

HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No.1176 of 2013**

1. Birendra Manjhi, S/o Vijay Kishno Mnajhi, aged about 40 years
2. Smt. Jharna Manjhi (wrongly mentioned as Mandi in the impugned judgment), W/o Birendra Manjhi, aged about 35 years
Both R/o–Village–Boregaon, Post Office & Police Station–
Farashgaon, Tahsil- Farashgaon, District- Kondagaon (C.G.)

---- Appellants**Versus**

1. Kalichand Das S/o Rashraj Das, R/o- East Boregaoin, Post Officer & Police Station – Farashgaon, Tahsil – Kondagaon, District – Kondagaon (C.G.)
[Registered owner of Vehicle Commander Jeep bearing registration No. CG/18/D/0342]
2. The National Insurance Company Limited, Through Divisional Manager, Divisional Office, the National Insurance Company Limited, Jagdalpur, District – Baster (C.G.)
[Insurer of Vehicle Commander Jeep bearing registration No. CG/18/D/0342]

---- Respondents

For Appellants	: Mr. Raj Kumar Pali, Advocate
For Respondent No.1	: Mr. Avinash K. Mishra, Advocate
For Respondent No.2	: Mr. B.N. Nande, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**Judgment on Board****19/12/2019**

1. This appeal has been filed by appellants/claimants under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the legality, validity and propriety of impugned award dated 19/07/2013 passed by learned Additional Motor Accident Claims Tribunal, Kondagaon, Bastar, Chhattisgarh (hereinafter

referred to as 'Claims Tribunal') in Motor Accident Claim Case No.86/2012 whereby learned Claims Tribunal dismissed the claim application filed by appellants/claimants in its entirety.

2. Facts of the case in nutshell, are that, son of appellants/claimants namely Balram Manjhi, aged about 22 years, met with an accident on 19/05/2008 while driving Jeep bearing registration No.CG/18/D/0342 (hereinafter referred to as 'offending vehicle') when he was going to village Malakot to village Hirri. In the aforementioned accident, he suffered grievous injuries over his person and due to fracture of waist bone, his lower part of the body became permanently disabled. Initially, Balram Manjhi was taken to Kondagaon Hospital, from where, he was referred to Ram Krishna Care Hospital, Raipur. Balram Manjhi took treatment as indoor patient from 19/05/2008 to 21/05/2008 at Kondagaon Hospital and thereafter, from 23/05/2008 to 03/06/2008 at Ram Krishna Care Hospital, Raipur.
3. Earlier, Balram Manjhi himself filed a claim application before the Claims Tribunal at Raipur on 12/02/2008, which came to be dismissed on account of territorial jurisdiction, of which, miscellaneous appeal has been preferred before this Court, which was dismissed as withdrawn on 17/02/2010 with liberty to file claim application before the competent Claims Tribunal. Balram Manjhi died on 07/08/2010, thereafter, appellants/claimants have filed claim application before the competent Claims Tribunal claiming

compensation of Rs.16,08,000/- in total including Rs.8,00,000/- towards medical expenses.

4. Non-applicant No.1, owner of offending vehicle filed reply to claim application and denied the manner of occurring of accident as pleaded in the claim application. It was pleaded that the accident took place on account of negligence on the part of Balram Manjhi himself. It was further pleaded that on the date of accident, deceased Balram Manjhi was earning Rs.2000/- per month as salary, on the date of accident, offending vehicle was insured with non-applicant No.2/Insurance Company, the liability, if any, would be on the Insurance Company.
5. Non-applicant No.2/Insurance Company also submitted reply to claim application and pleaded that accident took place due to negligence on the part of deceased Balram Manjhi himself. Death of Balram Manjhi was not an outcome of motor accident. Balram Manjhi himself has not filed any claim application with respect to medical expenses as pleaded in the claim application and further that earlier claim application filed by deceased Balram Manjhi on account of suffering injury on his person, was dismissed by the Claims Tribunal, Raipur on account of territorial jurisdiction. There was violation of conditions of insurance policy as on the date of accident, deceased Balram Manjhi was not possessing valid and effective driving licence to drive the vehicle.

