

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A. (C) No. 259 of 2013**

*{Arising out of Award dated 01.12.2012 by the learned Additional Motor Accident
Claims Tribunal, Kondagaon in Claim Case No. 65 of 2012}*

1. Smt. Mamta W/o Hemraj Gunjam, aged about 22 years.
2. Smt. Tijiya Bai W/o Phool Singh, aged about 52 years.
3. Phool Singh S/o Chamra Gunjam, aged about 56 years.

All are R/o village Bade Jamari, Post Bakulwahi, Tahsil and District and PS
Narayanpur, Chhattisgarh.

---- Appellants**Versus**

1. Ramesh Jadhav S/o Kadam Jadhav, aged about 48 years, C/o Alim Ahmad Patel, R/o 9-B, Sanjay Nagar, Nearby Aslam Masque (Masjid) Aurangabad, Police Station and District Aurangabad, Maharashtra.
2. Alim Ahmad Patel S/o Malik Mohammad Ahmad Patel, aged about 42 years, R/o 9-B, Sanjay Nagar, Nearby Aslam Masque (Masjid) Aurangabad, Police Station and District Aurangabad, Maharashtra.
3. The United Insurance Company Limited, Through Zonal Manager, Zonal Office, Jail Road, Kutchaheer Chowk, Raipur, PS, Tahsil and District Raipur, Chhattisgarh.

---- Respondents

For Appellants	: Shri Anil Gulati, Advocate.
For Respondent No. 1 & 2	: None.
For Respondent No. 3	: Smt. Chitra Shrivastava, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Parth Prateem Sahu, Judge

21.05.2020

1. Challenge in this appeal is to the award dated 01.12.2012 passed by the learned Additional Motor Accident Claims Tribunal, Kondagaon (*for short 'the Tribunal'*) in Claim Case No. 67 of 2012 whereby the learned Claims Tribunal has dismissed the claim of the Appellant/Claimants.
2. Facts in brief, relevant for disposal of this case are that on 15.02.2011, a motor-cycle bearing registration No. TN 28 AB 6826, on which deceased Hemraj and Dhannu Ram were traveling, was dashed by a Truck bearing registration No. MH 19 Z 0121 which was being driven by Respondent No. 1 and owned by Respondent No. 2. On account of the aforementioned accident, both the occupants of the motor-cycle died. The claimant/Appellant No. 1 is the wife and the Appellants No. 2 and 3 are the parents of the deceased Hemraj. They have filed the claim petition before the learned Tribunal pleading that the accident was on account of rash and negligent driving by the Respondent No. 1 who is the driver of the offending truck and have claimed a total sum of Rs. 8,00,000/- as compensation against the motor accidental death of the deceased.
3. The Non-Applicant No. 1 and 2, who are the driver and owner respectively of the offending vehicle, even after service of notice, did not appear before the learned Tribunal and they were proceeded ex-parte.
4. The Non-Applicant No. 3 i.e. the Insurance Company filed its reply and submitted that there was no driving licence with the driver of the motor cycle and further there was no licence with the driver of the offending vehicle i.e. Truck

resulting into gross violation of the conditions of the insurance policy amongst other grounds. The learned Tribunal, on appreciation of the pleadings and evidence on record, arrived at a finding that the driving licence of the truck driver has not been produced and further that there was some contradictions in the pleadings of the claim application as well as the contents of FIR with respect to driver and the pillion rider of the motor-cycle. The driver of the offending vehicle was not properly impleaded, thus he was not having an opportunity to defend the allegation of rash and negligent driving and considering aforementioned aspects, the claim of the Appellants was dismissed.

5. Shri Anil Gulati, learned counsel for Appellants submits that the Tribunal erred in dismissing the claim application. He submits that in a motor accident, two persons died who were travelling on motor-cycle. The Truck was found standing on spot of accident under which motor-cycle was lying. The FIR was prompt, which bears the number of Truck involved in accident. The driving licence of the driver was seized by Police and on that basis, Respondent No. 1 was made as party Respondent/Non-Applicant being driver of offending vehicle. The Tribunal dismissed the application on technicalities of pleadings. He further contended that Respondent has not placed any material or evidence to controvert the case of Appellants/Applicants. It is submitted that the claim application be allowed and the amount of compensation be awarded.
6. Per contra, learned counsel for the Respondent No. 3/ Insurance Company submits that in this case, the accident itself is disputed and the learned Tribunal after considering all the evidence and pleadings placed on record by the respective parties, has rightly passed the impugned award which does not call for any interference.
7. We have heard learned counsel for the Respondent-Insurance Company and perused the records.

8. Perusal of the record would show that the copy of the FIR has been filed as Exhibit P/1 in which number of the Truck has been specifically mentioned against which the claim application has been filed and the relevant documents of the criminal case has also been filed in the claim application from Exhibit P/1 to P/7.
9. From perusal of the records, particularly the documents of the criminal case would show that the accident cannot be said to be disputed but the only fact which can be said that as per pleading of the Insurance Company that the driver of the truck has not been properly impleaded as a party. It is a fact that neither the owner nor the driver have appeared before the Tribunal but based on the materials collected by the Investigating Agency which is a part of this record, the driving licence was also filed as Exhibit P/7 from which the name of the driver can be ascertained. So far as the duty or the liability of claimants is only to place the facts before the Tribunal and if that is being disputed by the other party, then it is the burden on that respondent/non-applicant to prove the fact which they assert. From the records, we do not find any material placed on record by the Insurance Company to dispute the fact of accident or the involvement of the driver who is the Non-Applicant No. 1 as the driver of the offending vehicle. What is important is the involvement of the vehicle. From perusal of Exhibit P-1, copy of FIR, it is apparent that the date and time of accident is 15.02.2011 in between 3:30 am to 4:30 am. FIR was lodged on the same day i.e. 15.02.2011 at 8:10 am which is without much delay. This document bears the number of Truck MH 19 Z 0121. The police during course of investigation prepared inquest Panchnama (Exhibit P-19) in which the position of the offending Truck is mentioned. Under the Truck, one motor cycle was lying and blood was found between the wheels of offending vehicle. In FIR (Exhibit P-1) name of deceased is also mentioned.

10. The aforementioned facts available in documents available on record clearly shows the involvement of the Truck and in accident, Hemraj and Dhanau Ram died. The finding recorded by the learned Tribunal in para 12 and 13 of the Award are contrary to the record. It was not a case of hit and run. Offending vehicle was on the place of incident, by which involvement of vehicle cannot be doubted. Investigating agency seized the licence which is part of record showing name of driver. Insurance Company has not led any evidence. In view of the aforementioned facts, we are of the considered view that in the above discussed facts and circumstances, claim application cannot be dismissed even otherwise in its entirety.
11. In the aforesaid facts and circumstances, we are of the view that the impugned award passed by the learned Tribunal dismissing the claim petition is not sustainable, we set aside the same accordingly. The Claim Case is remanded back to the learned Tribunal for fresh adjudication after affording opportunity of hearing to both sides. It goes without saying that the parties would be at liberty to amend or make further pleadings and to lead further evidence. Looking to the date of accident, we direct that the learned Tribunal will make all its endeavour to dispose of the claim petition within a period of three months from the date of receipt of a copy of this order.
12. The appeal is allowed in part.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge