

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No.174 of 2015**

1. Ramadhar @ Bhakhla Dhiwar S/o Late Baratu, aged about 50 years.
2. Smt. Baishakha Bai W/o Ramadhar, aged about 46 years.

Both are R/o Village Ghutiya Baranpara, Police Station, Janjgir Civil and Revenue District Janjgir Champa C.G.

---- Appellants/Claimants**Versus**

1. Ramji Chandra R/o Village Odekera, Police Station Jaijaipur, District Janjgir Champa C.G.
2. Shiv Sharan Sahu S/o Late Ram Khilawan R/o Village Dewri, Post Office Bankimongara, Tashil Katghora, District Korba C.G.
3. The Branch Manager, Chola Mandalam M.S. General Insurance Company Limited, Shop No. CF-7 & 8, Garden Side First Floor, Rajiv Plaza, Bilaspur, District Bilaspur, C.G.

---- Respondents

For Appellants	:	Shri A.L. Singroul, Advocate.
For Respondent No.3	:	Shri D.L. Dewangan, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****22.01.2019**

1. The appellants/claimants have filed the instant appeal under Section 173 of the Motor Vehicle Act against the order dated 14.11.2014 passed by Motor Accident Claims Tribunal, Janjgir Champa, C.G. in claim case No. 77/2012 whereby the claim petition filed under Section 166 of the Motor Vehicles Act has been dismissed on the ground that despite affording number of opportunity to the claimants, they did not adduce any evidence and have been seeking adjournments on one ground or the other.

2. Learned counsel for the appellants submits that as the date of appearance was wrongly given to the claimants, they could not appear before the Tribunal for giving evidence and this fact was brought to the knowledge of the Tribunal by filing an application in this regard, however, the Tribunal without considering the facts and circumstances of the case closed the right adducing evidence of the claimants and accordingly dismissed the claim petition for want of evidence. He prays for remand of the case to the concerned Tribunal for deciding the same on its merits after affording opportunity of adducing evidence to the parties in accordance with law.
3. On the other hand, learned counsel for the Insurance Company supports the impugned order and submits that the Tribunal has rightly dismissed the claim petition for want of evidence as the claimants did not adduce evidence on the earlier occasions also after seeking adjournments for the same.
4. Heard learned counsel for the parties and perused the material available on record.
5. Considering the facts and circumstances of the case, in particular the fact that the claimants aged about 50 & 46 years are father and mother of the deceased aged 21 years, the claimants could not appear before the Tribunal on the date fixed for recording of evidence as they were inadvertently given some other date for the said purpose by their counsel and further considering the fact that due to mistake on the part of counsel, the party cannot be made to suffer, this Court is of the opinion that the matter needs to be remanded to the Tribunal for deciding the claim case on its merits after affording due opportunity of

hearing to the parties in accordance with law.

6. For the reasons mentioned herein above, 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, after affording full opportunity of hearing to the parties, as expeditiously as possible preferably within a period of 6 months from the date of first appearance of the parties. Parties are directed to appear before the concerned Tribunal on 15th February, 2019.
7. 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.
8. Record of the Tribunal be sent back forthwith.
9. No order as to costs.

Sd/-
Gautam Chourdiya
Judge

Akhilesh