6. Based on the pleadings put-forth by the respective parties before the learned Claims Tribunal, learned Claims Tribunal has framed issue No.1 i.e. whether claimants are entitled for any amount of compensation, if yes, then, what amount and from which non-applicants; and second issue has been framed, which is formal in nature.
7. On appreciation of pleadings and evidence placed on record by respective parties, learned Claims Tribunal has arrived at a finding that postmortem report has not been placed on record by claimants to prove the death of deceased Balram Manjhi was on account of accidental injuries suffered by him. It was recorded that in fact, claimants have not sent dead body of their son for postmortem. In view of above, learned Claims Tribunal arrived at a conclusion that death of Balram Manjhi could not be proved was on account of accidental injuries suffered by him in motor accident.
8. Mr. Raj Kumar Pali, learned counsel appearing for the appellants submits that claimants who are parents of the deceased placed on record sufficient material and evidence i.e. medical prescriptions and the other documents relating to treatment of deceased and further, the documents forming part of the record of criminal case, which was registered by the concerned Police Station after motor accident, which took place on 19/05/2008. As learned Claims Tribunal has not framed any specific issue whether death of Balram Manjhi was on account of accidental injuries suffered by him, therefore, learned

Claims Tribunal committed an error in not following the procedure as prescribed under Section 169 of the M.V. Act and prayed that the case may be remitted back to learned Claims Tribunal for framing appropriate issues on the basis of pleadings placed on record by respective parties for deciding the claim case afresh.

- 9.** Per contra, Mr. B. N. Nande, learned counsel appearing for respondent No.2/Insurance Company submits that as deceased Balram Manjhi himself filed claim application during his lifetime in the year 2008 itself, but after dismissal on account of territorial jurisdiction by learned Claims Tribunal, deceased Balram Manjhi has not filed any claim case before the competent Claims Tribunal for grant of compensation. Looking to the time gap between date of accident i.e. 19/05/2008 and date of death i.e. 07/08/2010, death of Balram Manjhi cannot be said to be on account of accidental injuries suffered by him. He also submits that nature and cause of death can be ascertained only from the postmortem of the dead body, but in the instant case, as per evidence of claimants themselves, they have stated that dead body was not sent for postmortem, therefore, learned Claims Tribunal has not committed any error in dismissing the claim application filed by the appellants/claimants.
- 10.** I have heard learned counsel appearing for the respective parties and perused the records carefully.
- 11.** The claimants in their claim application have pleaded that when Balram Manjhi was driving Jeep on 19/05/2008, he met with an

accident due to bursting of right side of the rear tire. It was also pleaded that on account of aforementioned accident, Balram Manjhi suffered grievous injuries over his shoulder, waist and back bone. Due to fracture injury suffered by Balram Manjhi on his back bone, he became permanent disabled as he suffered paralysis on the lower part of his body i.e. below waist.

- 12.** The claimants have placed on record the certified copy of earlier claim application filed by the deceased- Balram Manjhi himself before learned Claims Tribunal at Raipur as Ex.P-2.
- 13.** Perusal of Ex.P-2 would show that in pleadings of that claim application, it has been pleaded that he was unable to move due to injuries suffered by him on his waist and further he was forced to lie on bed continuously. It was further pleaded that he has suffered permanent disability on account of accidental injury.
- 14.** The claimants have also filed final report as Ex.P-4 mentioning therein that the offending vehicle driven by Balram Manjhi met with an accident on 19/05/2008.
- 15.** Perusal of First Information Report (Ex.P-5) would show that date of accident is 19/05/2008 at about 4.30 PM and the report has been lodged before the Police Station, Farashgaon on the same day at about 18.15 hours i.e. 6.15 PM within a period of less than 2 hours from the time of accident.

- 16.** MLC report has been placed on record as Ex.P-7, wherein it has been mentioned that deceased Balram Manjhi suffered grievous injuries over his waist and lower limbs along with other part of the body. The claimants have also filed medical documents with regard to treatment of deceased Balram Manjhi as Ex.P-11 to Ex.P-33. Driving license has been produced as Ex.P-34 as well as the disability certificate as Ex.P-36.
- 17.** Perusal of aforementioned documents available on record would show that motor accident as pleaded in the claim application occurred on 19/05/2008, in which Balram Manjhi suffered injuries. Aforementioned fact is not disputed by learned counsel appearing for respondent No.2.
- 18.** Looking to the very specific pleading made in claim application supported by the documents as well as looking to the pleadings made by respondent No.2/Insurance Company in his reply to claim application that death of Balram Manjhi was not on account of accidental injuries suffered by him, learned Claims Tribunal ought to have framed specific issue in this regard whether the death of Balram Manjhi was on account of accidental injuries or not, but learned Claims Tribunal has not framed such issue except one whether claimants are entitled for the amount of compensation or not.
- 19.** The M.V. Act is a beneficial piece of legislation and if the person suffered any injury on account of motor accident or any person died on account of motor accident, then the persons claiming before

learned Claims Tribunal, are entitled for just and proper amount of compensation on the basis of pleadings and evidence placed on record by them.

- 20.** Section 169 of the M.V. Act provides for procedure and powers of Claims Tribunal, which reads as follows :

“169. Procedure and powers of Claims

Tribunals.-(1) In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the power of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of and matter relevant to the inquiry to assist it in holding the inquiry.”

