Khan