

AFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 494 of 2014**

1. Smt. Ratni Bhatra W/o late Gopinath aged about 39 years
2. Ku. Pratibha D/o late Gopinath, aged about 10 years
3. Ku. Borimani D/o late Gopinath, aged about 7 years
4. Ku. Khema D/o late Gopinath, aged about 02 years

Appellant/ claimant 2 to 4 are minor through natural guardian mother namely Smt. Ratni Bhatra, all resident of village-Sakarda, Current Address-Village Talnar, Manjhipara, Tahsil-Bakawand, P.S. Jagdalpur, Revenue and Civil District Bastar Jagdalpur C.G.

-----Appellants/Claimants**VERSUS**

1. Jeraled Agrawal S/o Premnath Agrawal (DIED and DELETED)
 - i) Premnath Agrawal S/o not known, aged about 58 years, R/o Ambedkar Ward, P.S. Bodhghat, Jagdalpur, Revenue and Civil District Bastar Chhattisgarh
2. Shriram Transport Finance Company Limited through Branch Manager, Branch Office Jagdalpur, opposite Girdhar Saw-Mills, Gidam Road, Jagdalpur, District Jagdalpur-Bastar C.G.
3. Reliance General Insurance Company Limited, through Branch manager, Branch office Reliance General Insurance Brokrage Private Limited, G.E. Road, Raipur Tahsil and District Raipur C.G.

-----Respondents

For Appellants	: Mr. Avinash K. Mishra, Advocate
For Respondent 1	: Mr. Vivek Agrawal, Advocate.
For Respondent 2	: Mr. Chandrashekhar Kaushik, Advocate on behalf of Ratnesh Agrawal, Advocate
For Respondent 3	: Mr. Shailesh Tiwari, Advocate on behalf of Mr. Sourabh Sharma, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Order on Board****Per Parth Prateem Sahu, J.****27/11/2020**

1. Appellants-claimants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "Act of 1988") challenging the impugned award dated 29.10.2013 passed by learned First Additional Motor Accident Claims Tribunal (F.T.C.) Jagdalpur, District Bastar in claim

case no. 91/2009 whereby learned Claims Tribunal allowed the application filed under Section 166 of the Act of 1988 in part and awarded Rs. 3,93,000/- as total compensation.

2. Facts relevant for disposal of this appeal are that, on 04.05.2009, Mono alias Momo Bhatra and Gopinath along with other labourers namely Podiya, Lakhma and Jagra were working as loader (hamal) on a truck bearing registration no. CG 17GA 4500 (hereinafter referred to as "offending truck") owned by non-applicant 1. Gopinath along with others after loading cement, iron bars and other goods went to Gidam from Jagdalpur. After unloading the goods at its destination place, they were returning on offending truck. On the way, near Banjaringhat, NH-16, non-applicant 1 drove his offending truck rashly and negligently due to which it over-turned. In the said accident, occupants of the truck suffered grievous injury over their person. Gopinath was taken to Maharani Hospital, Jagdalpur where during the course of treatment he died.
3. Applicants who are widow and minor children of the deceased Gopinath filed an application under Section 166 of the Act of 1988 pleading therein that on the date of accident, deceased while working as loader on truck was earning Rs. 130/- per day, he was working for 26 days in a month and thereby earning Rs. 3,380/- per month. Applicants were dependents upon the deceased suffered monetary loss and claimed Rs. 16,48,400/- as total compensation.
4. Non-applicant 1 who is driver-cum-owner of the offending truck submitted reply to claim application. He partly admitted the contents of the claim application, engagement of the deceased as loader on the truck was admitted and further pleaded that offending truck was insured with non-applicant 3-Insurance Company, liability, if any, would be upon non-applicant 3/ Insurance Company. Income as pleaded in the claim application was denied.

5. Non-applicant 3/Insurance Company submitted reply to the claim application denying the pleadings made therein. It was further pleaded that the accident was a result of negligence on the part of deceased himself. Non-applicant 1 was not possessed with valid and effective driving licence; premium was not paid for covering risk of the deceased (labourer).
6. Learned Claims Tribunal, upon appreciation of pleadings and evidence placed on record by the respective parties, while exonerating the Insurance Company, awarded total sum of Rs. 3,93,000/- as compensation.
7. Mr. Avinash K. Mishra, learned counsel for the appellants-claimants submits that the Claims Tribunal erred in awarding meagre amount of compensation, erroneously exonerated the Insurance Company from its liability. Learned Claims Tribunal further erred in arriving at a finding that the deceased was traveling as passenger whereas he was traveling as Hamal (loader) and there was employee-employer relationship between the deceased and non-applicant 1. He further contended that the Claims Tribunal erred in arriving at a finding that risk of deceased was not covered; applying wrong multiplier, non-awarding of future prospects and in awarding meagre amount of compensation on other conventional heads.
8. Per contra, Mr. Vivek Agrawal learned counsel for legal representative of Respondent 1 submits that the original owner of the offending truck ie. Respondent 1 died during the pendency of claim application. Legal representative of original non-applicant 1 was brought on record only in appeal. Impugned award is passed against a dead person, hence, the impugned award is null and void. It is further contended that appeal for enhancement of the amount of impugned award cannot be maintained against null and void award. Respondent 1 who has been substituted in place of original Respondent 1 as legal representative was not residing

with original owner (Jeraled Agrawal) but he was residing separately, hence, no liability can be fastened upon present Respondent 1 for the act and omission of original non-applicant 1 in claim application.

