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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 147 of 2014

1. Sitamber Uraon S/o Late Dwarnath Uraon; aged about 20 yers;
2. Rajendra Uraon S/o Late Dwarnath Uraon; aged about 18 years;
3. Radheshyam Uraon S/o Late Dwarnath uraon; aged about 16 year;
4. Rajesh uraon S/o Late Dwarnath Uraon; aged about 14 years;
5. Anita Kumari D/o Late Dwarnath aged about 13 years;
6. Manoj Uraon S/o Late Dwarnath Uraon; aged about 12 year;

Applicant No. 03 to 06 minor through the brother (natural guardian) appellant No. 01 Sitamber Uraon;

All R/o Village- Vishrampur; Post- Vishrampur, Ranka; District- Garhawa (Jharkhand); at post- I.T.I. Rampur, Korba; Police Station, Tahsil & District (Revenue & Civil)- Korba (C.G.).

---- Appellant/Claimant

Versus

1. Ali Sher Ansari S/o Farid Ansari; R/o Village & Police Station- Miral; District -Garhawa (Jharkhand); (Driver of the Vehicle)
2. Mohammad Shahid Ali Sher S/o Mohammad Shahid Mangaru Miyan; R/o Village & Police Station- Miral; District- Garhawa (Jharkhand); (Owner of the vehicle).
3. The New India Insurance Company Ltd.; Branch Office T.P. Nagar, Korba; Police Station, Tahsil & District (Revenue & Civil)- Korba (C.G.).

---- Respondents

For Appellant	:	Shri Aanand Keshewani, Advocate
For Respondent No.3	:	Shri Raj Awasthi, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

06.02.2019

1. The instant appeal is directed against the dismissal of the Appellants' claim petition vide award dated 03.07.2013 by the Additional Motor Accident Claims Tribunal Korba, in Claim Case No. 15 of 2013.
2. Facts of the case, as per claim petition, are that on 28.10.2005 at about 3.30 o'clock, deceased- Lakhmani Devi wife of Late Dwarnath Uraon met with an accident due to rash and negligent driving of Respondent No.1, driver of the offending vehicle bearing registration No. UTY-9311 and as a result thereof, Lakhmani Devi sustained grievous injuries and died on the spot.
3. Learned counsel for the Claimant submits that the Tribunal has erred in

dismissing the claim petition by the impugned award dated 3.7.2013 merely on the ground that prior to dismissal of the claim petition several opportunities were afforded to the claimants for adducing evidence, but the claimants have not taken any interest in prosecuting the claim petition. He further submits that at the time of accident out of six claimants, four claimants were minor and claimant No. 1 aged about 20 years was only caretaker of the family and claimant No. 2 was 18 years of age. On 03.07.2013, claimant No. 1, Sitamber Uraon was ill at State of Jharkhand which is very far from the Claims Tribunal Korba could not appear before the Tribunal for adducing evidence due to his illness and that fact was also mentioned in the application filed before the Tribunal stating that he was unable to adduce evidence before the Tribunal on that day and, therefore, the Claims Tribunal ought not have dismissed the claim petition filed by the claimants on the technical grounds, as such, it is prayed that impugned award may be set aside directing the claims Tribunal for considering the claim petition afresh in accordance with law.

4. Learned counsel for the respondent No. 3/Insurance Company opposes the contention made by the claimants and submits that if any fresh award is to be passed by the Claims Tribunal then the additional burden would be upon the Insurance Company to give more interest on the amount of compensation, therefore, learned Tribunal rightly dismissed the claim petition file by the claimants because sufficient opportunity was given to the claimants to adduce the evidence before the Tribunal but neither he appeared nor adduced any evidence before the Tribunal therefore, there is no need to interfere with the award impugned. He further submits that in case the matter is remitted to the Claims Tribunal for fresh trial, the interest on the awarded amount can not be awarded from the date of application, it can be applicable from the date of fresh award.

5. I have heard learned counsel for the parties and perused the record of the Tribunal.

6. Looking to the overall facts & circumstances of the case and the claim

petition filed by the minor children of the deceased, who are belonging to the scheduled tribe category; and looking to the facts mentioned in the application that on 3.07.2013 claimant No. 1- Sitamber Uraon, who was the only care taker of the family, could not come from the Jharkhand due to illness unavoidable circumstances which was not under control of the claimant, therefore, in theses circumstances, dismissal of claim petition is not justified. So far as the interest part is concerned, the respondent No. 3/Insurance Company is at liberty to raise this plea before the Claims Tribunal, that will be considered by the Claims Tribunal in accordance with law.

7. In view of the aforesaid discussion, the appeal is allowed. The impugned award is set aside and the matter is remanded back to the concerned Tribunal to decide the claim petition afresh on its own merits, in the light of observations made hereinabove, after affording due opportunity of hearing to the affected parties.

8. 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.

9. Record of the Tribunal be sent back forthwith. Parties are directed to appear before the concerned Claims Tribunal on **28th February, 2019**.

10. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