- 21.** Sub-section (2) of Section 169 of the M.V. Act envisages that the Claims Tribunal is having the powers of Civil Court, and therefore, to decide the application or lis before it, it was incumbent upon Claims

Tribunal to frame issues on the basis of pleadings made in the claim application as well as pleadings made in the reply to claim application. The purpose of framing issues on the basis of pleadings made by respective parties is only to alert the parties to the case, to produce necessary evidence to make out their cases on the issues framed, which are gist of the case to be decided by the learned Claims Tribunal or competent Court.

22. In the matter of **Makhan Lal Bangal v. Manas Bhunia & ors** reported in **AIR 2001 SC 490**, the Hon'ble Supreme Court while dealing with necessity of framing specific issues with respect to pleadings made by respective parties has held thus :-

“19. An election petition is like a civil trial. The stage of framing the issues is an important one inasmuch as on that day the scope of the trial is determined by laying the path on which the trial shall proceed excluding diversions and departures therefrom. The date fixed for settlement of issues is, therefore, a date fixed for hearing. The real dispute between the parties is determined, the area of conflict is narrowed and the concave mirror held by the court reflecting the pleadings of the parties pinpoints into issues the disputes on which the two sides differ. The correct decision of civil lis largely depends on correct framing of issues, correctly determining the real points in controversy which need to be decided. The scheme of Order XIV of the Code of Civil Procedure dealing with settlement of issues

shows that an issue arises when a material proposition of fact or law is affirmed by one party and denied by the other. Each material proposition affirmed by one party and denied by other should form the subject of a distinct issue. An obligation is cast on the court to read the plaint/petition and the written statement/counter, if any, and then determine with the assistance of the learned counsel for the parties, the material propositions of fact or of law on which the parties are at variance. The issues shall be framed and recorded on which the decision of the case shall depend. The parties and their counsel are bound to assist the court in the process of framing of issues. Duty of the counsel does not belittle the primary obligation cast on the court. It is for the Presiding Judge to exert himself so as to frame sufficiently expressive issues. An omission to frame proper issues may be a ground for remanding the case for retrial subject to prejudice having been shown to have resulted by the omission. The petition may be disposed of at the first hearing if it appears that the parties are not at issue on any material question of law or of fact and the court may at once pronounce the judgment. If the parties are at issue on some questions of law or of fact, the suit or petition shall be fixed for trial calling upon the parties to adduce evidence on issues of fact. The evidence shall be confined to issues and the pleadings. No evidence on controversies, not covered by issues and the pleadings, shall normally be admitted, for

each party leads evidence in support of issues the burden of proving which lies on him. The object of an issue is to tie down the evidence and arguments and decision to a particular question so that there may be no doubt on what the dispute is. The judgment, then proceeding issue-wise would be able to tell precisely how the dispute was decided.”

- 23.** In the matter of **Fiza Developers and Inter-trade Private Limited v. AMCI (India) Private Limited & another** reported in **(2009) 17 SCC 796** observed as under:-

“10. The object of issues is to focus upon the questions on which evidence has to be led and to indicate the party on whom the burden of proof lies.”

- 24.** Non-framing of specific issue on which the claim application of appellants is dismissed have cause prejudice to the appellants. They could not able to put evidence with that part of the pleading in written statement. The M.V. Act is a beneficial piece of legislation having an object to provide compensation to the family members of the deceased or to the injured/claimants.
- 25.** In the case at hand, learned Claims Tribunal has not framed any specific issues whether death of Balram Manjhi was on account of motor accidental injuries or the entitlement of claimants for any amount of compensation and if yes, then under which head. In the opinion of this Court, learned Claims Tribunal committed an error in

deciding the claim without framing issues on all facts as appearing from the pleadings made by the respective parties.

26. In view of above, impugned award dated 19/07/2013 passed by learned Claims Tribunal is set aside and Motor Accident Claim Case No.86/2012 is remitted back to the learned Claims Tribunal for deciding the case after framing specific additional issues (i) whether death of Balram Manjhi is a result of motor accidental injuries suffered by him or not; and, (ii) whether the claimants are entitled for medical expenses as claimed by them in their claim application or not?
27. The parties are directed to remain present before the Additional Motor Accident Claims Tribunal, Kondagaon, Bastar (C.G.) on 20/03/2020. Looking to the date of accident, learned Claims Tribunal is directed to decide the claim application within a further period of four months.
28. Needless to mention that appellants/claimants and respondents/non-applicants will be entitled to amend their pleadings, file additional documents, lead further evidence in their support.
29. Appeal is allowed in part on the terms as indicated above.

Sd/-

(Parth Prateem Sahu)
Judge