9. We have heard learned counsel for the respective parties and also perused the record.
10. Application under Section 166 of the Act of 1988 for grant of compensation against motor accidental death of late Gopinath on 04.05.2009 was filed on 23.09.2009. Claims Tribunal *vide* order dated 10.02.2010 ordered for issuance of notice to non-applicants. Non-applicant 1 owner-cum-driver of the offending truck made his appearance and filed Vakaltnama of advocate engaged by him on 19.03.2010. He was represented by advocate engaged by him till 02.01.2013. On said date, advocate appeared on behalf of non-applicant 1 and intimated the Tribunal that Respondent 1 died. Claims Tribunal has not passed any order directing the counsel for applicants to file necessary application but has proceeded *ex parte* against non-applicant 1. Once it is brought to the knowledge of the Claims Tribunal that one of the parties to the claim application died during the pendency of claim application then the Tribunal ought to have issued appropriate direction in this regard, more so when, the application for grant of compensation is filed under Section 166 of the Act which is beneficial piece of legislation. Learned Claims Tribunal after recording that non-applicant 1 did not appear, recorded proceeding of his becoming *ex parte*. After conclusion of the enquiry, impugned award was passed awarding Rs. 3,93,000/- as compensation.
11. Before this Court, after issuance of notice, Respondent 1 has been reported to be dead as per the noting dated 02.07.2014. On 16.06.2015, Appellants moved an application for bringing legal representative(s) of Respondent 1. The said application came to be allowed *vide* order dated 29.09.2020 and father of deceased Jeraled Agrawal has been impleaded

as Respondent 1. Present respondent 1 was substituted in place of original Respondent 1 (Jeraled Agrawal).

12. Submission made by the learned counsel for Respondent 1 that original Respondent 1 (Jeraled Agrawal) died during the pendency of the application is not denied or controverted by the learned counsel for the appellants. Learned Counsel for the appellants submits that the claimants are poor persons, they have lost their bread winner, widow of deceased Gopinath and father of other respondents were fully dependents upon the counsel engaged by them before the Claims Tribunal. He contended that the appellants-claimants are tribals resident of interior tribal village of district Jagdalpur, hence, one opportunity may be granted to them to make appropriate application/ proceedings before the Claims Tribunal for impleading legal heirs of original Respondent 1 (Jeraled Agrawal) owner-cum-driver of the offending truck.
13. Proceedings under Motor Vehicles Act, 1988 are not to be conducted as a regular civil suit, hence, very limited provisions of Code of Civil Procedure are applicable to it. Admittedly, looking to the address shown in the application as well as in appeal of the appellants-claimants, it is apparent that they are resident of Talnar, Manjhipara, Tahsil Bakawand, P.S. Jagdalpur. Perusal of proceedings recorded by the Claims Tribunal would show that after oral intimation made by the learned counsel appearing for non-applicant 1 therein with regard to his death instead of directing to file appropriate application on the intimation given by learned counsel for Respondent 1 or passing orders in that regard, Claims Tribunal has mentioned non-applicant 1 to be proceeded *ex parte* and thereafter passed the award against non-applicant 1 and 3. When once it is brought to the notice of the Tribunal that non-applicant 1 died during the pendency of claim application, then it could not have proceeded further, recording non-applicant 1 to be '*ex parte*'.

Tribunal, invoking its jurisdiction under Section 168 and 169 of the Act of 1988, could have directed appellants to file appropriate application. The Tribunal, when dealing with applications for grant of compensation under the Motor Vehicles Act, is not expected to act as a neutral spectator but under the Act of 1988, duty is casted upon it to award just compensation after conducting proper enquiry.

14. Further another aspect of the case is that, no order/ award can be passed against a dead person. If, on account of any mistake or any other reason, award/ order is passed against dead person, is a nullity. Hon'ble Supreme Court in case of **T. Gnanavel v. T.S. Kanagaraj and another** reported in **(2009) 14 SCC 294** has held thus:

“29. For the reasons aforesaid, we are of the opinion that the High Court had rightly interpreted the provision of Order 22 Rule 4(4) CPC and accordingly held that the decree passed by the trial court on 20-12-2002, in OS No. 3946 of 1999 was a nullity in the eye of the law as the defendant had died during the pendency of the suit for specific performance of the contract for sale and no exemption was sought at the instance of the appellant-plaintiff to bring on record the heirs and legal representatives of the defendant before the judgment was pronounced.

33. In view of the discussions made hereinabove and the decisions considered by us in this appeal, it is amply clear that the High Court had rightly held that the order of the trial court was a nullity and thus the same was liable to be set aside. We therefore, find no infirmity in the impugned judgment.”

15. Now the question arises before this Court is whether the claimants who lost their bread winner, for the mistake of the counsel, would be left to suffer. The mistake on the part of the counsel is apparent on the face of the record as he did not take any step even after intimation of death was not only given but was also recorded by Tribunal. Tribunal instead of recording the legal heirs of deceased respondent to be brought on record or claim to be abated against him, has recorded to have proceeded ex parte against him. The claimants are poor tribal resident of interior tribal

area. The mistake is procedural. Procedures are hand made of justice and cannot defeat the substantive rights of the parties.

16. Keeping in mind the beneficial provisions of the Act of 1988, we find it appropriate to **remit back** the case to the Claims Tribunal for deciding the claim application afresh after drawing appropriate proceedings ie. substitution of name of legal representative(s) of non-applicant 1. Claims Tribunal shall decide the claim application afresh after affording opportunity to all the parties concerned to amend their pleadings, file reply to the claim application, place documents and to lead further evidence. Taking note of the fact that the accident is of the year 2009, we direct the Claims Tribunal to decide the claim application preferably within a period of 5 months from the date of production of certified copy of the order passed by this Court.
17. Records of the claim case be sent back to the concerned Claims Tribunal forthwith.
18. Accordingly, appeal is disposed of with the above directions.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge