

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1262 of 2014

1. Johra Beebi wife of late Sarifuddin Ansari, aged about 53 years
 2. Qayum Ansari son of Sarifuddin Ansari, aged about 33 years
 3. Sameem Ansari son of late Sarifuddin Ansari, aged about 31 years
- All are resident of Mominpura, Ambikapur, Police Station and Tahsil- Ambikapur, District Surguja (C.G.)

---- Appellants/Claimants

Versus

1. Pentha son of Devnath, aged about 36 years, Caste-Uraon, Vehicle Driver
(Non-applicant No.2)
 2. Babunath son of Devnath, aged about 41 years, Caste-Uraon
(Non-applicant No.3)
- Both are resident of Village-Manik Prakashpur, Police Station & Tahsil- Ambikapur, District- Surguja (C.G.)

---- Respondents

For Appellants	:	Shri D.N. Prajapati and Shri Bishnu Mani, Advocates
For Respondents	:	None

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

14.03.2019

1. The instant appeal is directed against the dismissal of the Appellants' claim petition vide award dated 12.09.2014 by the Fourth Additional Motor Accident Claims Tribunal, Ambikapur, District Surguja (C.G.) in M.A.C.C. No. 51 of 2013.
2. The Appellants/Claimants claimed compensation of Rs.9,01,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for death of deceased- Sarifuddin Ansari in the motor accident.
3. The Tribunal after recording the evidence led by the parties, dismissed the claim petition on ground that number of the offending vehicle- Hero Honda Splender is mentioned in the claim petition as CG-15/CD/3828 but as per evidence of claimants witnesses, the number of the offending vehicle is CG-15/CD/2838 and

no document was produced whether the vehicle in question was motorcycle or not and registered under transport department or not. However, the Tribunal has only given the finding on issues No.1 and 2 and dismissed the claim petition.

4. Learned counsel for the Appellants submits that deceased- Sarifuddin Ansari, 60 years old person died in the accident caused by motorcycle No. CG-15/CD/2838. As per evidence of Johra Beebi- witness No.1, she also stated in para-1 that non-applicant No.2 rider of the motorcycle, dashed the deceased, due to which deceased sustained injury and during treatment, he died on 12.12.2011. It has also come in the evidence of Claimants witnesses No.2- Qayum Ansari and No. 3- Ramesh Kumar that the number of the offending vehicle motorcycle is CG-15/CD/2838 in place of CG-15/CD/3828. In the claim petition though there is some typographical error with respect to the number of the offending vehicle by the counsel for the Claimants, however, only on the basis of said typographical error, the Tribunal was not justified in dismissing the Claimants' claim petition. Learned counsel for the Appellants further submits that as per claim petition, Johra Beebi, widow of deceased, is an old lady and illiterate rustic villager, she put thumb impression on the evidence/affidavit which was prepared by her counsel filed under Order 18 Rule 4 of CPC. Therefore, proper opportunity of hearing is required to be given to the Claimants to explain the above discrepancy. He also submits that in the facts and circumstance, the matter needs to be remanded to the Tribunal for deciding the claim petition afresh on all the issues after giving due opportunity of hearing and adducing evidence to the parties.

5. Heard learned counsel for the Appellants and perused the material available on record.

6. In this case, after giving notice to Respondents 1 and 2/non-applicant 2 and 3 before the Tribunal, they remained *ex parte*.

7. As per documents produced before the Tribunal, it is not in dispute that as per Ex.-P/1 to Ex.P/40, Sarifuddin Ansari sustained grievous injuries on various

parts of his body in the above accident and succumbed to the same. As per Article-A and Ex.-P/3 both death certificates, the death occurred on 12.12.2011. As per pleadings in the claim petition, the accident occurred on 06.12.2011. Thereafter, the deceased was under continuous treatment as per Ex.-P/1 medication sheet of Raghunath District Hospital, Ambikapur and death certificates (Ex.-P/3 and Article-A). As per Ex.-P/4 and Ex.-P/5 dated 09.12.2011 till death i.e. 12.12.2011 deceased was admitted in the Alam Hospital and Research Centre Pvt. Ltd., Jharkhand and death certificate is also issued by that Hospital where last breath was taken by the deceased as per Article-A. Looking to all the documents of treatment, death certificate and medical bills i.e. Ex.-P/6 to Ex.-P/40, it is not in dispute that due to above accident deceased died. It is also not in dispute that the offending vehicle was being driven by non-applicant No.2/Respondent No.1 in a rash and negligent manner as mentioned in pleadings and evidence of Johra Beebi, Qayum Ansar and Ramesh Kumar under Order 18 Rule 4 of CPC. There is only discrepancy in respect of number of the offending vehicle in the evidence of Johra Beebi, Qayum Ansari and Ramesh Kumar but they have categorically stated the name of the driver i.e. non-applicant No.2 of the offending vehicle.

8. Considering the facts and circumstances of the case, the nature and quality of evidence adduced by the Claimants, the provisions of the Motor Vehicles Act, the summary nature of trial as also the fact that while deciding the claim petition strict rule of evidence is not to be insisted upon and it has to be decided on the basis of preponderance of probability, the finding so recorded by the Tribunal is not sustainable and this Court is of the opinion that matter needs to be decided afresh on merits by the Tribunal in accordance with law.

9. Accordingly, 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, in the light of observations made hereinabove, after affording full opportunity of hearing to the parties.

- 10.** 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.
- 11.** Records of the Tribunal be sent back forthwith. Parties are directed to appear before the concerned Claims Tribunal on 29th April, 2019. If necessary to issue fresh notice to non-applicant No.2 and 3, the Tribunal may do so.
- 12.** No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

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