

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1120 of 2018

1. Aash Kumar Yadav S/o Late Punau Ram Yadav Aged About 43 Years
2. Maheshwari Bai W/o Aash Kumar Yadav Aged About 40 Years

Both R/o Mana Basti Thana Mana Camp Tahsil And District- Raipur, Chhattisgarh.

---- Appellants/claimants

Versus

1. Mahadev @ Mahendra Yadav S/o Ramdhar Yadav Aged About 26 Years R/o Village- Nayapara Rajeem Thana Nayapara Tahsil And District- Raipur, Chhattisgarh.(Owner Cum Driver The Offending Vehicle Scorpio Bearing Registration No. C.G. 15/B/0247), (Owner Cum Driver)
2. Branch Manager National Insurance Company Limited Branch Office - Mobin Mahal, G.E. Road Tahsil And District- Raipur, Chhattisgarh, (Insurer The Offending Vehicle Scorpio Bearing Registration No. C.G. 15/B./0247).....(Insurer)

---- Respondents

For Appellants	:	Shri AL Singroul, Advocate.
For Respondents No.1 & 2	:	None.
For Respondent No.3	:	Shri Shivendu Pandya, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

13/05/2019:

Aggrieved by the award dated 13.4.2018 passed by II Additional Judge to the Court of I Additional MACT, Raipur (CG) in MACT No.294/2015 whereby application u/s 163A of the Motor Vehicles Act, 1988 (in short "the Act") of the claimants has been dismissed, the appellants/claimants have filed the instant appeal u/s 173 of the Act.

02. As per averments in the claim petition, on 25.8.2013 Bhupendra Kumar Yadav along with his elder brother Praveen Yadav was going

towards Rajim from Fingeshwar on motorcycle. However, on the way, non-applicant No.1 Madhav @ Mahendra Yadav, driver & owner of vehicle Scorpio bearing No. CG 15B 0247, driving the said vehicle rashly and negligently, dashed the motorcycle of the deceased and as a result thereof, both Bhupendra Yadav and his brother Praveen Yadav died. At the time of accident, the offending vehicle was insured with non-applicant No.2. On report being made, offence under Section 304A of IPC was registered under Crime No.97/2013 against non-applicant No.1 vide FIR (Ex.P/2) and after investigation, charge sheet was filed against non-applicant No.1 and one Peeluram Yadav under Sections 302, 120B, 34 of IPC vide Ex.P/1.

However, on claim petition being filed by the claimants, parents of the deceased, under Section 163A of the Act, the Tribunal dismissed the same on the ground that evidence on record shows that the death of deceased Bhupendra Kumar Yadav was a simpliciter murder and not due to use of motor vehicle and therefore, the claim petition being not maintainable is liable to be dismissed.

03. Learned counsel for the appellants/claimants submits that initially FIR (Ex.P/2) was registered against non-applicant No.1 under Section 304A of IPC but after completion of investigation, charge sheet (Ex.P/1) was filed against non-applicant No.1 and one Peeluram Yadav under Sections 302, 120B, 34 of IPC and after trial, both of them were acquitted by Additional Sessions Judge, Gariyaband vide judgment dated 12.11.2014 passed in ST No.45/2013 (Ex.D/1) by extending them benefit of doubt as the prosecution could not prove its case beyond all reasonable doubt against them that they used the vehicle for committing murder and from the evidence of Ramesh Kumar Sahu and Hukum Singh it appeared that the accident occurred due to rash and negligent driving of the vehicle Scorpio. No evidence was adduced before the criminal Court to prove intention on the part of the accused persons to cause death of the deceased. However, in view of the entire evidence available on record, the Tribunal was not justified in dismissing the claim petition on the ground of death of the deceased being simpliciter murder and not by use of motor vehicle. Therefore, the matter needs to be remanded to the Tribunal for decision afresh in

accordance with law.

04. On the other hand, learned counsel appearing for respondent/insurance company opposes the above submission of the appellants and supports the impugned award.

05. Heard learned counsel for the parties and perused the material available on record.

06. It is not disputed by the parties that death of Bhupendra Kumar Yadav and Praveen Yadav was caused due to injuries suffered by them in motor vehicular accident and the vehicle in question was being driven by non-applicant No.1 and at the relevant time it was insured with non-applicant No.2. On the date of accident itself i.e. 25.8.2013 FIR (Ex.P/2) was registered against non-applicant No.1 under Section 304A of IPC but after investigation, charge sheet (Ex.P/1) was filed against non-applicant No.1 and one Peeluram Yadav under Sections 302, 120B, 34 of IPC. However, as per judgment dated 12.11.2014 of Ex.D/1 passed by Additional Sessions Judge, Gariyaband in ST No.45/2013, the accused persons i.e. non-applicant No.1 Madhav and one Peeluram Yadav were acquitted of the charges by giving them benefit of doubt as the prosecution could not prove its case beyond all reasonable doubt against them that they had any intention or motive to cause death of the deceased persons. Thus, looking to the evidence of the claimants before the Tribunal, the findings of the criminal Court that there was no intention on the part of the accused persons to cause death of the deceased, the fact that while deciding claim cases the Tribunal should not insist for strict rule of evidence but has to decide the same on the basis of preponderance of probabilities, this Court is of the opinion that the Tribunal was not justified in treating the death of the deceased as simpliciter murder and dismissing the claim petition on that ground alone. Accordingly, the findings so recorded by the Tribunal are liable to be set aside and the matter is required to be remitted to the Tribunal for deciding the claim petition afresh in accordance with law.

07. In the result, the appeal is allowed. The impugned award is

hereby set aside and the matter is remanded to the Tribunal with a direction to decide the claim case afresh after giving due opportunity of hearing and adducing evidence to both the parties, within a period of six months from the date of receipt of the records. The parties shall also be permitted to amend their pleadings, file additional documents, if so required, and adduce evidence thereon.

08. Registry is directed to send the record to the concerned Tribunal without delay.

09. Parties to appear before the concerned Tribunal on **05th July, 2019**.

It is made clear that nothing in this order shall be construed as an expression of opinion on merits of the case and the Tribunal to decide the claim case strictly on the basis of material available before it in accordance with law.

Sd/

(Gautam Chourdiya)

Judge