

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 611 of 2013

1. Udaychand S/o Tilakdhari Aged About 25 Years, Occupation Vehicle Driver, R/o Ramnagar, P.S. Basantpur, Civil and Revenue District Balrampur, Chhattisgarh
2. Arun Kumar S/o Amarnath Kushwaha Aged About 25 Years, Occupation Vehicle Owner, R/o of village Near Forest Colony, Ward No. 11, Wadrafnagar, P.S. Basantpur, Civil and Revenue District Balrampur C.G.

---- Appellants

Versus

1. Smt. Sunita Lakda W/o Late Deepak Lakda Aged About 22 Years,
 2. Pratap Lakda S/o Late Deepak Lakda Aged About 10 months, Minor, Through legal guardian mother Smt. Sunita Lakda,
 3. Vijay S/o Kundi Lakda Aged About 50 Years,
 4. Smt. Tilaso W/o Vijay Lakda Aged About 45 Years
 5. Rekha Bharti D/o Vijay Lakda Aged About 18 Years
 6. Sulekha Lakda D/o Vijay Lakda Aged About 17 Years Minor, Through father and legal guardian Vijay Lakda,
 7. Akash Lakda S/o Vijay Lakda Aged About 10 Years Minor, Through father and Legal guardian Vijay Lakda,
 8. Deepika Lakda D/o Vijay Lakda Aged About 22 Years
- Respondents No. 1 to 8 are resident of village Gonda, Police Station Pratappur, Civil and Revenue District Surajpur (C.G.)
9. Shriram General Insurance Company Limited 10008, E-B, Rico Industrial Area Sitapura, Jaipur, Civil and Revenue District Jaipur (Rajasthan) 302022.

-----Respondents

For Appellants	:	Mr. D.N. Prajapati, Advocate
For Respondent No.1 to 8	:	None
For Respondent No.9	:	Mr. Pankaj Agrawal, Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board

03 .10.2019

1. This appeal has been filed against the award dated 25.03.2013 passed by Additional Motor Accident Claimants Tribunal Pratappur District Sarguja, in Claim Case No. 63 of 2012, awarding compensation of Rs. 4,33,000/- in favour of the respondents/claimants to be paid by the owner and driver of the offending vehicle (the appellants herein) and absolving the Insurance company of satisfying the award.
2. Facts of the case in brief are that, on 13.03.2011 the deceased Deepak Lakda, who at the relevant time was driving the Pick-up vehicle bearing registration No. UP-64/H/5834 while returning from Allahabad dashed the same against the offending vehicle i.e. truck bearing registration No. WB 35A/3862 stationary on the road near a petrol pump. The impact of the collision was such that the driver of the pickup vehicle died on the spot.
3. Having seen the documents on record and the evidence adduced by the parties learned tribunal by award impugned awarded the compensation of Rs. 4,33,000/- in favour of the claimants to be paid by the appellants herein. At the same time, learned tribunal absolved the insurance company of its liability to satisfy the award on the ground that at the time of accident the offending vehicle was not fit for the purposes as the fitness certificate was

not brought on record and therefore, it was in the breach of the Insurance Policy.

4. Learned counsel for the appellants has filed an application under Order 41 Rule 27 CPC for taking the certificate showing the offending vehicle to be fit for the period 03.03.2011 to 02.03.2012 which did not form the part of the record in the Tribunal due to the negligence of the local counsel though it was in his custody all-throughout. The application states that the mistake being bonafide and inadvertent in not producing the fitness certificate before the tribunal should not come in the way of justice to the appellants for the lapse of the local counsel. This bona-fide mistake came to the knowledge of the appellants only after the impugned award came to be passed. The prayer made by the counsel for the appellants is that to ensure justice to the appellants the matter may be remanded back to the Tribunal to be decided on that particular issue as early as possible and then the appropriate order may be passed.
5. Counsel for the respondent/Insurance company however, supports the award impugned on the ground that as the fitness certificate of the offending vehicle was not in the record of the Tribunal, no error can be attributed to the award impugned.
6. This court has seen the fitness certificate (Annexure A/3) filed by the counsel for the appellants along with appropriate application, and according to this the offending vehicle was fit with effect from 3.3.2011 to 2.3.2012. There appears to be genuineness in the submission of the counsel for the appellants that for the

lapse of the local counsel possessing the fitness certificate but could not produce the same at the appropriate time, should not deprive the appellants of justice. Moreover, seizure memo Ex.P-1 also indicates that there was a fitness certificate effective from 03.03.2011 to 02.03.2012 but unfortunately the same was not included in the record. Mere this, technical point attributable to the local counsel should not hamper the demand of justice by anyone and therefore, a fresh order on the point whether the vehicle was fit to be plied for the purpose for which it was insured at the relevant time or not. In these circumstances, this Court thinks it proper to remand the case to the tribunal with a direction to decide the issue of the offending vehicle being plied in violation of the condition of the Insurance policy or not. This has to be done by the tribunal after examining the parties on this particular issue, as early as possible preferably within a period of three months from the date of receipt of copy of this order.

7. Appeal is thus allowed and the award impugned is set aside.

Sd/-

(Vimla Singh Kapoor)

JUDGE

Jyotishi/ Santosh