

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No.656 of 2014**

1. Om Bai Rathiya Wd/o Late Fatturam Rathiya, Aged About 36 Years, Occupation -Housewife.
2. Gourishankar Rathiya S/o Late Fatturam Rathiya, Aged About 18 Years.
3. Ramgopal Rathiya S/o Late Fatturam Rathiya, Aged About 16 Years.

Appellant No.3 is minor, through legal guardian mother Om Bai Rathiya. All are by Caste-Kanwar, R/o -Village- Kunkuni, P.S & Tah- Kharsia, Distt. Raigarh, C.G.

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

1. Upendra Kumar Mahis @ David S/o Gourishankar Mahis, Aged About 44 Years, Occupation -Service, PWD, Vehicle Driver & Owner, R/o -village -Chhuhipali, P.S- Dabhra, Distt. Janjgir-Champa C.G.
2. Divisional Manager, National Insu. Co. Ltd., B-1 Taha Complex-01, Vyapar Vihar, Bilaspur C.G.

--- Respondents

For Appellants	: Mr. Monoj Kumar Jaiswal, Advocate.
For Respondent No.1	: Mr. Abhishek Sharma, Advocate.
For Respondent No.2	: Mr. Dashrath Gupta, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ**Hon'ble Shri Parth Prateem Sahu, J****Order on Board****Per Parth Prateem Sahu, J****21/09/2020**

1. Appellants/Claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging the award dated 22.03.2014 in claim Case No.143/2012 passed by the learned Motor Accident Claims Tribunal, Raigarh, Distt. Raigarh, (in short 'the Tribunal') dismissing the claim application of claimants/appellants herein.

2. Facts relevant for disposal of this appeal are that on 08.11.2011, deceased -Fatturam Rathiya along with his sons ie claimant Nos.2 & 3 were returning to his village- Kunkuni from village -Dhabra on motorcycle. When they reached near Dhabra Petrol Pump, one Hero Honda Motorcycle bearing registration No.CG11/CA/6184 (for short, 'offending vehicle'), driven by non-applicant No.1 in a rash and negligent manner, dashed against the motorcycle from back side, as a result of which, they fell down, Fatturam Rathiya suffered grievous injuries over his person. He was brought to Hospital, where during the course of treatment he died. Accident was reported to Police Station – Dhabra, Distt. Janjgir -Champa, based on which, Crime bearing No.257/2011 was registered against non-applicant No.1.
3. Claimants, who are widow & two sons of deceased, filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.50,52,000/- on account of untimely motor-accidental death of late Fatturam Rathiya.
4. Non-applicant No.1 submitted reply to application, denied the pleadings made therein. He further pleaded that on the date of accident, one motorcycle was running ahead of his motorcycle in which, three persons were traveling, rider of motorcycle suddenly turned the motorcycle towards Dhabra Petrol Pump on wrong side, the motorcycle crossed away by touching his front wheel and after travelling little distance fell down, as he was not involved in accident he proceeded to his journey. Accident was on account of negligence of driver of motorcycle on which deceased was travelling and he has been falsely implicated in the criminal case. He further stated that on the date of accident, offending

vehicle was insured with respondent No.2/Insurance Company, therefore, liability, if any, to pay the amount of compensation is of Insurance Company.

5. Non-applicant No.2/Insurance Company while denying the pleadings made in application also denied the employment and income of deceased as pleaded by appellants/claimants. It was stated that on the date of accident, three persons were travelling on motorcycle, which is contrary to motor vehicles and traffic rules. Accident took place between two motorcycles, therefore, there was contributory negligence of both drivers of motorcycles. It was further stated that offending vehicle was plied in breach of conditions of insurance policy as at the time of accident, non-applicant No.1 was not possessing valid and effective driving license, therefore, Insurance Company is not liable to indemnify the insured.
6. On appreciation of pleadings and evidence placed on record by respective parties, Tribunal dismissed application under Section 166 of the Act of 1988 by recording a finding that death of deceased was on account of motorcycle-accident, but negligence of non-applicant No.1 could not be proved.
7. Learned counsel for the appellants submits that Tribunal has not considered the specific admission made by Non-applicant No.1 that motorcycle on which deceased was traveling crossed his motorcycle by touching its front wheel. He further submits that once it is admitted in evidence that front wheel of motorcycle touched with other vehicles which met with an accident, then there is involvement of motorcycle driven by non-applicant No.1 in accident, therefore, the entire application could not

have been dismissed. He also submits that the Tribunal has not properly appreciated the pleadings and evidence placed on record.

8. Learned counsel for respondent No.1/owner-cum-driver submits that upon appreciating the entire evidence brought on record by the parties, Tribunal has rightly arrived at a finding that there was no negligence of non-applicant No.1 in accident and held that appellants failed to prove negligence on the part of non-applicant No.1.
9. Per contra, learned counsel for respondent No.2/Insurance Company submits that appellants has not arrayed owner of offending vehicle, non-applicant No.1 in his reply has denied ownership of offending vehicle. He further submits that offending vehicle was registered in name of Ghashiya Ram Banjare and in absence of impleadment of the registered owner of motorcycle, in whose name offending vehicle was registered, claim application itself is not maintainable.
10. We have heard learned counsel for the respective parties and also perused the record of the claim case.
11. The Tribunal for arriving at a finding that there was no negligence of non-applicant No.1 have considered the evidence of AW-3 & AW-2, wherein AW/3 -Purushottam Singh Rathiya has stated in his evidence that accident took place when they were taking fuel in their motorcycle at Dhabra Petrol Pump, at that time offending vehicle driven by non-applicant No.1 came from back side and dashed the motorcycle. Whereas AW/2 -Gaurishankar Rathiya has stated in his evidence that while returning from Dhabra, in front of a petrol pump, offending vehicle dashed their motorcycle from behind and that he is not aware about the name of the driver of offending motorcycle.

12.FIR was lodged by Gourishankar Rathiya, son of deceased, on 08.11.2011 against driver of unknown motorcycle based upon which crime was registered for offence under Sections 279 & 337 of IPC, as apparent from Ex-P-1. Merg intimation placed on record as Ex.P-3 was lodged by Ward boy of K.G. Hospital, Raigarh in which it is mentioned that Fatturam Rathiya died on 09.11.2011 at about 5:20 am. Application was filed under Section 166 of the Act of 1988. Though there is contradiction in the evidence of AW-2 & AW-3 with regard to the manner in which accident took-place, but taking into entirety of the evidence of AW-1 & 2 and their pleadings from where it can be ascertained that at the time of accident, non-applicant No.1 alongwith motorcycle was there. In evidence NAW-1 has stated that motorcycle driven by AW-1, on which deceased was sitting, crossed his motorcycle by touching its front wheel. Tribunal has misread the evidence of AW-3 and considered him the witness to be travelling on motorcycle driven by AW-1. Whereas, upon going through the entire evidence of AW-3, it appears that he is not the person, who was travelling on motorcycle which met with accident, but appears that he was on another motorcycle and was standing at Fuel Station taking fuel in his vehicle. Tribunal has not taken into consideration the pleading made by respondent No.1 and hence, not formulated any issue in this regard.

13.Taking into consideration aforementioned facts and circumstances of the case, we are of the view that Tribunal has not considered and appreciated the entire pleading and evidence on record properly. Erred in appreciating the evidence of AW-3 and as such, arrived at erroneous finding.

14. For the foregoing reasons, we find it appropriate to remit back the matter to Tribunal for deciding the claim application afresh.

15. In the result, appeal is allowed. Impugned award is set aside and matter is remitted back to Tribunal for deciding claim application afresh in accordance with law after considering the evidence afresh. It goes without saying that the parties will be at liberty to produce the documents and lead further evidence, if any, in support of their case. Tribunal is directed to dispose of the matter within the further period of 6 months from the date of receipt of copy of this order.

16. Office to immediately send back the record of claim case.

Sd/-

(P.R. Ramamchandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Jamal/-