

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR
M. A. (C) No. 530 of 2012

Harishankar Tiwari S/o K.P. Tiwari, aged about 51 yrs R/o Ward No.2 Imli Bhata, Mahasamund, Distt. Mahasamund (C.G.).

Office address Forest Office Mahasamund, Tah. Mahasamund Distt. Mahasamund, (C.G.).

---- Appellant

Versus

1. Gore Lal Chandrakar S/o Shri Narayan Chandrakar, aged about 44 years
2. Smt. Tulsa Bai W/o Gore Lal Chandrakar, Aged about 40 years

Both are R/o Old Russian Block, Sector-6 Bhilai, Thana Bhilai Nagar, Tah & Distt. Durg, C.G.

3. Sukra (Died and deleted as per Court's order dated 13.1.20 & 4.2.20) through legal representative :

(3.1) Pradis Sagar S/o Late Sukra, aged about 46 years, R/o Near Surana College Kasarideeh, Tahsil and District Durg (C.G.).

---- Respondents

For Appellant	: Shri Neelkanth Malviya, Advocate
For Respondent No.1 & 2	: Shri P. R. Patankar, Advocate
For Respondent No.3	: None

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Parth Prateem Sahu, Judge

01.12.2020

1. Appellant/non-applicant No.1 has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988

(henceforth 'M.V. Act') challenging the award dated 28.07.2008 passed by the 7th Additional Motor Accident Claims Tribunal (F.T.C.) Durg, Chhattisgarh (henceforth 'Claims Tribunal') in Claim Case No.69 of 2007 whereby learned Claims Tribunal allowed the application under Section 166 of the M.V. Act filed by respondents No.1 and 2 i.e. parents of deceased in part and awarded Rs.9,79,618/- as total compensation.

2. Brief facts relevant for disposal of this appeal, are that, on 02.10.2006, Tarun Chandrakar was travelling on his motorcycle on National Highway No.6, while so, when he reached near village Paragaon Nisda turn, one motorcycle bearing No.CG-07/ZR/4629 (henceforth 'offending vehicle') driven by appellant/non-applicant No.1 rashly and negligently, dashed the motorcycle of Tarun Chandrakar and caused accident. In the said accident, Tarun Chandrakar suffered grievous injuries over his head. He was taken to Ramkrishna Hospital, Raipur where during the course of treatment, he succumbed to the injuries on 12.10.2006. Motor accidental death was reported to concerned Police Station, based upon which, Merg No.80 of 2006 was registered.
3. Respondents No.1 and 2/claimants have filed an application under Section 166 of the M.V. Act pleading therein that on the date of accident, deceased was aged about 22 years,

working as supervisor with Kumar Undertaking, Sikola Bhatha, Durg, earning Rs.6,500/- per month and thereby claimed Rs.12,55,000/- as total compensation.

4. Non-applicant No.1/appellant did not appear before learned Claims Tribunal and was proceeded *ex parte*.
5. Upon appreciation of pleadings and evidence brought on record by the claimants, learned Claims Tribunal arrived at a finding that death of Tarun Chandrakar was on account of motor accidental injuries due to rash and negligent driving of offending vehicle by non-applicant No.1 and awarded Rs.9,79,618/- as total compensation upon assessing income of deceased as Rs.6,500/- per month.
6. Shri Neelkanth Malviya, learned counsel for the appellant/non-applicant No.1/owner of offending vehicle submits that at no point of time, he was served with notice of claim application. Referring to the proceedings drawn by learned Claims Tribunal dated 17.10.2007 submitted that learned Claims Tribunal has recorded that notice sent to non-applicants No.1 and 2 received back to Claims Tribunal unserved and issuance of a direction for issuance of fresh notice. He further points out that on the same day, one Santosh Verma, Advocate caused his appearance on behalf of appellant/non-applicant No.1. Once the notice sent to appellant returned unserved and pendency of claim application is not within the knowledge of appellant, there

was no occasion to instruct any of the counsel to appear in his behalf. Name of Shri Santosh Verma shown in order-sheet appearing on behalf of appellant/non-applicant No.1 is without his instructions. He unauthorizedly appeared on his behalf on the basis of filing memo. No *Vakalatnama* has been signed by appellant for its filing before learned Claims Tribunal. It is contended that arising out of same accident, appellant has also filed an application under Section 166 of the M.V. Act seeking compensation for injuries suffered by him. His claim application was registered as Claim Case No.132 of 2007 before the 8th Additional Motor Accident Claims Tribunal (F.T.C.), Raipur. Non-appellant No.1/father of deceased and owner of motorcycle driven by deceased Tarun Chandrakar appeared before learned Claims Tribunal at Raipur in the proceeding filed by the appellant, through his Advocate by name, Shri Yogendra Chandrakar. He appeared before learned Claims Tribunal at Raipur, but has not informed the Claims Tribunal or the appellant about filing of claim application by father of deceased seeking compensation against the death of his son in the accident against the appellant in another Claims Tribunal. It is pointed out that from the aforementioned facts appearing in the case, it is apparent that respondent No.1/claimant No.1 has purposefully suppressed the fact of filing of claim application against the appellant. Appearance made by Advocate on

behalf of appellant in the proceeding of claim application before Claims Tribunal at Durg is without instruction/direction of the appellant. It is further pointed out that counsel appearing on behalf of respondent No.1/claimant No.1 before Claims Tribunal at Raipur and counsel who filed an application on behalf of respondents No.1 and 2 against the appellant is one and the same, but they have not mentioned this fact of pendency of claim application before Claims Tribunal at Durg, though contested the case at Claims Tribunal, Raipur. It is further contended that impugned award passed against him is without giving him an opportunity to defend his case, more so when Claims Tribunal at Raipur while deciding his claim application for awarding of compensation had arrived at a finding that deceased and appellant to be contributory negligent equally vide award dated 08.05.2009. Award passed by Claims Tribunal at Raipur was not put to challenge by respondent No.1/claimant No.1 in an appeal before the appropriate forum, hence, finding recorded by Claims Tribunal at Raipur has attained its finality. Had the appellant was served with a notice, he could have taken appropriate defence, from which he has been deprived. He further submitted that as it is a case where notice sent by Claims Tribunal has not served upon him, impugned award be set aside and matter be remitted back to Claims Tribunal for deciding the claim case

afresh after affording an opportunity to the appellant. It is also contended that appellant as per direction issued by this Court has deposited an amount of Rs.5 Lacs before Claims Tribunal. He lastly argued that appellant got knowledge about filing of any claim application against him and passing of award by Claims Tribunal at Durg only when *Kurki* notice was sent on the address of his office and immediately thereafter, he applied for the certified copy of award and filed an application under Order 9 Rule 13 read with Section 151 of CPC for setting aside *ex parte* award, which came to be dismissed on 13.12.2011 and thereafter, without any further delay, this appeal has been filed.

7. Per contra, Shri P.R. Patankar, learned counsel for respondents No.1 and 2/claimants submits that once the counsel appeared on behalf of the appellant, it will be presumed that appellant was having knowledge with regard to pendency of claim application before Claims Tribunal at Durg, but it appears that appellant has avoided the proceedings. He should not be permitted to take benefit of his own mistake.
8. We have heard learned counsel for the respective parties.
9. The only grievance raised by the appellant is that impugned award is passed without effecting service of notice upon him of claim application filed by respondents No.1 and 2 against the appellant.

10. To appreciate the submission made by learned counsel for the appellant, we have minutely perused the record of claim case, perusal of which shows that respondents No.1 and 2 filed an application under Section 166 of the M.V. Act before Claims Tribunal on 20.09.2007. In order-sheet dated 17.10.2007, it is recorded that notice sent to the appellant and other non-applicants received unserved on account of wrong address. Learned Claims Tribunal thereafter directed for issuance of fresh notice through usual mode as well as registered post. Later on, one Santosh Verma, Advocate appeared before Claims Tribunal on the same day stating that he has filed memo of appearance on behalf of appellant/non-applicant No.1. Perusal of subsequent order-sheets dated 20.11.2007 would show that appearance on behalf of non-applicant No.1 has been mentioned as Shri Harishankar Tiwari, Advocate. Similar presence was marked on 27.12.2007, Shri Santosh Verma thereafter has been shown appearing till 30.06.2008. On 10.07.2008, learned Claims Tribunal has marked non-applicant No.1/appellant to be not present and he was proceeded exparte. On 28.07.2008, impugned award was passed in absence of non-applicant No.1/appellant. Memo of appearance filed by Shri Santosh Verma on 17.10.2007 is available on record. In memo of appearance, not only signature of appellant is missing but even the name of non-applicant No.1/appellant

for whom he is appearing is not mentioned. The envelope of registered post sent to the appellant for service of notice of proceedings dated 17.10.2007 is available on record, in which, address has been shown as “Harishankar Tiwari, S/o K.P. Tiwari, Deputy Ranger, Forest Department, Saraipali, District Mahasamund”. The envelope returned to Claims Tribunal with a note that “person named was not found on the address”, whereas address shown in the cause-title in the memo of appeal to be “resident of Ward No.2, Imli Bhata, Mahasamund, Tahsil and District Mahasamund”.

11. From the aforementioned facts available on record, particularly, the address on which notice was sent has been mentioned in the envelope differently than what was mentioned in claim application, itself is sufficient to arrive at a conclusion that notice of claim application has not been sent on the address of the appellant as mentioned in claim application. It appears that submission made by learned counsel for the appellant that Shri Santosh Verma, Advocate has filed his memo of appearance in his behalf is without instruction and knowledge is having some force. Even in claim application filed by the appellant before Claims Tribunal at Raipur also, same address as mentioned in claim application of the subject case is mentioned. The submission of learned counsel for the appellant that the counsel who filed claim application before Claims Tribunal at Durg himself

appeared at Claims Tribunal Raipur contesting the claim filed by the appellant, but not intimated the fact of pendency of claim application against him is not controverted by the counsel for respondents No.1 and 2.

12. In view of aforementioned facts and circumstances of case, particularly, taking into consideration the order-sheet recorded by learned Claims Tribunal dated 17.10.2007 wherein it is mentioned that notice sent to the appellant received back unserved, we are of the considered opinion that notice of claim application filed against him was not served upon him and impugned award passed against him is without effective service of notice upon him.
13. For the foregoing reasons, we find it appropriate to set aside the impugned award passed by learned Claims Tribunal. Accordingly, the appeal is allowed. Impugned award is set aside and the matter is remanded back to the Claims Tribunal with a direction to decide the case afresh in accordance with law, after providing adequate opportunity of hearing to the parties. Learned Claims Tribunal will proceed to decide the claim application afresh from the stage of notice.
14. The parties are directed to appear before learned Claims Tribunal on **29.01.2021**. Since the accident is of the year 2006, we direct the Claims Tribunal to decide the Claim Case No.69 of 2007 as expeditiously as possible, preferably

within five months, from the date of receipt of certified copy of this judgment.

15. Original record of Claim Case No.69 of 2007 be sent back forthwith along with copy of this order.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh