

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 831 of 2014

1. Geetanjali Patel Wd/o Shri Rajendra Patel, aged about 25 years, by Caste- Aghariya, Occupation- Housewife
2. Minor Harish Patel S/o Late Shri Rajendra Patel, aged about 08 years by Caste – Aghariya
3. Minor Satish Patel S/o Late Shri Rajendra Patel, aged about 08 years by Caste- Aghariya

Appellant No. 2 and 3 are minor through Natural Guardian Mother Smt. Geetanjali Patel

All are residence of village- Tongopathra, Thana & Tahsil- Pithoura, Civil & Revenue District- Mahasamund (C.G.)

---- Appellants/Claimants

Versus

- Branch Manager, United India Insurance Company Limited, Amar Complex, Jeevan Beema Marg Pandari Raipur, District Raipur (C.G.)
(Insurer of the Vehicle)

---- Respondent/Non-applicant

For Appellants	:	Shri Sunil Sahu, Advocate
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For Respondent	:	Smt. Chitra Shrivastava, Advocate
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Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

04.02.2019

1. This is Claimant's appeal against the order dated 10.07.2014 passed by the Motor Accident Claims Tribunal, Mahasamund (C.G.) in Claim Case No. 62 of 2013, whereby, an objection dated 22.04.2014 filed by the non-applicant/Respondent seeking dismissal of the claim case in view of the decisions in the matters of ***Oriental Insurance Company Ltd. Vs. Rajni Devi 2008 (5) SCC 736*** and ***Ningamma and another Vs. United India Insurance Company Limited, 2009 (13) SCC, 710*** that the deceased being the owner of the vehicle, the Claimants have no right to claim compensation under Section 163-A of the Motor Vehicle Act, has been allowed and consequently the claim petition has been dismissed by the Tribunal.

2. Learned counsel for the Claimants submits that opportunity of hearing was

not given to the Claimants to adduce evidence in support of their case by the Tribunal and only on account of objection dated 22.04.2014 filed by the non-applicant/Respondent, their claim petition has been dismissed. He also submits that insurance of the vehicle is admitted by the non-applicant/Insurance Company, therefore, they cannot escape from the liability of paying compensation to the Claimants against the death of owner for which the premium has been taken by it. He further submits that without considering all the relevant aspects of the matter, the Tribunal has dismissed the claim petition only on the basis of application/objection filed by the non-applicant which is not just and proper. Therefore, in the facts and circumstances of the case, the matter may be remanded to the Tribunal for deciding the claim petition on merits after giving due opportunity of hearing and of adducing evidence to the parties.

3. Learned counsel for the Respondent/Insurance Company opposes the contention made by the learned counsel for the Appellants and submits that the Tribunal has rightly dismissed the claim petition of the Claimants filed under Section 163-A of the Motor Vehicles Act.

4. Heard the learned counsel for the parties and perused the record of the Tribunal.

5. In the present case, on 22.08.2013 considering the pleadings of both the parties, issues were framed by the Tribunal and affidavits were filed by Geetanjali Patel and Jagbandhu Bariha under Order 18 Rule 4 of CPC. Without considering the statements of Geetanjali Patel and Jagbandhu Bariha, the Tribunal only on the basis of objection filed by the non-applicant and in view of the above decisions of the Hon'ble Supreme regarding maintainability, dismissed the claim petition of the Claimants.

6. 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, in particular the fact that proper opportunity of hearing has not been afforded to the Claimants for rebutting the contention of the Insurance Company, the finding so

recorded by the Tribunal is not sustainable in law and this Court is of the opinion that matter needs to be decided afresh on merits by the Tribunal in accordance with law.

7. Accordingly, the appeal is allowed, the order 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 due opportunity of hearing to the 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 15th March, 2019.

10. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge